



[2012] JMSC CIVIL 190

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

**IN CIVIL DIVISION**

**CLAIM NO. 2011 HCV 00705**

<b>BETWEEN</b>	<b>BRUCE WALFORD</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>GARNETT JAMES FULLERTON</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>ROHAN GEORGE GORDON</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**Ms. Oraina Lawrence instructed by Messrs. Kinghorn & Kinghorn for and behalf of the Claimant**

**Defendant not present or appearing**

**Assessment of Damages – lower back pain –  
No permanent partial disability**

**Heard: 13<sup>th</sup> December 2012**

**CORAM: Justice David Batts**

[1] This Assessment of Damages came on for hearing on the 13<sup>th</sup> December 2012. On that day, the claimant satisfied the court by affidavit sworn to on the 21<sup>st</sup> November 2012 that the defendant had on the 12<sup>th</sup> November 2012 been served with Notice of Assessment of Damages.

[2] The defendant did not appear nor was he represented and therefore the hearing of the Assessment of Damages commenced before me. The claimant was sworn and gave his occupation as a welder. His witness statement dated the 6<sup>th</sup> November 2012 was allowed to stand as his evidence-in-chief.


[3] In that statement, he deponed that on the 22<sup>nd</sup> July 2010 whilst crossing the road he was hit by a motor vehicle. He felt no pain immediately after the accident but on the following morning felt serious pain in neck, lower back and bottom. He went to see his private doctor. He stated that the accident affected him for a period of time. He stated that he was unable to do basic household chores and bending was extremely painful. He was unable to work for two (2) weeks.

[4] It is clear, however, that his recovery is complete as he spoke of his pain and discomfort in the past tense. Exhibit 1 being the doctor's medical report supports the claimant's account of his injuries and the doctor concluded that he suffered lower back pain with abrasion to gluteal region. Treatment consisted of analgesics and muscle relaxant and to do physiotherapy of lower back.

[5] I have considered the unreported judgment of Anderson J in **Trevor Benjamin v Henry Ford et al** Claim No. 2005 HCV 02876 delivered on the 23<sup>rd</sup> March 2010. The award was \$700,000.00 for pain and suffering which when updated comes to \$846,615.58. In my view, in this case, the claimant is not as seriously injured as the claimant in **Trevor Benjamin**.

[6] I therefore make the following award:

- a. For Pain and Suffering I award the sum of \$700,000.00.
- b. For Special Damages \$16,850.00 as supported in receipts in Exhibit 2.
- c. Interest on Special Damages of 3% per annum from the date of the accident (22<sup>nd</sup> July 2010 to the 13<sup>th</sup> December 2012).
- d. Interest on General Damages 3% per annum from the date of the service of the Claim (18<sup>th</sup> February 2011) to present 13<sup>th</sup> December 2012.
- e. Costs to the claimant of \$40,000.00.

  
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**David Batts,**  
**Puisne Judge**