



[2012] JMSC CIVIL 189

Counsels Note of Oral Judgment

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2011 HCV 04669

BETWEEN GARY REID CLAIMANT
AND KERN PAUL ANTHONY BRAHAM DEFENDANT

Mr. Richard R. Reitzin instructed by Messrs Reitzin & Hernandez for the claimant
No appearance by or on behalf of the defendant

Heard: 10th December 2012

Assessment of Damages - injury to knee, ankle, back, and neck - inability to play scrummage

CORAM: JUSTICE DAVID BATTS, Q.C.

[1] In this assessment of damages for Gary Reid, his evidence by way of a witness statement dated 5th October, 2012 was accepted as his evidence in chief.

[2] He is a constable of police. While on duty on 28th February, 2011, at about 8:30 a.m. he, along with his colleagues, stopped a driver to check motor vehicle documents. That driver, suddenly and without warning sped off resulting in an impact to the claimant who fell and rolled over several times.

[3] As a result, the claimant experienced excruciating pain to his right ankle and right knee. He was taken to the Kingston Public Hospital for treatment. He was treated and sent home.

[4] He felt traumatised and the witness statement speaks to the pain. He was unable to work for approximately 3 weeks.

[5] He still feels intermittent pain especially to the lower part of his back. Sometimes he has to lie flat on the floor to alleviate his pain.

[6] He no longer enjoys the ability to play "scrimmage" football.

[7] Two medical reports were tendered pursuant to section 31(e) of the Evidence Act in support of the claimant's claim. Dr. Vaughan in his report dated 19th May, 2011 states that he diagnosed Mr. Reid as suffering from whiplash injury and traumatic lumbago. He states that Mr. Reid recuperated satisfactorily and had returned to work after 21 days with no permanent disability.

[8] Having seen and heard the claimant I accept that he is a witness of truth. He has pain and he lacks the ability to play scrimmage football, that beautiful game he once enjoyed.

[9] Counsel has produced two authorities and they provide some assistance. The first of which is **Claston Campbell v Omar Lawrence & Ors.** C.L.C 135 of 2002. There the claimant suffered a laceration to his chin, trauma to his chest, trauma to his back and a whiplash injury to neck resulting in pain and restriction of movements. The doctor did not quantify any permanent disability but his enjoyment of life, his quality of life had been affected. Mrs. Justice McDonald in February, 2003 awarded the sum of \$650,000

for general damages. That figure updates to \$1,911,645.96 using the C.P.I. of 189.4 for October, 2012.

[10] There was also cited the case of **Cynthia Wilks v Lenworth Phillips & Anor.** C.L.W276 of 1990, a case of some vintage, reported in Harrison & Harrison Assessment of Damages for Personal Injuries at p. 375. That was a judgment of Langrin, J. of blessed memory. There the claimant suffered a wound to her right ankle, bruises to her legs and multiple contusions. She was awarded \$30,000.00 which would be worth now \$433,079.27.

[11] In this assessment, I will be assisted by the case of **Claston Campbell.** I regard it as sufficient as a guide given that there the claimant suffered trauma to his chest and chin which tends to balance out the fact that Mr. Reid had injuries to his knees and ankles.


Order

I award Mr. Reid \$1.9 million for general damages together with interest at the rate of 3% per annum on this amount from the date of service of the claim form being 26th July, 2011 to the date hereof.

I order the defendant to pay the claimant's costs to be taxed if not agreed.

I direct the claimant to bring in a written draft of these reasons and orders.

By the court


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Judge