



[2020] JMSC Civ 83

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. 2015HCV05460**

<b>BETWEEN</b>	<b>LITISHA STERLING</b>	<b>1<sup>ST</sup> CLAIMANT</b>
	<b>KAYDIANN WILLIAMS</b>	<b>2<sup>ND</sup> CLAIMANT</b>
<b>AND</b>	<b>KEMAR LATOY BLACKMAN</b>	<b>DEFENDANT</b>

**IN CHAMBERS**

Mr Seyhon Hanson instructed by Bennett, Beecher Bravo for the Claimants

Mrs Claudine Stewart-Linton instructed by Burton Campbell & Associates for the Defendant

Heard: March 2 & 11, 2020

**Application to Amend Statement of Case – Rule 20.4 of the Civil Procedure Rule (CPR) – Whether the Statement of Case can be amended after the limitation period**

**MASTER MASON**

**Background**

[1] On November 12, 2015 the Claimants filed a Claim Form seeking to recover damages and costs resulting from a motor vehicle accident. The Claimants allege that on the afternoon of March 7, 2010 whilst stationary at the traffic lights at the intersection of South Odeon Avenue and Constant Spring Road, the Defendant so negligently drove his vehicle in the rear of the Claimants' motor car causing the Claimants to suffer injuries and expense.

**[2]** By way of a Notice of Application for Court Orders filed on September 5, 2019, the Claimants are seeking permission for the following Orders:

- (a) To amend the Particulars of Claim filed on November 12, 2015 in terms of the proposed amendments exhibited to the Affidavit of Litisha Sterling filed on September 5, 2019 in support of the said application; and to
- (b) Have Dr Lloyd Brooks Medical Doctor and General Practitioner certified as an expert witness pursuant to Part 32 of the CPR 2002 and for his medical reports dated June 18, 2019 in relation to both Litisha Sterling and Kaydiann Williams to be allowed to stand as filed.

**[3]** The applicants contend at paragraph 1 of their Affidavits that they were under the care of Dr Lloyd Brooks for a significant period and as such, the medical reports of June 18, 2019 give greater details of the injuries that were pleaded in the original Particulars of Claim. Further, they maintain at paragraph 13 of their Affidavits that the delay in amending the Particulars of Claim was not deliberate and would not create any prejudice to the Defendant because his attorney-at-law was serve with an Affidavit exhibiting Dr Brook's report of April 21, 2016 which detail the nature of their injuries. But, on the other hand the Claimants would be greatly prejudiced if the amendments sought are not granted.

**[4]** The proposed amendments for the 1<sup>st</sup> Claimant under the heading Particulars of Injuries are found at paragraphs a, and k to y and under the heading Particulars of Special Damages at paragraphs c, d, e, o, s, t, and v.

**[5]** The proposed amendments in relation to the 2<sup>nd</sup> Claimant under the heading Particulars of Injuries are at paragraphs e to r. The proposed amendments for special damages are at paragraphs d, e, paragraph 6 c medical reports dated June 18, 2019 from Dr Lloyd Brooks, Ivy Green Medical Centre and e Assessor's Report.

**[6]** It is noted that the Defendant has filed an Affidavit on January 17, 2020 in response to the application to Amend Particulars of Claim.

## The Law

[7] Rule 20 of the CPR deals with Amendments to Parties Statement of Case. Rule 20.4 provides that:

*“An application for permission to amend a Statement of Case may be made at the Case Management Conference.*

[8] Rule 20.4(2) states:

*“Statements of Case may only be amended after a Case Management Conference with the permission of the Court.”*

[9] Rule 20 does not state the principles upon which the Court should exercise its discretion with regard to allowing amendments after Case Management. It has been held in a number of decided cases examining the Court’s discretion under this rule that the general consideration is the overriding objective of dealing with cases justly and as such, the Court must give effect to the overriding objective when exercising its discretion under this rule.

