



[2016] JMSC Civ. 132

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION

CLAIM NO. 2015 HCV 04867

BETWEEN	CONWAY RHOOMS	CLAIMANT
AND	MAI ZHANG	1 ST DEFENDANT
AND	LANCE SCOTT	2 ND DEFENDANT

Mr Charles R. Campbell for the claimant.

Ms Mary Thwaites-Whittingham instructed by Daly, Thwaites & Company for the defendants.

Assessment of damages – whiplash injury – lumbrosacral back strain – no permanent disability

Heard June 24, July 23, 2016

TIE, J. (AG)

[1] On February 15, 2011, a motor vehicle collision took place along the Deeside main road in the parish of St Catherine when the second defendant, driving a vehicle owned by the first defendant, collided into the rear of a vehicle which was being driven by the claimant.

[2] Liability was not contested and the matter proceeded to assessment of damages. Special damages having been agreed, the sole issue was that of the appropriate award for general damages.

[3] The claimant's injuries were set out in the medical reports of Dr Bullock and Dr Rose.

[4] Dr Bullock examined the claimant on the day of the incident. His findings may be summarised as follows:-

- Whiplash injury to the neck with moderate pain and spasm of the muscles of the neck and the trapezius muscles extending to the occipital area of the head and both shoulders.
- Tenderness of the posterior aspect of the neck.
- Restriction in the normal ranges of movements of the neck by approximately sixty percent (60%) in all directions.
- Lumbosacral back strain with moderate pain and spasm of the muscles of the lower back extending to the gluteal areas and hamstring muscles.
- Tenderness of the tissues in the lumbosacral junction.
- Restriction in the normal ranges of movements of the lower back.

[5] A follow up visit the following month revealed pain and stiffness in the back and neck, as well as spasms of the trapezius and paracervical muscles. His neck mobility had improved by approximately forty percent (40%). He had spasms of the paravertebral muscles and tenderness of the tissue in the lumbosacral region. The mobility in his lower back had improved by thirty percent (30%), but it was noted that the pain in his lower back was aggravated by long standing and bending.

[6] Dr. Rose examined the claimant on January 20, 2016 and assessed him with the benefit of the medical report of Dr. Bullock. At that time the claimant complained of pain whilst undergoing certain activities.

[7] Dr Rose was informed that he was involved in another road traffic accident in September 2015 and that he had developed pains in the right shoulder, and that there was exacerbation of his neck pains.

[8] Dr. Rose diagnosed him with chronic whiplash injury and chronic lumbo-sacral strain and opined that the road traffic accident on February 15, 2011 was the competent medical cause of his injuries. He determined that his condition was resolved.

The submissions on general damages

[9] The claimant submits that general damages in the range of one million seven hundred thousand (\$1,700,000) dollars to one million eight hundred thousand (\$1,800,000) dollars is appropriate. In support thereof the claimant presented the following cases as useful guidelines in relation to quantum:-

- Lascelled Allen v Ameco Caribbena Incorporated and Peter Perry (Claim No. 2009 HCV 03883)
- Matthew Wallace v Mark Anthony Kettle (Claim No 2009HCV 06399)
- Talisha Bryan v Anthony Simpson & Andre Fletcher (Claim No. 2011 HCV 05780)
- Cornell Tomlinson v Dennis Gordon (claim No 2010 HCV 04670)

[10] The defendant on the other hand contends that compensation in the range of eight hundred thousand (\$800,000) dollars to one million (\$1,000,000) dollars is reasonable and offered the following cases for consideration:-

- Peter Marshall v Carlton Cole & Alvin Thorpe (Claim No 2006 HCV 1006)
- Sylvester Charlton v Super Star Bus Co.Ltd & Gladys Mattra et al (Suit No C.L. 1987 C 320)

- Trevor Benjamin v Henry Ford et al (Claim No 2005HCV 02876)
- Matthew Wallace v Mark Kettle (Claim No 2009 HCV 06399)
- Michael Baugh v Juliet Ostemeyer et al (Claim No 2010 HCV 05699)

[11] In considering the submissions, the court considered the various cases presented in the context of the injuries sustained by this particular claimant. The assessment of damages, not being an exact science, a review of cases provides guidance in an effort to maintain consistency in awards. The comparison of injuries and the awards made for compensation is a challenging undertaking as often times injuries, though prima facie of a particular classification vary in degree of severity, which severity is often not stated and indeed at times cannot be stated, it must also be recognised that each individual is unique and as such the impact of a seemingly similar injury will vary from individual to individual.

[12] As regards the cases presented by the claimant, I found the injuries of **Lascelles Allen** to be less severe than those experienced by the claimant herein. This case was therefore of limited assistance.

[13] As regards the cases presented by the defendant I found the cases of **Benjamin** (wherein the claimant suffered soft tissue injuries) and **Baugh** (wherein the claimant suffered numerous injuries connected with the spine with a resulting permanent partial disability of the whole person) to also be of limited assistance given the dissimilarities of the injuries sustained by those claimants when compared with the injuries sustained by the claimant herein. The injuries of **Benjamin** were less serious than those of the claimant herein whilst the injuries of **Baugh** were more severe.

[14] The other cases presented by the parties involved claimants with somewhat similar injuries to the claimant herein.

[15] Counsel for the defendant has submitted that greater weight ought to be placed on the medical report of Dr Bullock and took issue with the classifications of the injury and pain by the doctors. I however do not find any real inconsistency in the reports. A review of the medical report of Dr Bullock reveals that he did not specifically classify the severity of the whiplash or lumbosacral strain that the claimant suffered but regarded his pain as moderate. Dr Rose on the other hand classified his injuries as chronic but at the time of examination he concluded that the injuries were resolved and found that there was no objective finding of pain.

[16] It is also note worthy that the claimant improved over the course of visits to Dr Bullock which spanned the period of a mere month and resumed working three to four months after the accident. His failure to undergo physiotherapy because of financial challenges will not be viewed harshly, given that his inability to work was due to the collision in issue.

[17] Having reviewed the various cases I am of the view that the sum of one million three hundred thousand dollars (\$1,300,000) dollars is an appropriate award for general damages.

[18] Special damages having been agreed by the parties, the sum of \$172, 500.00 is awarded with interest of 3% from February 15, 2011 to July 22, 2016.

General damages is awarded in the sum of \$1,300,000 with interest of 3% from October 20, 2015.

Cost to the claimant to be agreed or taxed.