



[2021] JMSC Civ 125

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019CV01075

BETWEEN	WAYNE WILLIAMS	CLAIMANT
AND	ROHAN DUNCAN	DEFENDANT

IN OPEN COURT

Representation: Kevin Williams and Regina Wong instructed by Grant, Stewart, Phillips and Co for the Claimant

Heard: June 9th, 2021 and July 2nd, 2021

Assessment of Damages – Personal Injury

CORAM: HUTCHINSON, J

[1] This matter which came before me for assessment of damages had its origins in a motor vehicle collision which occurred on the 20th of August 2018 at 4:50 pm in the vicinity of Ocean Boulevard and Port Royal Street. The collision occurred when a Nissan Tiida Latio registered 2904 GS which was being driven by the Defendant collided in the rear of the Claimant's Suzuki Swift motor car registered 4733 HJ. The matter was uncontested as the Defendant who was served on the 4th of April 2019 failed to file an acknowledgment or service. Default Judgment was entered on the 24th of April 2019 after which the matter was listed for Assessment of Damages. The Defendant was served with notice of assessment, witness

statements of the Claimant and a number of additional documents on the 8th of April 2021, he however failed to attend or participate in this hearing.

[2] The Claimant requested that he be compensated for special damages for which he produced the following documents;

- (a) Medical Report of Dr. Suzanne Minott- Arscott dated 11th January 2019.
- (b) Receipt for Medical report \$5000.
- (c) Payment of \$1400 for a visit with Dr Arscott.
- (d) Payment of \$2100 for a follow up visit with Dr Arscott.
- (e) Invoice and Payment to El Shaddai for an x-ray in the sum of \$8000.
- (f) Invoice and Payment for CT scan - \$18,000.
- (g) Receipts for prescription filled at the New Kingston pharmacy \$9318.
- (h) Receipt from Stewart's Auto Sales re: payment of excess in the sum of \$210,000

[3] On my review of the receipts presented in respect of sums paid for prescription, x-rays, CT scan and the medical report, I found that the Claimant had proved medical expenses in the sum of \$48, 818. In respect of the documentation produced by Stewarts Auto Sales to prove the excess which was paid by the Claimant towards the cost of the initial repairs done to the vehicle, I am satisfied that this amount had to be paid out of pocket and the Claimant ought to be reimbursed for same.

[4] An additional claim was made for loss of use of his vehicle for a period of 87 days which he explained was the time that elapsed while he waited for a determination to be made as to who would be responsible for the cost of the repairs to his vehicle. The daily rate of \$3,657.86 was proposed in light of the fact that the sum of \$25,605.04 was paid to the Claimant by his insurers JNGI for a period of 7 days.

The sum which would then be due taking into account this for this payment amounts to \$292,628.78. I accept that these expenses have been proven by the documentary and other evidence provided and as such I am prepared to award the Claimant the sum of \$551,446.78.

[5] Dr. Minott-Arscott saw the Claimant on the 21st of August 2018 and in the report produced by her she observed that the following injuries had been suffered by him;

- (a) *Pain in his shoulders.*
- (b) *Mild occipital headache.*
- (c) *Pain on flexion and rotation of his head indicative of whiplash injury for which he was provided with muscle relaxants and sent for an x-rays of his neck and lower back. He was also advised to have a CT scan conducted if these headaches continued.*

It was noted that the report did not provide a restricted range of movement neither did it provide an opinion in respect of any possible permanent partial disability or whole person impairment. Neither was there any evidence provided by the Claimant in respect of any ongoing issues.

[6] The X-ray report revealed evidence of loss of cervical lordosis with the final impression being a finding of cervical spondylosis. On a review of same it was evident that this pre-dates the accident as evidence of this was noted on X-rays done on the Claimant on the 10th of April 2018. The August 2018 report showed that there were no interval changes seen since the last imaging in April 2018. In addition to these observations, the Claimant was also noted to have paraspinal muscular spasms.