[10] Sykes J (as he then was) in the case **Peter Salmon v Master Blend Feeds** Suit No CL1999/S163 delivered October 26, 2007 examined the power of the Court to amend Statements of Case after the limitation period in the context of the CPR. His Lordship discussed Rule 19.4 and Part 20 in his Judgment. His Lordship concluded that Rule 20.4 gives the Court the discretion to Amend Statements of Case after the limitation period regardless of the provisions of Rules 19.4 and 20.6. Rule 20.4 he stated, was governed exclusively by the overriding objectives.

[11] In the case at bar, the proposed amendments being sought by the Claimants are well outside the limitation period. The cause of action occurred on March 7, 2010, the original Claim Form and Particulars of Claim was filed on November 12, 2015. The proposed amendments were filed on September 5, 2019.

[12] Case law supports the position that Amendments to injuries and special damages after the limitation period has expired should only be permitted if they had been pleaded prior to the limitation period and if the Defendant was notified that they

would be of a continuing nature. If the proposed amendments are being pleaded for the first time, such amendments are deemed new pleadings and are statute barred. However, Amendments to Statements of Case after the limitation period are allowed in certain other circumstances.

[13] The issue of amendments to special damages after the limitation period arose in the case of **Judith Godmar v Ciboney Group Limited** SCCA 144 of 2001 delivered July 3, 2003. Smith J A at page 22 had this to say:

*“It is my view having read the cases cited among other, that the limitation period does not apply to the claim for additional special damages. Such additional claims as Morrison, Q.C. submitted are consistent with the ongoing treatment of the Appellant in respect of the injuries pleaded in the Amended Statement of Claim. Furthermore, these additional claims represent expenses incurred during the limitation period.....”*

*“..... they are merely additional expenses in respect of injuries already pleaded in the Statement of Claim and paid within the limitation period to substantially the same doctors and therapists already listed in the Particulars of Special Damages.”*

[14] At pages 24 and 25 of the same judgment Smith J A went on to say:

*“In Gloria Moo Young and another v Geoffrey Chong et al SCCA No. 117/99 (unreported) delivered 23<sup>rd</sup> March [2000] Harrison J in addressing the question reiterated that amendments may be granted:*

- 1. When it is necessary to decide the real issues in controversy however late*
- 2. When it will not create any prejudice to the other party and is not presenting a “new case,” and*
- 3. When it’s fair in all the circumstances of the case.*

### **Analysis**

[15] I have come to the conclusion that in the interest of justice Leave to Further Amend the Statement of Claim to include the additional items of Special Damages should be granted. I have come to this conclusion because:

1. These additional items of special damages do not constitute a “fresh claim”

2. The further amendments may be necessary for the purpose of determining the real question in controversy that is to say, the quantum of damages.
3. The Defendant/Respondent will have adequate opportunity to investigate the additional items claimed.
4. The Plaintiff/Appellant may be ordered to make further discovery of documents.
5. The expenses claimed are capable of exact calculation thus it is possible for the Defendant/Respondent to come to a conclusion as to what would be a reasonable sum to pay into court to satisfy the claim and if they are minded to increase the sum already paid into court.
6. The Defendant/Respondent may be adequately compensated in costs on such amendment.

**[16]** It seem clear therefore that the amendment to a Statement of Case after the limitation period may be appropriate in the interest of justice, provided they are not new causes of action. Based on the examination of case law in respect of proposed amendments after the limitation period. I am of the view that the proposed amendments are merely additional facts or better particulars allegedly constituting a breach of duty already pleaded, as well as they provide further receipts in respect of special damages arising from the original cause of action.

**[17]** I have considered the proposed amendments to the Statement of Case under the two heads with respect to the 1<sup>st</sup> Claimant. I am in agreement with the proposed amendments with the exception of the claim for battered bruises under the heading Particular of Injuries. It is my view that this claim comprise an entirely new injury made after the limitation period.

