



[2026] JMSC Civ 78

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV03270

BETWEEN	KEON MAXWELL	CLAIMANT
AND	KARIN CHAMBERS	FIRST DEFENDANT
AND	ANTHONY CHAMBERS	SECOND DEFENDANT

IN OPEN COURT

Ms. Kashina Moore instructed by Nigel Jones & Company for the Claimant

Ms. Ann Marie Stewart instructed by Donovan E. Collins appears on behalf of the First Defendant

Heard: June 18 & 23, 2026

Assessment of Damages – Personal Injury — Motor Vehicle Collision — Negligence — Pain and Suffering and loss of Amenities — Special Damages

WINT-BLAIR J

Background

[1] The claimant, Keon Maxwell, a police officer claims against the first defendant, Karin Chambers, and the second defendant, Anthony Chambers to recover damages for negligence and/or breach of statutory duty in that on or about December 7, 2015, the claimant was a passenger of a motor vehicle travelling along Vernon Avenue, in the parish of Saint Mary when the second defendant who was driving the first defendant's motor vehicle, negligently collided into the motor

vehicle in which the claimant was travelling, causing the claimant to suffer injuries, loss and damage and incur expenses.

- [2] By way of an affidavit of service filed on May 21, 2021, the Claim Form and Particulars of Claim were served on the first defendant, on April 23, 2021, who failed to file an Acknowledgement of Service in response to the claim. Consequently, the claimant obtained Judgment in Default of Acknowledgement of Service on July 6, 2021, in Judgment Binder 777 Folio 2. In furtherance of that unchallenged judgment, the claimant has approached this Court for damages to be assessed.

Issue

- [3] The main issue to be determined is the quantum of damages which should be awarded to the claimant for injuries suffered and other related losses as a result of the second defendant's negligence.

Evidence

- [4] The claimant, in his witness statement, says that on or about December 7, 2015, at approximately 4:50 p.m., while on duty as a police officer and passenger in the government police motor vehicle with registration number E44; he was transporting prisoners from the Port Maria Court House to Oracabessa Police Station. The motor vehicle was travelling westerly along Vernon Avenue in the parish of Saint Mary towards Oracabessa at about 50 kilometres per hour. A motor car, which he now knows is owned by the first defendant, Karin Chambers, and was being driven by the second defendant, Anthony Chambers, was travelling along Vernon Avenue in an easterly direction at about 60 kilometres per hour.
- [5] Upon reaching the vicinity of Wynter's Petroleum Service Station, the second defendant, without signal, made a sudden right turn across the road and into the path of the police service vehicle in which he was travelling. The second defendant was attempting to turn into a service station when he negligently collided with the

motor vehicle that the claimant was in. The claimant immediately began experiencing pain in his head, lower back, and leg.

[6] On December 15, 2015 the claimant visited Port Maria Hospital Complex and was treated by Dr. Fidel A. Fraser. The injuries he sustained are stated in the medical report of Dr Fidel A. Fraser dated November 17, 2017.

[7] The claimant, in his witness statement, said that the injuries he suffered were as follows:

- a. Chronic cervical spasm
- b. Chronic lumbar spasm
- c. Right femoral shaft stress fracture
- d. Acute cervical sprain
- e. Acute lumbar sprain
- f. Right acromioclavicular sprain- grade 1;
- g. Pain to the right thigh query cause rule latent osteomyelitis
- h. Paracervical spasm
- i. Left sided rotational and extension discomfort
- j. Pain at the 7th cervical and 1st thoracic vertebral
- k. Mild bilateral paraspinal
- l. Spasm with midline tenderness
- m. Pain in the shoulder, neck, lower back and thigh
- n. Tingling and cramping across the shoulder and towards hips
- o. Back pain aggravated by driving, sleep and lifting weight greater than 60 lbs
- p. Unable to wear body armour; as if aggravated back pain
- q. Pain after sexual intercourse
- r. Mild to moderate difficulty in performing daily living activities (ADLs)
- s. The accident aggravated his old injury, and he will possibly experience pain periodically
- t. Experiences spasms in the right thigh during rifle practice
- u. Was required to be on 28 days leave in the first instance and had to take additional sick leave thereafter.

