

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2008 HCV00183

BETWEEN	MARLENE SEALY	CLAIMANT
AND	HARLEY WILLIAMS	1 st DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2 nd DEFENDANT

Ms. Cavelle Johnston instructed by Williams, McKoy and Palmer for the Claimant.

Ms. Gail Mitchell for the 1st and 2nd Defendants instructed by the Director of State Proceedings.

Assessment of Damage – Negligence - Motor Vehicle Accident - Personal Injury to lower back - left hip joint - left knee

Heard on the 25th September 2009 and 5th February 2010

G. Brown, J (Ag.)

The Claimant is a Woman Sergeant of Police employed to the Jamaica Constabulary Force. She is 53 years of age.

The 1st Defendant is a motor vehicle mechanic and employed to the Ministry of National Security and is a servant of the Crown. The Attorney General admitted liability.

On the 9th day of May 2003 the Claimant was on duty at the Motorized Patrol Division at Elleston Road in the parish of Kingston. She was standing on the premises when a police service motor car driven by the 1st Defendant collided into her. She was injured and taken to the Kingston Public Hospital for treatment.

In the Statement of Claim the Claimant's injuries were set out as follows:

1. *Severe trauma and injury to lumbar spine, specifically:*
 - a. *Central canal stenosis bilateral foraminal stenosis, diffuse posterior disc bulge and compression of spinal nerves.*
 - b. *Degeneration of the disc space in lumbar spine.*
 - c. *Limitation and difficulty in the movement and sustained pain radiating from lumbar spine to left buttock and dorsal aspect of left lower extremity.*
 - d. *Difficulty walking and standing for a prolonged period of time.*
 - e. *Continued degeneration and complications of lumbar spine.*
2. *Injuries require surgical repair of lumbar spine with a projected six (6) month hospital stay independent of further review, in addition to treatment with pain killers.*
3. *Injuries necessitated Magnetic Resonance Imaging (MRI), bed rest, anti-inflammatory medication and analgesics, physical therapy and ongoing visits to physician.*

The Claimant was treated first by Dr. Marc White and later Dr. A. Mena, an Orthopedic Surgeon.

A medical report from Dr. White dated the 9th October 2008 was tendered into evidence. Dr. Mena was called as an expert witness. He examined her on the 19th March 2009 and diagnosed her condition as follows;

- a) Post Traumatic Lumbar sacral Strain
- b) Degenerative Disc Disease L5 S1
- c) Central Canal Stenosis and Bilateral Foraminal

The Claimant in her testimony said she had no known medical condition before the accident and therefore the degenerative disc disease and the central stenosis and bilateral foraminal stenosis were as a result of the accident. Since then she experienced considerable pain in both her right and left hip, her hips are less flexible, making basic movement most of the time. She also

experienced a pain in her lower back that increases with bending, walking and standing and a burning sensation in her back and hip if she stands or sits too long. She had to take pain medication on a regular basis. As a consequence of the accident, she was no longer able to do many basic household chores and had to avoid tasks that require standing or sitting for extended periods. Her duties at the JCF, prior to the accident, were to drive radio car and engage in the general supervision of the officers. She no longer drives a motor car.

It was submitted by Ms. Johnson that there was no evidence that the Claimant had any pre-existing back, hip, spinal or related condition prior to the accident. She relied on Dr. White's report that the injuries appeared to have direct correlation with the trauma suffered by Ms Sealy.

Dr. White first saw her on the 12th day of May 2003. She was seen by Dr. Mena on the 19th March 2009 some 5 years and 10 months after the accident. He was of the opinion that the degenerative disc disease and the central canal stenosis could have been caused by the accident or could have been pre-existing conditions at the time. This was mere speculation by Dr. Mena as there was no evidence before the court that this was a pre-existing condition. In the circumstances, I find that on a balance of probability the injuries suffered by the Claimant were as a result of the accident.

It was the Claimant's contention that an award of \$4,000,000.00 for pain and suffering and loss of amenities would be appropriate. She relied primarily on the case of Marie Jackson v Glenroy Charlton and George Harriot as it took into consideration permanent partial impairment post surgery. She also cited Wesley Granville v Delroy Campbell and Gwendolyn Brown.

The Defendant on the other hand suggested \$1,800,000.00 as a reasonable sum for general damages. She relied on Iris Smith v Arnett McPherson & Donald Oldfield and Anthony Gordon v Chris Meikle & Esrick Nathan.

In this instant case the Claimant would be required to undergo surgery to relieve pressure on the spinal nerve. She was diagnosed to have a posterior disc bulge and not a herniated disc. Her permanent partial disability was assessed at 8% -10% of the whole person. Surgery would reduce this to 7% - 8% of the whole person.

In the circumstances I make the following award:

- a) Special Damages \$822,365.00 with interest at 3% from the 9th May 2003 to the 5th February 2010.
- b) General Damages \$3,000,000.00 with interest at 3% from 18th January 2008 to the 5th February 2010.