**[18]** With regard to the proposed amendments to the Statement of Case in favour of the 2<sup>nd</sup> Claimant I am in agreement with all of the proposed amendment.

[19] However, the Defendant was concerned about item d of the special damages as it relates to the 2<sup>nd</sup> Claimant and wished for it to be broken down. It refers to doctor's visits from 8/5/2010 – 15/4/2014. To my mind this can be dealt with in the evidence at trial. The merits of the case demands that it stand as it would be unjust to disallow it.

**The issue of compensation for damage to the car**

[20] The Defendant vigorously rejects this claim on the basis that the 1<sup>st</sup> Claimant was aware of the damage to the car which involved in an accident since March 7, 2010. The Defendant contends that despite the Claimant not being in possession of the Assessor's Report, a claim could have been made in the Statement of Case with a view to computing the figure for the damage at a later date. The Defendant contends that the explanation proffered by the 1<sup>st</sup> Claimant as "having tremendous difficulties in obtaining the Assessor's Report was unacceptable.

[21] I accept the 1<sup>st</sup> Claimant's explanation for not being able to provide the Assessor's Report before August 19, 2019. At paragraph 12 of her affidavit she adequately offer an explanation for the delay in providing the report. She states:

*"I had tremendous challenges getting a copy of the Assessor's Report from my insurers as I was informed by a representative and verily believe that my file which contained the report could not be found. I only recently been able to get a replacement copy of the Assessor's Report from Howard Engineering Limited, which company had originally done the assessment of the damage to my vehicle.*

[22] It is noted that the damage to the car arises from out of the same facts which are pleaded at paragraph 4 and 5 of the original claim. It is therefore not classified as a new claim, where the only difference between the original case and the case set out in the proposed amendment is a further instance of breach, or the addition of a new remedy, there is no addition of a new cause of action – **Savings and Investment Bank Ltd v Fincken** [2001] EWCA Civ 1639, The Times November 2001 the claim for damage to the vehicle is a claim in negligence, it is the accident, caused by the negligence of the Defendant which resulted in the damage to the 1<sup>st</sup> Claimant's motorcar.

[23] In that regard, it is necessary to examine the duty alleged, the nature and extent of the breach alleged and the nature of the damage claimed **Lloyds Bank PLC v Rogers** [1996] the Times, 24 March 1997.

[24] The presumption in law is that in a motor vehicle accident the person who strikes from behind is deemed the person at fault.

### **Conclusion**

[25] In conclusion therefore I am of the view that the proposed amendment be allowed in the interest of justice, and to enable the matters in controversy between the parties to be determined. I find the proposed amendment do not constitute any fresh claim except where indicated. Additionally, the proposed amendments do not present any prejudice to the Defendant as they stand. The Claimants will be able to rely on the medical reports of Dr Lloyd Brooks and other medical evidence as presented in assisting the Court in resolving the matter.

[26] Accordingly, I make the following Orders.

1. That the Particulars of Claim filed herein on the 12<sup>th</sup> day of November 2012 as per document exhibited to the Affidavit of Litisha Sterling are to be amended to remove item (n) battered bruises from the proposed Amended Particulars of Injuries of the 1<sup>st</sup> Claimant Litisha Sterling.
2. That the Amended Particulars of Claim to be filed and served on or before March 31, 2020.
3. That Dr Lloyd Brooks Medical Doctor and General Practitioner is certified as an expert witness pursuant to Part 32 of the CPR 2002 and his medical reports dated June 18, 2019 in relation to both Litisha Sterling and Kaydiann Williams are to be allowed to stand as expert reports in this matter.
4. That the said Dr Lloyd Brooks Medical Doctor and General Practitioner must attend trial on May 4 – 7, 2020 to be cross examined.

5. Costs to be costs in the Claim
6. The Applicant/Claimant's attorney-at-law to prepare file and serve this Order.