- v. As recommended by the doctor, my duties were modified to perform less strenuous duties, and only worked 6 hours per week for approximately six months.
- w. Flexion extension injury of cervical spine with persistent axial symptomology and non-verifiable radiculopathy, being class 1 injury and a disability rating of 2% whole person impairment
- x. Flexion extension injury of lumbar spine with persistent axial symptomology with physical loading and non-verifiable radiculopathy, being a class 1 injury and with a disability rating of 3% whole person impairment
- y. Loading injury of the right femur resulting in stress fracture through an area of the femur with premorbid pathology being a class 1 injury and a disability rating of 9% lower extremity impairment and 4% whole person impairment
- z. Total impairment rating is 9% whole person impairment (WPI)

[8] As a result of the accident, he was on sick leave for six months because the pain was unbearable, and he found it difficult to perform his job tasks. He also had to pay someone \$5000.00 every two weeks to wash and clean for him during the first 4 months of his sick leave. He did not get a receipt or have them sign anything; he paid cash.

[9] He spent \$28,000.00 on his Medical/Expert Report and exhibited a copy of a cheque for \$28,000.00, which he said was paid by his attorney, Nigel Jones and Company, on his behalf.

[10] He said that he had to travel from St. Mary to Kingston on various dates, including December 15, 2015, and August 11, 2017, at \$4000 per trip, including return, as he had to charter a taxi. He made three of these trips, as far as he can remember. He also travelled from St. Mary to Ocho Rios to run various tests, including an MRI, and that trip cost \$2,000.00. He also chartered a taxi for a period to get around, but cannot remember the amount spent on these occasions and therefore has not included them.

[11] He lists his expenses as follows:

Medical Expenses	JM\$28,000.00
Transportation Expenses	JM\$15,000.00
Household Chores	JM\$40,000.00
Total	JM\$83,000.00

[12] He experiences occasional pain in his lower back and femur, especially when standing for a long period of time, and takes pain medication that costs him around US\$30.00 for a bottle of 60 pills. He has taken 2 pain tablets every other day to relieve the pain since the accident.

[13] In cross-examination, he said that he was not wearing a seatbelt at the time of the accident because police officers are exempt. He confirmed a prior injury to his right femur from an earlier age but said that, before the accident, he lived a normal life, engaging in rigorous activities such as gym workouts and police duties. He said that he began to feel pain immediately after the accident. His shift was from 8:00 a.m. to 6:00 p.m. He was still on duty at the time of the accident but could not complete his shift because he was injured. The accident occurred at approximately 4:50 p.m., which effectively ended his shift.

Submissions

[14] Counsel for the claimant submits that the evidence relating to his injuries has not been challenged or shaken. The claimant, as well as Dr. Fidel Fraser's expert report, outlined the injuries he sustained. He was seen by Dr. Fraser nine times. This is indicative of a prolonged period of pain and sickness, spanning from December 15, 2015, when Mr. Maxwell was first seen by Dr. Fraser, to August 22, 2017, which the report notes as the last date. The unchallenged evidence is that Mr. Maxwell underwent physical therapy, and the medical report is also clear that the collision is the culpable cause of the claimant's complaint.

