



[2016] JMSC Civ. 214

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2011 HCV 05200

BETWEEN	BARBARA WRIGHT	CLAIMANT
AND	THE UNIVERSITY HOSPITAL BOARD OF MANAGEMENT	DEFENDANT

IN OPEN COURT

Mrs. Denise Senior-Smith instructed by Oswest Senior-Smith & Co. for the Claimant

Krishna Desai instructed by Myers, Fletcher & Gordon for the Defendant

Heard: 4th November and December 7, 2016

Assessment of Damages - Wrong Blood Transfusion - General Damages - Pain and Suffering - Physical injury- Psychological Injury - Post Traumatic Stress Disorder - Aggravated Damages - Future Medical Expenses.

CORAM: JACKSON-HAISLEY, J. (AG.)

[1] The Claimant, Barbara Wright, was admitted at the University Hospital of the West Indies from March 4, 2006 to April 10, 2006. On the 5th March 2006, she was transfused with blood of a type different from her own, as a result of which she alleges that the Hospital was negligent. The Hospital has admitted liability in respect of the wrong blood transfusion but puts the Claimant to proof with regard to damages.

[2] By way of a Claim Form filed on August 19, 2011 the Claimant claims General Damages, Aggravated Damages, Special Damages, Future Medical Expenses,

Interest, Costs and such further or other relief as this Honourable Court deems just. At the Assessment of Damages the parties agreed the following documents which were tendered into evidence as exhibits:

- Exhibit 1 - Psychiatric Report prepared by Dr. Terrence Bernard dated June 29, 2015.
- Exhibit 2 - Invoice prepared by Dr. Terrence Bernard dated June 29, 2015 in the sum of \$24,000.00.
- Exhibit 3 - Invoice from the desk of Dr. Terrence Bernard dated February 8, 2015 in the sum of \$36,000.00.
- Exhibit 4 - Psychiatric Report prepared by Dr. