



[2023] JMSC Civ. 232

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018HCV03615

BETWEEN	SYMONE LAWRENCE	CLAIMANT
AND	KIRK SAMUELS	1ST DEFENDANT
AND	LAURISTON HAMILTON	2ND DEFENDANT

IN OPEN COURT

Mr. Sean Kinghorn instructed by Kinghorn and Kinghorn appearing for the Claimant

Defendants absent and unrepresented

Heard: November 1st, 2023 and December 6th, 2023

Assessment of Damages — Personal Injury — Passenger in vehicle involved in collision — Negligence — Pain and suffering and loss of amenities — Special damages — Severe whiplash — Lower back strain — Contusions — Headaches.

T. HUTCHINSON SHELLY, J

BACKGROUND

[1] On the 19th of March 2015, at approximately 7:15 am, the Claimant was a passenger in a motor vehicle which was owned by Mr. Hamilton (the 2nd defendant) and being driven by Mr. Samuels (the 1st defendant). The motor vehicle was travelling along the Spanish Town Road heading in the direction of the Portia Simpson Miller Square. On approaching a traffic light at Weymouth

Drive, Mr. Samuels sped through the amber light in an effort to avoid stopping on the red light. In the process, he encountered a line of traffic which was stationary and collided into the rear of one such vehicle causing Ms. Lawrence to be jerked forward and backward on impact.

[2] On September 24th, 2018, Ms. Lawrence filed a Claim and Particulars of Claim alleging that she sustained personal injuries, damage, loss and expense as a result of the 1st Defendant's negligence for which she seeks to recover damages. The 2nd Defendant was served with the documents on the 11th of November 2018 but failed to respond to the Claim. Default Judgment was entered against him on the 2nd of September 2019.

[3] On the 1st of November 2023, the matter was scheduled for Assessment of Damages. The Claimant gave evidence as to the quantum of damages that she believes the Court should award. The 2nd Defendant, who had been served with notice of the hearing and assessment documents, did not appear and remained unrepresented. As such, the assessment proceeded uncontested.

ISSUE

[4] The default judgment having been entered and liability determined, the issue for the Court is:

- What quantum of damages, if any, the Claimant is entitled to?

THE CLAIMANT'S EVIDENCE

[5] At the hearing, Ms. Lawrence was sworn and her witness statement dated April 28th, 2023, was allowed to stand as her evidence-in-chief. Ms. Lawrence recounted the sequence of events outlined above. She added that after the collision, she managed to make her way to the Hunts Bay Police Station where she made a report, following which she went home. On her arrival home, she began to feel pain in her neck and back. The pain increased overnight and she

was unable to get out of bed the following day. She sought medical treatment from Dr. Christopher Barnes, who after treating her, referred her to a physiotherapist with whom she later did several sessions.

[6] She was unable to perform her usual domestic chores and had to be assisted by her sister. She also suffered a miscarriage sometime after which she attributes to the pain and discomfort in her body. Ms. Lawrence informed the Court that she now faces challenges standing or sitting for long periods which impacts her role as a Principal at a Primary and Infant School.

[7] She outlined her expenses as including transportation costs in the sum of **Ten Thousand Dollars (\$10,000.00)** as she had to cover the cost of chartering public transportation to move around in search of medical treatment. No documents were provided in support of this expense. Ms. Lawrence explained that none were received from the relevant transport operators.

[8] Ms. Lawrence also placed into evidence a medical report which was prepared by Dr. Barnes which she says assessed her injuries as including severe whiplash, lower back strain, contusion to right forearm and headaches. She also exhibited a number of receipts showing payment for medical visits, prescription drugs and the medical report and asks for an award of **Forty-Nine Thousand Two Hundred and Seventy-Two Dollars and Fifty-Four Cents (\$49,272.54)** to compensate her for this expense.

SPECIAL DAMAGES

[9] It is an established principle that special damages, which are generally capable of exact calculation, must be specifically pleaded and proved and therefore in any action in which a Claimant seeks to recover special damages, he has a duty to prove his loss strictly¹. The authorities have demonstrated however that the

¹ **Lawford Murphy v Luther Mills** (1976) 14 JLR 119

court has some discretion in relaxing the rule in the interest of fairness and justice, depending on the particular circumstances of the case².