[7] A number of authorities were cited by Mr Williams in support of the request for General Damages in the sum of \$2.7 million. The first was ***Evoni McLean v Pepsi Cola Bottling Co Ltd and An'or [2014] JMSC Civ 55***. The date of this award was

April 4th, 2014 and the CPI then was 81.8. In that case, the medical report revealed that the Claimant had suffered mild whiplash injury, mild soft tissue injury to right shoulder, mild mechanical lower back pain, resolved triggering of fingers of both hands. The award made in that case was \$2 million which updates to 2,665,036.67 using the CPI for May 2021 of 109.

- [8] The next decision cited was ***Carlton Willoughby v Wilton Hyman and An'or [2018] JMSC Civ 87***. The date of that award was the 22nd of May 2018 and the relevant CPI was 94.6. The Claimant was given an award in the sum of \$1.6 million. The injuries suffered by him were noted as chronic mechanical lower back pain with muscle spasm, chronic cervical strain/whiplash injury, chronic muscoskeletal chest pain, right shoulder strain. He was prescribed analgesics and muscle relaxants and also engaged in physiotherapy. He completed these sessions without pain and normal active movements and with muscle strength achieved. This award updates to \$1,843,551.79.
- [9] The 3rd authority cited was ***Talisha Bryan v Anthony Simpson and An'or [2014] JMSC Civ 31***. That award was made in March 2014 with a CPI of 82. The sum award to the Claimant for general damages was \$1.4 million. The injuries which the Court accepted as proved were whiplash injury to the neck and lower back strain. She was treated with analgesics and engaged in physiotherapy. At the time of the hearing she reported that she still experienced occasional lower back pain especially after sitting for an extended period or when bending to pick up an object. This award updates to the sum of \$1,860,975.60 using the CPI for May 2021.
- [10] The 4th and final authority cited was ***Patrick Thompson and An'or v Dean Thompson and An'or [2013] JMCA Civ 42***. The date of that award was the 18th of August 2008 and the relevant CPI was 51.9. The sum awarded to the 3rd respondent, who was a firefighter at the time of the motor vehicle accident which resulted in his injuries, was \$2 million. The injuries sustained by him were whiplash injury to the cervical spine, acute lumbar-sacral strain and soft tissue injury to the side of the head. He also suffered from frequent headaches which lingered,

constant pain in his lower back aggravated by sitting or driving for long hours, he was also diagnosed with a mild lumbosacral strain. His injuries were assigned a combined permanent impairment of 6% of the whole person by the Consultant Neurologist and on a follow up visit a permanent impairment of 1% of the whole person was assigned by the Consultant Orthopaedic Surgeon.

[11] As a result of ongoing issues he was removed from front line duties. His personal life was also negatively impacted. The Court found that the award of \$2 million which had been made in the lower Court was entirely justified. In respect of this authority, Mr Williams quite correctly conceded that the injuries and personal circumstances of this Claimant were far more serious than those of Mr Williams. He argued however that the discourse of Morrison J.A, as he then was provides useful guidance in respect of what would be an appropriate award in the instant case.

[12] On an examination of the cases which remained for my consideration, I noted that the nature and severity of the injuries sustained by the Claimant in the **Carlton Willoughby** case were greater than what was reported and observed in respect of this Claimant. His injuries in my opinion would place him in the mid range of those which were noted in the **Talisha Bryan** and **Evoni McLean** decisions with the injuries of Ms. McLean being marginally more severe. In light of this finding I am of the view that an appropriate award would be the sum of \$2,500,000 million.

[13] As such, damages payable to the Claimant are assessed as follows:

(a) Special Damages in the sum of \$551,446.78 - 3 % interest to be applied from the 20th of August 2018 to today's date.

(b) General Damages in the sum of \$2,500,000 - 6% interest to be applied from the 4th of April 2019 to today's date.

(c) Costs to the Claimant to be taxed if not agreed.