- [15] He was a police officer who lived an active lifestyle, went to the gym, completed basic training, and played cricket for the force. Therefore, his complaints are in no way connected to the previous accident he experienced as a child. In so far as there was trauma to the right thigh, and the fact that his job or the current accident in question placed stress on that body part or created any deterioration or discomfort, counsel relied on the eggshell skull principle to submit that the first defendant must take the claimant as she finds him.
- [16] Dr Fraser has said that the claimant has reached his maximum improvement, although he also noted that there was no exhaustion of medical care, given economic reasons and the claimant's fear of undergoing any further surgery on the femur. The impairment rating resulting from the injuries is 9% for whole-person impairment. The medical evidence was never challenged, and Dr Fraser has clearly linked the injuries to this current motor vehicle accident. When assessing the compensation, this court should have regard to all injuries assessed by Dr Fraser.
- [17] The injuries suffered by the claimant are more severe than the cases cited. In the instant case, the claimant is a police officer who is unable to wear body armour due to the accident and suffers from sprains. Notably, sprains may be worse than fractures, as they can arise during flare-ups. The impact of the accident on this claimant is quite severe; it has also caused him to have pain after sexual intercourse.
- [18] Counsel relied on the case of **Sasha-Gay Downer (b.n.f Myrna Buchanan) v Anthony Williams and Dovon Griffiths**¹ to assist this Court in determining the appropriate award for the claimant. In this case, Ms Sasha-Gay Downer suffered, according to her medical report from Dr R.C. Rose, cervical strain, mechanical lower back pains, strained adductor muscles of the left thigh, lumbar spasms, tenderness and swelling to the anterior aspect of the left thigh, tenderness with

¹ 2005 HCV 1825 in Khan Vol 6 pg 124

swelling to the left hip, and intermittent lower back pain. She was later reviewed again by Dr Rose, who found tenderness on palpation of the midline of the lower spine and diagnosed her as having mechanical lower back pain. Ms Sasha-Gay Dower was awarded \$1,005,150.00 with interest for general damages at the hearing of her assessment of damages on July 26, 2007. Using the January 2025 Consumer Price Index of 143.1 the award updates to JMD\$3,538,128. The instant claimant's injuries are more severe than the claimant's injuries in that case.

[19] In the case of **Yvonne Black v Oshnell Morgan & Renford Williams**,² Yvonne Black suffered muscular spasm of the neck, neck pain, a burning sensation across the shoulder, lower back pain, and 10% permanent partial disability. The court awarded \$2,300,000.00 for pain and suffering in April 2007, which, using the January 2025 CPI of 143.1, updates to JMD\$8,349,000.00. Though the severity of the injuries was similar, the claimant herein suffered more severe injuries than the claimant in that case.

[20] In the case of **Olive Henry v Robert Evans and Greg Evans**,³ Olive Henry suffered pain and stiffness of the neck, pain in back interscapular areas, soreness over renal areas, marked restriction of extension and lateral flexion of the cervical spine, impaired rotation, bilateral sacrospinalis spasm with tenderness and spasm in the rhomboids and trapezii, restriction of thoracic rotation especially towards the right, tenderness in the extensor compartments of both forearms more significantly on the right, diminished grip on the right and defused sensory blunting on the right and 11% permanent partial disability. The court awarded the sum of \$1,830,000.00 for general damages on February 23, 1999, which, when updated, amounts to JMD\$13,926,300. Counsel submitted that, although the severity of the injuries was similar to those in the above-mentioned authorities, the claimant's injuries were more severe.

² Claim No. 2006 HCV 00938

³ Suit No. C.L 1998 H 019 reported at Volume 5 of the Khans page 156

- [21] The injuries in **Olive Henry** are similar to those of the claimant at bar, namely neck, shoulder and back injuries. Both had an impairment; however, Ms Henry experienced permanent partial disability of 11%, and the claimant herein was assessed with 9% whole person impairment. However, it should not go unnoticed that while Ms Henry experienced soreness in the area of her kidney, the claimant in the instant case had a fracture to his femur, pain in his thigh, pain after sex, and tingling and cramping in his shoulders and hips. He also notably experienced back pain aggravated by driving, sleeping and lifting weights greater than 60 lbs, mild to moderate difficulty in performing daily living activities, and an inability to wear body armour, as it aggravates back pain and spasm in the right thigh during rifle practice.
- [22] As a result of the whole person impairment, the impact it would have on his career, the impact on his lifestyle as he could not wash and clean and had to take sick leave; that he still feels pain in his lower back and femur if standing for a long time. The appropriate award in the instant case would be \$16,000,000.00.
- [23] The defendant's counsel argues that the medical report lacks essential information necessary for the court to determine causation, as the Court cannot speculate. The report does not contain enough details to establish causation regarding the childhood injury and the 2009 accident.
- [24] Dr Fraser did not treat Mr Maxwell for his pre-existing injuries neither did he cite any medical report he reviewed or referred to in assessing Mr Maxwell's assertions that he had recovered from the prior injuries; nor did his examination(s) confirm those assertions. Despite investigations revealing an old injury with a complex surgical scar on the right femur, there is no indication of the percentage impairment allowed for that old injury. These intervening factors affect causation and must be properly assessed.
- [25] The medical report conflicts with the evidence, and the injury details claimed do not align with the medical findings. Additionally, the impairment rating is provisional because the report notes that Mr Maxwell's condition has fluctuated and is unlikely