[10] The Claimant requested compensation for special damages for which she produced the following documents:

(a) Medical Report from Dr. Christopher Barnes	\$20,000.00
(b) Three receipts from Vicky's Pharmacy	\$19,766.54
(c) Receipt from K's Pharmacy	\$2,506.00
(d) Receipt from Old Harbour Radiology Centre	<u>\$7,000.00</u>
Total Expenses	\$49,272.54

[11] These documents were admitted into evidence as exhibits 1 through to 4. On my review of the receipts presented in respect of sums paid for the medical related expenses, I am satisfied that these sums were expended as a result of the Claimant's injuries and I award her compensation in the sum of **Forty-Nine Thousand Two Hundred and Seventy-Two Dollars and Fifty-Four Cents (\$49,272.54)**.

[12] In respect of the transportation expenses, in her pleadings, the Claimant had stated the amount then expended as **Ten Thousand Dollars (\$10,000.00)** which is consistent with what she later stated in her evidence. She was quite candid in acknowledging that she has no proof of this expense but asked the Court to accept that this is entirely due to the vagaries of the local public transportation sector.

[13] As acknowledged above, the general rule which requires special damages to be specifically pleaded and proved may be relaxed having regard to what is reasonable in the circumstances. The Tribunal is also endowed with the

² **Julius Roy v Audrey Jolly** [2012] JMCA Civ.63

discretion to use its experience to arrive at a just award.³ The authorities on this point include situations, such as the case at bar, where documentary proof of transportation expenses is unavailable.

[14] On my review of this expense while it is evident that there are no documentary records in support of same, the purpose of the trips was to obtain medical treatment which was necessitated by this incident. The sum claimed while not specifically particularised for the five (5) visits outlined in the receipts is nonetheless entirely reasonable in light of the prevailing transportation costs for chartered vehicles. In the circumstances, the Claimant is awarded the sum of **Ten Thousand Dollars (\$10,000.00)**.

[15] As such, the sum of **Fifty-Nine Thousand Two Hundred and Seventy-Two Dollars and Fifty-Four Cents (\$59,272.54)** is awarded to Ms. Lawrence for special damages.

GENERAL DAMAGES

Medical Evidence

[16] The particulars of the Claimant's injuries were outlined in the Medical Report prepared by Dr. Christopher Barnes who examined Ms. Lawrence on the day of the accident. In the report, it was noted that Ms. Lawrence presented with lower back pain and stiffness, neck pain and stiffness, headache and dizziness and pain and swelling to the right forearm. X-rays of the cervical and lumbar spine were done and the examination revealed findings consistent with severe whiplash injury, lower back strain and contusion to the right forearm.

³ *Attorney General of Jamaica v Tanya Clarke (nee Tyrell)*, SCCA No. 109/2002; *Desmond Walters v Carlene Mitchell* [1992] 29 JLR 173.

[17] Ms. Lawrence was treated with analgesics, muscle relaxants and ice therapy. It was also recommended that she engage in physiotherapy sessions. Her prognosis was stated as being impacted by her state of pregnancy which restricted the medications which she could be prescribed. Dr. Barnes opined that the severe version of Ms. Lawrence's back pain occurred once every month and is associated with walking or standing for long periods and lifting heavy loads. There was no indication of the likely period over which these issues would be resolved or whether Ms. Lawrence had suffered any resulting disability.

SUBMISSIONS ON DAMAGES

[18] Learned Counsel relied on three (3) authorities in support of the request for an award between **One Million Eight Hundred Thousand Dollars (\$1,800,000.00)** and **Two Million Five Hundred Thousand Dollars (\$2,500,000.00)** as General Damages. The first was the authority of **Talisha Bryan v Anthony Simpson and Andre Fletcher** Claim No. 2011 HCV 05280, delivered on the 13th day of March 2014. The Claimant sustained a whiplash injury and other minor soft tissue injuries. An award of **One Million Four Hundred Thousand Dollars (\$1,400,000.00)** was made in March 2014 when the CPI was 82. Applying the October CPI of 133.9, this updates to **Two Million Two Hundred and Eighty-Six Thousand and Ninety-Seven Dollars and Fifty-Six Cents (\$2,286,097.56)**.

