

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

Judgment Book

CLAIM NO. 2005HCV00265

BETWEEN	YVETTE MADDEN	CLAIMANT
A N D	METRO CAR RENTALS LIMITED	1 ST DEFENDANT
A N D	CHRISTINE TOMLINSON	2 ND DEFENDANT

Miss Marion Rose-Green instructed by Marion Rose-Green & Co. for the Claimant
Miss Alicia Thomas instructed by Lightbourne & Hamilton for the Defendants

Heard on 11th January, 2008

Oral delivery of judgment on 13th May, 2008

Assessment of Damages

Coram: MORRISON J. (Ag.)

At the conclusion of the assessment hearing on Friday, 18th January 2008, owing to considerable time constraints, I ordered that written submissions were to be exchanged between the parties by 1st February 2008 and that final written submissions be submitted to the Court by 8th February, 2008. Up to the date of writing this judgment being 13th May, 2008, I am yet to receive same despite administrative reminders to both counsel. I can only hope that the omission to obey the orders are not intentional.

In spite of their collaborative failure I feel compelled to proceed to give my judgment lest I be overtaken by supervening considerations.

On the 3rd August 1999 the Claimant was injured as a result of the negligence of the 2nd Defendant, the servant and/or agent and/or permitted driver of the 1st Defendant. The Claimant received treatment from Dr. Sonia Davidson on the day following the accident.

The doctor received the following complaints: headache, neck pain, backache and pain in the left leg. The report continues, "when examined there appeared to be pain on the right side of the neck when the head was rotated to the left. The pain radiated to the right shoulder and to the inner aspect of the right scapula. Pain behaviour was also elicited in the right posterior thoracic region when patient moved her body into some normal posture. There was also evidence of left calf stiffness ..."

She was then referred to a physiotherapist despite whose intervention, "she continued to experience pain of varying intensity especially in the right dorsal region and neck. She has also experienced tingling in her legs and toes."

The doctor opined that in addition to muscular and ligamentous strain in the affected area she may also have intervertebral disc protusion. As to the latter, a Magnetic Nuclear Imaging (MSI) investigation was ordered by Dr. Davidson.

As no defence was filed to the claim for damages instituted by the Claimant judgment in default was entered against the Defendants on the 27th June 2005.

The Claimant's attorneys advanced submissions along the lines of the diminution of the earning potential of the Claimant, lifestyle modification due to a prolapsed intervertebrae disc injury. The Claimant sought, not without resistance from the Defendants, to enlarge and supplement the details of consequential loss in her claim,

based on the reports of Dr. Mansingh, Dr. Christopher Rose and that of Dr. Sonia Davidson, all this in the context of a case which had begun.

The basis of the objection by the Defendants was that the amendments violated Rule 20.1 of the Civil Procedure Rules 2000 and that in any event for any amendment sought the Claimant would need the leave of the Court after case management orders were made.

In the end I agreed with the Defendant that the discretionary leave of the court would have to be obtained before such amendments could be granted. The purpose of doing so before the trial is to enable the Defendant to receive instructions and to advance any challenge in respect of the material disclosed in the amendment. Once pleadings have been closed it is now too late.

Finally, the Claimant asked for special damages as pleaded, in the sum of \$998,078.45. In relation to general damages the Claimant relied on the medical report of Dr. Davidson in which she complained of pains, muscular and ligameneous strain, intervertebral disc injury. From Dr. Mansingh's report the Claimant has a prolapsed intervertebral disc injury. Her whole person disability was assessed at 10% which was upgraded to 11% as a result of the Claimant developing accident associated hypertension.

The Claimant relied on **Marie Jackson vs. Glenroy Charlton and Another**, Khan & Khan Vol. 5; **Yvonne Black vs. Oshane Morgan** unreported, delivered on 12th April 2007; **Icilda Osbourne v. George Barnes and Others** unreported delivered on 17th February 2006; **Renee Bryan v. Icolyn Leslie-Taylor and Another**, unreported

delivered on 16th May 2006 and **Dawn Vernon v. Paulnar Sea Port Company Ltd.**, unreported, delivered on 8th April 2005.

Of the above cited cases I placed reliance on the **Osbourne** case as well as on the **Bryan** case, supra. In the **Bryan** case it involved a healthy looking 24 years old young female in no obvious distress. She complained of sudden onset of right ankle pains; and right shoulder pains which began a few days following the accident; mild blurring of vision; numbness in the fingers of the right hand, mild lower back pains and mild dizziness. In his prognosis the doctor opined that she will be plagued by neck pains which will be aggravated by activities of daily living which involve lifting, bending, holding the neck in a fixed position for long periods and any sudden movements of her neck. Her disability rating was assessed at 11%. She was awarded, on 16th May 2006, the sum of \$2,300,000.00 by Pusey, J (Ag.) as he then was which when translated as at January 2008 yields \$2,721,328.00.

In the **Osbourne** case the Claimant's principal injuries were in respect of lower back pains and neck pains. Her total disability rating was assessed at 10% of the whole person. On the 17th day of February 2006 she was awarded by Sykes, J a sum of \$2,500,000.00 for pain and suffering and loss of amenities. Translated into the money of today as at January 2008 gives a total of \$3,000,598.14.

I am of the view that the injuries to the Claimant at bar is far more serious than those in the **Osbourne** case. The Claimant had to visit a number of professionals on a multitude of occasions. She is now aged, 63 years old and is partially reliant on a wheel chair, reliant on special seats and has to follow a special regime for the rest of her life. Her entire being, mental, physical and emotional has been compromised.

In this context I am of the view that she be compensated as follows:-

Special Damages awarded in the sum of \$990,078.45 with interest on thereon 6% from 3.8.99 to 2.6.2005 and thereafter at 3% from 21.6.2005 to 4.7.2008. General damages in sum of \$3,500,000.00 being a upgrade of the **Osbourne** case, with interest thereon at 6% from 3.2.2005 to 2.6.2005 and thereafter at 3% from 21.6.2005 to 4.7.2008.

Costs to Claimant of \$52,000.00.