to remain the same. The assessment would have been more precise if Mr Maxwell had returned for review in 2018, as suggested, but there is no evidence he did. The cases provided by the claimant are greatly exaggerated and cannot be compared to the injuries actually sustained.

[26] Counsel relied on **Dwight Johnson v Grace Dixon**⁴ to submit that the claimant failed in his duty to take reasonable steps to mitigate his loss. Even if the court is minded to accept the medical report of Dr Fraser, the injuries claimed for and mentioned in the claimant's submissions are not supported by any medical evidence. The diagnosis of Dr Fraser is:

- a. Chronic Cervical Sprain
- b. Chronic lumbar sprain
- c. Right Femoral shaft stress fracture

[27] Consequently, the cases submitted by the claimant are distinguishable. An appropriate award should range between a low of \$2,000,000.00 to a high of \$5,000,000.00 in reliance on the case of **Courtney Livermore v Ezekiel Alexander Russell**⁵. In **Livermore**, where the claimant's injuries were more serious, the WPI was 26%, and the claimant was awarded \$6,000,000.00; that award updates to \$9.2 million. Given that the claimant's injuries are less serious (WPI of 9%) and the report, even in its incomplete state, can only be properly deemed provisional, this range is appropriate. Further, the claimant must strictly prove the merit on which interest should be awarded at 6%.

[28] While the claimant said he felt pain immediately after the accident on December 7, 2015, he did not attend a doctor until a week later, on December 15, 2015. Given his evidence of rigorous work and physical activity, it is unclear whether the accident prompted him to seek medical attention on that date. There is no evidence to support a claim for six months' sick leave; the doctor placed him on only twenty-

⁴ Civ.141 at paragraphs 31-33

⁵ [2017] JMSC Civ. 134

eight days. The medical report does not enable the court to properly assess whether the accident had any impact, or to what extent.

- [29]** The report states that the claimant suffered a "former complicated childhood right femoral fracture healed uneventfully," but it conducts no fact-finding and offers no medical basis on which to rely. It does not clarify whether the reported 20-plus years without thigh issues extends beyond the accident date of December 7, 2015. Regarding the 2009 accident, this is an unexplained intervening act, and the court cannot speculate as to whether any injuries originate from it.
- [30]** Furthermore, Dr Fraser's report appears to attribute the claimant's symptoms to an accident on December 30, 2015, whereas the matter before the court concerns the accident of December 7, 2015. The doctor does not indicate that the December 7 accident aggravated any pre-existing injury. The report makes no mention of, for example, mild bilateral paraspinal/paracervical spasm, and the basis for the cervical sprain diagnosis is not explained, unlike the lumbar findings, which were supported by X-ray.
- [31]** The stress fracture is an overuse injury consistent with the childhood fracture and the claimant's history of strenuous work, cricket, and gym activity. The report provides no indication that the accident caused or aggravated it. The X-ray revealed an old, healed right femoral shaft fracture with a surgical scar, and the claimant underwent no surgery as a result of this accident.
- [32]** There is no evidence before the court that the claimant attended physical therapy, nor are there any receipts for medical treatment or doctor's visits. The doctor recorded nine consultations but provided only two dates, December 2015 and August 2017, and there is no evidence from the claimant confirming those visits. There is also no medical evidence supporting any effect on the claimant's sexual activities. No prescription for pain medication appears in the report, and the evidence does not identify what pills were purchased or that they were prescribed.