[19] The second authority cited was **Kavin Pryce v Raphael Binns and Micheal Jackson** [2015] JMSC Civ. 96, the Claimant was diagnosed as suffering from the following injuries:

1. Cervical Strain
2. Lower Back Strain
3. Soft Tissue Injuries to Left Thigh
4. Left Knee Sprain

- [20] On the 22nd day of May 2015, the Court awarded the sum of **One Million Five Hundred Thousand Dollars (\$1,500,000.00)**. The CPI in May 2015 was 85.9. After indexation, the award updates to **Two Million Three Hundred and Thirty-Eight Thousand One Hundred and Eighty-Three Dollars and Ninety-Three Cents (\$2,338,183.93)**.
- [21] In the final authority of **Melvin Henry v Neville Gutzmer** [2023] JMSC Civ. 49, the Learned Trial Judge outlined the nature and extent of the Claimant's injuries as follows:
- Motor vehicle accident with soft tissue injury;
 - Hyper extension C-Spine injury with central cord syndrome;
 - abrasions to back, chest and right leg;
 - weakness to bilateral upper limbs and
 - non-tender abdomen, mild prostatomegaly.
- [22] At the hospital, his wounds were cleaned and dressed, he was treated with painkillers and had to wear a cervical collar for a week. He was treated as an out-patient until 2021 and had to undergo physiotherapy and continue on pain medication for some time. Mr. Henry also gave evidence that he still experiences pain as a result of his injury.
- [23] On the 20th March 2023, an award in the sum of **One Million Eight Hundred Thousand Dollars (\$1,800,000.00)** was made. The CPI at the time of the award was 128. After indexation, this award updates to **One Million Eight Hundred and Eighty-Two Thousand Nine Hundred and Sixty-Eight Dollars and Seventy-Five Cents (\$1,882,968.75)**. Mr. Kinghorn submitted that the case of **Melvin Henry** should be adopted as the starting point in making this award. He argued that the injuries of Ms. Lawrence are more severe and asked that an award at the upper end of the range in the sum of **Two Million Five Hundred Thousand Dollars (\$2,500,000.00)** be awarded as well as the usual orders for interest and costs.

DISCUSSION/ANALYSIS

[24] Having examined the authorities and the evidence before the Court, I agree that a comparison of Ms. Lawrence's injuries with those of **Melvin Henry** reveal that Ms. Lawrence's injuries were marginally more severe than those suffered by **Melvin Henry**. On the other hand, although the injuries sustained by the Claimant in the **Kavin Pryce** case were somewhat comparable in nature, they were more numerous and of a greater degree of severity than those observed in respect of this Claimant. The most closely comparable injuries were those suffered by the Claimant in the **Talisha Bryan** case as she also suffered a whiplash type injury and lower back strain. She also continued to experience occasional pain in spite of treatment with physiotherapy and analgesics.

[25] Having carefully reviewed the foregoing authorities, it is my considered view that the appropriate award for general damages would place Ms. Lawrence on par with that which was given in the **Talisha Bryan** case. Accordingly, I am satisfied that an appropriate award for pain and suffering is **Two Million Three Hundred Thousand Dollars (\$2,300,000.00)**.

ORDER

[26] Damages are assessed as follows:

1. Special Damages are awarded in the sum of **Fifty-Nine Thousand Two Hundred and Seventy-Two Dollars and Fifty-Four Cents (\$59,272.54)** with interest at the rate of 3% from March 19th, 2015 to December 6th, 2023.
2. General Damages are awarded for pain and suffering in the sum of Two Million Three **Hundred Thousand Dollars (\$2,300,000.00)** with interest at the rate of 3% from November 11th, 2018 to December 6th, 2023.
3. Costs to the Claimant to be agreed or taxed.

4. Claimant's Attorney to prepare, file and serve the Judgment herein.