



[2018] JMSC Civ 87

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2014 HCV 05367

BETWEEN	CARLON WILLOUGHBY	CLAIMANT
AND	WILTON HAYMAN	1ST DEFENDANT
AND	DAVION THOMPSON	2ND DEFENDANT

IN OPEN COURT

Mr. Paul Edwards instructed by Bignall Law for the Claimant.

The Defendant absent and unrepresented.

Heard: 11th May and 22nd May, 2018.

DAMAGES - ASSESSMENT OF – PERSONAL INJURY

SIMONE WOLFE-REECE, J (Ag.)

BACKGROUND

[1] The claimant by way of claim form filed on November 6, 2014 sought to recover damages from the defendants for negligence for personal injuries arising out of a motor vehicle accident on or about January 3, 2013 along Hagley Park Road in the parish of St. Andrew.

The claimant having served the 1st defendant obtained judgment in default of acknowledgment of service against the 1st defendant, with damages to be assessed

on February 16, 2015. In furtherance of that judgment the claimant now approaches this court for damages to be assessed. On May 11, 2018 the claimant led evidence before the court for the court to determine the quantum that he should be awarded.

EVIDENCE

- [2] The claimant was sworn and his witness statement dated 19th December 2017 was allowed to stand as his evidence in chief. It is his evidence that on January 3, 2013 after 5 pm he was travelling in his motor vehicle along Hagley Park Road. He says there was a lot of traffic on the road going in both directions, he positioned his vehicle to turn right into Hagley Park Plaza, when he saw a Toyota Caldina motor car bearing registration plate number PE7721 overtaking the line of traffic and coming towards him. There was not enough space for this vehicle to overtake, however the driver proceeded and collided into his vehicle causing damage to his motor vehicle and his person.
- [3] Mr. Willoughby says that the impact jolted and jerked him, leaving him in shock and shaken up. It is his evidence that he did not feel any immediate pain, however when he returned home in the night he was uncomfortable and in a lot of pain. In spite of this discomfort he did not seek medical treatment until January 10, 2013 after seeing his attorney.
- [4] The claimant tendered into evidence the medical report of Dr. George Lawson dated September 25, 2014 and the physiotherapy report of Durga Prasad Gogineni to assist the court in assessing the damages. Dr. Lawson after examination made the following working diagnoses:-
- (a) Chronic mechanical lower back pain with muscle spasm
 - (b) Chronic cervical strain/ whiplash injury
 - (c) Chronic musculoskeletal chest pain
 - (d) Right shoulder strain

- [5] Dr. Lawson prescribed analgesics and muscle relaxant medications, and recommended a course of physiotherapy. The claimant did eight physiotherapy sessions with registered Physiotherapist Durga Prasad Gogineni who discharged the claimant on March 4, 2013 without pain and normal active movements and muscle strength were achieved.

SUBMISSIONS & ANALYSIS

- [6] This case is uncontested as the defendant has chosen not to attend to participate in the process. Edwards sought to make submissions and citing cases he considered relevant of assistance the court in its determination. The first case is **Talisha Bryan v. Anthony Simpson and Andre Fletcher** [2014] JMSC Civ.31. The claimant in that case suffered a whiplash in jury to the neck and lower back strain. Like the claimant at bar she was treated with analgesics, muscle relaxants and advised to do physiotherapy. In 2014 Lindo J (Ag.) as she then was in considering the above mentioned case awarded a sum on 1,400,000.00 for general damages, pain and suffering and loss of amenities. This award when updated amounts to a sum \$1,621,568.63. Mr. Edwards sought to convince this court that an award of sum of \$1,600,000.00 would in fact be a fair and just assessment in this case.
- [7] The other authority commended to the court for consideration was **Trevor Benjamin v. Henry Ford et. Al.** Claim No. 2005HCV2876. In that case assessment of damages was done in 2010 Anderson J stated that the injuries to the claimant were best categorized as soft tissue injuries. The court awarded a sum of \$700,000.00 for general damages which equates today to a sum of \$1,109,003.83. The injuries in the case at bar were more serious than the injuries sustained by Mr. Benjamin.
- [8] On assessment of both authorities and the evidence before the court I am inclined to agree with Counsel on his submission that \$1,600,000.00 is a reasonable award for general damages to the Claimant.

[9] The claimant pleaded special damages in the sum \$84,000.00. Mr. Edwards was forthright and admitted that the claimant in the instant case was only able to prove special damages in the sum of \$72,000.00. This includes the cost of the medical report and doctor visits, xrays, transportation expenses and eight sessions of physiotherapy.

[10] The assessment of damages for the injury and loss incurred by the claimant are as follows:-

(a) General Damages for Pain and Suffering and Loss of Amenities awarded in the sum of \$1,600,000.00 with interest at a rate of 3% from 13th November 2014 (date of service of the claim form) to 22nd May 2018.

(b) Special Damages awarded in the sum of \$72000.00 with interest at 3% from 3rd January 2013 (date of the accident) to 22nd May 2018.

(c) Costs to the Claimant summarily assessed at \$70,000.00.