[33] There is no evidence of economic hardship or personal reasons to explain the claimant's failure to follow the doctor's recommendations regarding surgery or other treatment. The claimant has failed to mitigate, and the first defendant should not bear responsibility for consequences attributable to that failure. On special damages, the claim for \$5,000.00 every two weeks for four months is unsupported. Special damages must be specifically pleaded and proved; there are no receipts. Any sick leave payment should not exceed the 28 days stated in the medical evidence. The claimant also acknowledged under cross-examination that his attorney paid the \$28,000.00 medical expense; there is no evidence that he personally incurred any medical costs.

Discussion

Special Damages

[34] Special damages are compensatory and are designed to return the claimant to the position that he was in prior to the injury. It is trite that special damages must be specially 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 strictly. The Particulars of Claim outline the sums claimed for Special Damages as follows:

- | | |
|---------------------|---------------|
| a. Medical Expenses | JM\$28,000.00 |
| b. Transportation | JM\$15,000.00 |

[35] The sum of Twenty- Eight Thousand Dollars (\$28,000.00) was pleaded as medical expenses in respect of the cost of the Medical Report prepared by Dr Fidel Fraser. There is no challenge to the payment of this report. Regarding household expenses, this was not pleaded. The same applies to any monies spent on pain medication.

[36] Regarding transportation, there has been some relaxation of the requirements for documentary evidence to prove special damages, such as transport expenses. In

Attorney General of Jamaica v Tanya Clarke (nee Tyrell),⁶ it has been established that a tribunal may exercise its discretion and draw on its knowledge of the vagaries of the local transport industry to arrive at a just award.

[37] In his pleadings, the claimant seeks an award of Fifteen Thousand Dollars (\$15,000.00) for this expense. He stated that he made three (3) trips from St. Mary to Kingston, including return trips, and had to charter a taxi, which would amount to \$12,000.00. Notably, he does not state the purpose of these trips. It cannot be inferred that these were trips to Dr Fraser, as the medical report indicates the medical office is located in Port Maria, St. Mary, which is also the parish where the claimant resides. He also said that he travelled from St. Mary to Ocho Rios to run various tests, including an MRI, and that the trip cost \$2,000.00. Although no documentary proof was provided in support of this sum, I find that the amount of Two Thousand Dollars (\$2,000.00) is reasonable in the circumstances. I accept that the trips to St. Mary to run various tests, including an MRI, were necessary as they were for the sole purpose of obtaining medical treatment for the injuries sustained. Accordingly, the sum of Two Thousand Dollars (\$2000.00) is awarded for this loss.

General Damages

[38] The particulars of the claimant's injuries were outlined in the Medical Report of Dr Fraser, which was entered into evidence. Upon medical examination, Dr Fraser's initial assessment was that the claimant suffered an acute cervical sprain, acute lumbar sprain, right acromioclavicular sprain- grade 1; and pain to the right thigh. After investigation using plain radiographs and MRI, the doctor's impressions were listed as:

- a. Chronic cervical sprain
- b. Chronic lumbar sprain

⁶ SCCA No. 109/2002

c. Right femoral shaft stress fracture

[39] The claimant's injuries, as indicated by him, are vastly different from the medical evidence upon which he relies. Further, there is no evidence of any mitigation of loss:

- i. It is the evidence of the claimant that he was not wearing a seatbelt at the time of the accident. Notably, the burden was on the defendant to show on a balance of probabilities that if the claimant had been wearing his seatbelt, he would not have suffered the injury or would have been less severely injured than he was (see **Racquel Bailey v Peter Shaw**)⁷. There is no evidence of this.
- ii. The claimant went to the doctor 2 weeks after his collision. Although Dr Fraser's medical report stated that the claimant went to Port Maria Hospital the day after the accident, the claimant himself provides no evidence of this.
- iii. He was to be reviewed by the doctor in 2018, and there is no evidence that this occurred. In his last assessment of the claimant, Dr Fraser comments that the claimant reached his maximum medical improvement without fully exhausting all available medical therapies. The claimant's personal opinions about his femur and financial concerns influence the doctor's findings that the claimant will need follow-up care since his condition is unlikely to stay the same. The claimant did not return for further review as he had been advised.
- iv. The doctor's comment is that although the claimant underwent supervised physical therapy, he may benefit from other therapies, such as acupuncture and chiropractic manipulation. There is no evidence that this was done.

