



[2015] JMSC Civ. 91

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

**CLAIM NO. 2012 HCV 02884**

<b>BETWEEN</b>	<b>TAHJE WALLEN (B.N.F. TRACEY-ANN WEDDERBURN)</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MARCIA JOHNSON</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>AINSLEY JOHNSON</b>	<b>2<sup>ND</sup> DEFENDANT</b>
<b>AND</b>	<b>LINCOLN WILLIAMS</b>	<b>3<sup>RD</sup> DEFENDANT</b>

**Ms. K. Facey instructed by Bignall Law for Claimant**

**First and Second Defendants absent and unrepresented**

**HEARD: April 16, 2015 and May 14, 2015**

**ASSESSMENT OF DAMAGES – STUDENT, AGED 13, INJURED IN MOTOR VEHICLE ACCIDENT ON NOVEMBER 30, 2010 ALONG WALTHAM PARK ROAD, ST. ANDREW (JUDGMENT AGAINST 1<sup>ST</sup> AND 2<sup>ND</sup> DEFENDANTS ONLY)**

**GRAHAM-ALLEN, J. (AG.)**

**Award**

[1]	Special Damages	-	\$76,000.00 with interest at 6% from November 30, 2010 to May 14, 2015.
	General Damages Pain and Suffering and Loss of Amenities	-	\$1,800,000.00 with interest at 6% from May 26, 2012 to May 14, 2015.

Costs to the claimant to be agreed or taxed.

**Particulars of Personal Injuries**

[2] (A) (1) Subconcussive blunt head injuries with Haematoma to face and left Periorbital Oedema and Ecchymosis.

- (2) Acute Post-Traumatic Headache.
  - (3) Broken Maxillary Central Incisors.
- (B) The claimant was initially seen by Dr. Carroll C. Jones. Her examination revealed that he had a Haematoma to the forehead.
- (C) He was further examined by Dr. George W. Lawson on December 6, 2010 and diagnosed with the injuries referred to at **A** above. Dr. Lawson stated that the claimant needed specialist evaluations (Dental Surgeon/Maxillofacial Neurosurgeon).

The claimant's condition was reviewed by Dr. Lawson on January 11, 2011. He indicated to Dr. Lawson the effects the injuries were having on him. They are as follows:

- (1) Difficulty lying on his forehead.
- (2) Difficulty with concentration and focus due to recurring headaches.
- (3) Leisure activities were curtailed during his convalescence.

Dr. Lawson found that these effects were not at variance with the clinical findings. His prognosis was that all the head/facial injuries were due to trauma during the accidents. Dr. Lawson opined that the injuries are solely attributable to the accident. The actions taken and claims made are reasonable. The effects of the accident on the claimant's education and social life are reasonable.

- (D) The claimant was subsequently seen by Dr. G.E. Gordon –Veitech, Paedodontist/Dental Surgeon. His examination revealed evidence of fractured teeth number eight (8) and nine (9). He stated that the injuries were consistent with the accident.

### **Cases Considered**

- [3] (1) **Claudius Hamilton v Kevin Marshall and Geovaughnie Holness** [2014] JMSC Civ. 81.

Personal Injuries: Sub-concussive blunt head injuries with large scalp laceration and soft tissue swelling; acute cervical strain/whiplash injuries; chronic post traumatic headaches.

General Damages awarded was \$1,700,000.00 which updates to \$1,757,936 today.

- (2) Damion Campbell (infant by Sandra Campbell, mother and next friend) and **Sandra Campbell v Kathleen Dyke and Earl Wilson** Suit No. C.L. 1992 C 346.

Personal Injuries: Bleeding from mouth three (3) upper permanent teeth knocked out (absence confirmed by X-ray). Missing teeth caused gum to resorb giving plaintiff appearance of “mash mouth.”

General Damages award was \$320,000.00 which updates to \$1,632,410.74 today.

### **Analysis**

[4] The cases considered provided reasonable guides as to the award made to the claimant in this matter. Except for the cervical strain/whiplash injury, the injuries suffered by the claimant in this case seem to be as serious as the injuries in **Hamilton’s case**. Hamilton had no injury to his teeth.

[5] As it relates to the injuries to the teeth of the claimant, the **Damion Campbell’s case** seems to be more serious. The claimant in the instant case had other injuries in addition to the injury to his teeth. Using these cases, the court came to the view that the award would have to be above the awards in the cases of **Hamilton and Campbell**.

[6] In arriving at the award, the court reviewed the evidence of the claimant which speaks to his pain and suffering. At paragraph 7 of his witness statement dated March 12, 2015 he stated as follows:

*“I started having frequent bouts of headaches especially when I am in the sun. This I never experienced prior to the accident. I still experience these headaches now but not as frequent; it has affected my memory a lot when I am in school I am not remembering the work. This has affected my academic performance adversely.”*

[7] It was submitted that an award of \$2,000,000.00 would be reasonable to compensate the claimant for the injuries he sustained. The court does not share this view. The court believes that an award of \$1,800,000.00 is more reasonable.

[8] In relation to Special Damages the sum of \$167,000.00 was pleaded. However, the sum of \$76,000.00 was strictly proven.

### **Conclusion**

[9] The court assesses damages against the 1<sup>st</sup> and 2<sup>nd</sup> defendants as follows:

- Special Damages awarded in the sum of \$76,000.00 with interest at 6% from November 30, 2010 to May 14, 2015.
- General Damages for Pain and Suffering and Loss of Amenities in the sum of \$1,800,000.00 with interest at 6% from May 26, 2012 to May 14, 2015.
- Costs to the claimant to be agreed or taxed.