



[2017] JSMC Civ. 93

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2015HCV04343

BETWEEN	ERICA MCKANE	CLAIMANT
AND	BRIAN DAMILLE	1ST DEFENDANT
AND	SLIVENE ROBERTS	2ND DEFENDANT
AND	ANTHONY GEORGE ELLIS	3RD DEFENDANT

Tashell Powell instructed Zavia Mayne & Company for Claimant.

Defendant unrepresented.

Damages-Personal Injury-Negligence-Motor Vehicle-Abrasions-Laceration to the scalp-Soft Tissue Injury

HEARD: June 13, 2017

CORAM: Y. BROWN, J. (Ag.)

- [1] On the 20th September 2013, the claimant Miss Erica McKane was walking along Camp Road in the parish of St. Andrew, in the vicinity of Arnold Road when the 3rd Defendant who was driving a motor vehicle registered 6119GJ lost control of the said vehicle which mounted the sidewalk and hit the Claimant therefrom. As a result, she suffered injury, loss and damage and incurred expense.
- [2] Having been served with the Claim Form and Particulars of Claim, the defendants neither filed an acknowledgement of service nor a defence and so, an interlocutory judgment was entered on December 21, 2015.
- [3] On the 13th June 2017, the matter came up for assessment of damages and the defendants were absent and unrepresented. The claimant Miss Erica McKane

was sworn and her witness statement filed on December 7, 2016 was identified by her and thereafter admitted as evidence-in-chief.

[4] Her injuries led her to the Kingston Public Hospital where she was treated by Dr. Phyu whose medical report was admitted into evidence. Upon examination of Miss McKane the doctor's findings were:

- Mucus pink and moist
- Oriented in time, place and person
- Abdomen soft and non tender'
- Abrasions to Medial right ankle
- Laceration to scalp

And the diagnosis was as follows:

- Multiple Abrasions
- Soft tissue injury to right shoulder
- Laceration to scalp.

Miss Mckane whose treatment included Voltaren 75mg, Zantac 150mg, cleaning and dressing, and suturing was sent home with a referral to a health centre for the suture removal.

Special Damages

[5] The Claimant substantiated her assertion that she had paid \$3000.00 to obtain a police report in the matter. A receipt in relation to that payment was tendered and admitted into evidence. She also stated that the intense and severe pain that she was experiencing prompted her to visit her school clinic on several occasions to receive treatment, and each time she paid \$800.00

[6] In amplification of paragraph 11 of her witness statement, Miss McKane noted that she had received no medical report from the school clinic, “as they say they don’t provide report for such cases.” Notwithstanding that bit of testimony, the claimant neither indicated the number of visits she made to the school clinic, nor did she provide any receipts in proof of payments. As such I have been placed in a position to accept that this item of special damages has not been satisfactorily proven. Hence, I will make an award of \$3000.00 for special damages.

General Damages

[7] The Claimant’s counsel Miss Tashell Powell submitted for consideration, the cases of **Anthony Simpson v Lloyd McMohan; and Hugh Douglas v Morris Warp, Vincent McPherson, Sergeant Boreland and the Attorney General for Jamaica**. Both cases are reported at volume 4 of Khan’s Report.

[8] In Anthony Simpson v Lloyd McMohan, the plaintiff, a bicyclist was injured in a motor vehicle collision. He suffered (1) head injury with loss of consciousness (2) 8cm laceration to lateral aspect of left parietal region of scalp (3) multiple 3cm lacerations to left side of face (4) 3 lacerations to right side of face (5-7cm in length) and (5) Abrasions to lateral aspect of right thigh and left knee.

[9] He was admitted to Spanish Town Hospital where he remained for several days. Thereafter he received treatment at the Out Patient Clinic at Kingston Public Hospital for swelling to the left side of his face. According to the report, he was started on antibiotics and compressions and after seven days the swelling stopped. Mr. Simpson was awarded \$180,000.00 in June 1994 which updates to \$1,644,045.80 using April 2017 C.P.I.

[10] The second case – Hugh Douglas – involves a security guard who was assaulted by a policeman who struck him with objects and kicked him all over his body. As a result, he suffered (1) bruises to right upper limb and weals over right shoulder (2) bruising of left upper limb with swelling to left arm, tenderness over humerus and swollen and tender left forearm (3) swollen and tender left thigh.

In April 1994, he was awarded general damages in the sum of \$140,000.00 for personal injury and using the April 2017 C.P.I this amounts to \$1,340,080.00. Having submitted both cases for consideration, Ms. Powell contended that the case of Anthony Simpson was more aligned with the case at bar.

[11] I accept Counsel's position that the two cases bear strong similarities as regards the injuries. However, I find that the injuries sustained by Mr. Simpson were more serious than those of Miss Mckane. He had to be admitted at hospital for several days. Furthermore, upon his discharge from one hospital (Spanish Town) he had to visit another due to the swelling to the left side of his face that persisted and ceased seven (7) days after he was started on antibiotics and compressions.

[12] On the other hand, Ms. McKane, in the case at bar, was not admitted according to Dr. Phyu's report, she was only referred to a health centre for the removal of suture. Although she amplified paragraph 13 of her witness statement to indicate that her dominant hand is the right and the pain she still feels, extends from a section in her head down to her neck and into the right shoulder, she has provided no medical report to substantiate this.

[13] She also added that "there is a section in my head which is swollen up until now and there is no hair there; it is unable to grow back." Again no medical evidence was offered in support.

[14] In light of the aforesaid, I will give recognition to the Simpson case as the preferred guide, but I am minded to reduce the award in the case at bar. As such, the sum of \$1.4 Million, I believe, is reasonable for general damages.

[15] Damages against the defendants is assessed as follows:

1. General Damages in the sum of \$1,400,000.00 with interest at 3% from the date of service of the Claim Form to the date of judgment.

2. Special Damages in the sum of \$3000 at 3% from the date of the accident to the date of judgment.
3. Cost to the claimant in the sum of \$40,000.00.