⁷ Claim No. 2004 HCV 3065

- [40] It is trite that a claimant has the duty to take all reasonable steps to mitigate his loss. Accordingly, damages will not be awarded for loss flowing from the claimant's failure to prevent further losses (see **Dwight Johnson v Grace Dixon**).
- [41] Regarding the stress fracture, Dr Fraser said that the claimant has a severe childhood injury from which he recovered well. However, Dr Fraser further notes that the claimant shows clinical signs suggestive of a stress fracture in this area. The condition persisted for more than nine months, and surgical intervention may be required to encourage healing. It was also noted that the claimant's current job imposes considerable physical stress and requires elite-level performance. In the circumstances, there is no evidence to suggest that the stress fracture was caused by the collision on December 7, 2015. According to the medical report, the diagnosis relating to the right femur is consistent with a documented history of a loading injury to the right femur resulting in a stress fracture. I do not accept that the stress fracture to the claimant's right femur was due to the accident in the instant matter. This leaves the injuries to his cervical and lumbar spine.
- [42] In the case of **Olive Henry v Robert Evans and Greg Evans**,⁸ the court awarded \$750,000.00 in general damages for pain and suffering on February 23, 1999, which when updated using the May 2026 CPI (149.6), amounts to JMD\$5,968,085.11. Notably, she suffered from a pre-existing cervical spondylosis at C5/6 discs, and other injuries of her cervical vertebrae and she did not bear any lumbar spine ailment. She was diagnosed with whiplash injury, and had a whole person disability of 5.5% being attributable to the accident.
- [43] In **Sasha-Gay Downer (b.n.f Myrna Buchanan) v Anthony Williams and Dovon Griffiths**⁹ the claimant was diagnosed with cervical strain, mechanical lower back pains and strained abductor muscles of the left thigh and had a whole person disability of 5%. She was awarded \$1,005,150.00 with interest for general

⁸ Suit No. C.L 1998 H 019 reported at Volume 5 of the Khans page 156

⁹ 2005 HCV 1825 in Khan Vol 6 pg 124

damages at the hearing of her assessment of damages, which updates to \$3,694,605.41 using the May 2026 CPI (149.6).

[44] In **Livermore**, the claimant sustained injuries to his cervical and lumbar spine resulting from a motor vehicle accident. The court accepted a whole person impairment of 26%, which exceeds the claimant's impairment in the instant case. The claimant in **Livermore** was awarded general damages of \$6,000,000.00, which updates to \$9,569,296.37 using the May 2026 CPI (149.6). Notably, there was aggravation by way of a pre-existing disease from a previous injury.

[45] The cases of **Livermore** and **Sasha- Gay Downer** are comparable with the instant case herein. The claimant's injury to his cervical and lumbar spine is equivalent to 5% whole person impairment. Having considered the authorities and his failure to mitigate, this merits a reduction in the award. Allowing for an adjustment to take account of this difference, I am satisfied that an appropriate award for pain and suffering in all the circumstances is Three Million Dollars (\$3,000,000.00). Lastly, no evidence has been adduced or submission made as to why interest should be awarded at 6%.

Orders

[46] As such, damages are assessed as follows:

1. Special Damages are awarded in the sum of Thirty Thousand Dollars (\$30,000.00) with interest at the rate of 3% from December 7, 2015, to the date of judgment.
2. General Damages are awarded for pain and suffering in the sum of Three Million Dollars (\$3,000,000.00) with interest at the rate of 3% from April 23, 2021, to the date of judgment.
3. Costs awarded to the claimant to be taxed if not agreed.

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Wint-Blair, J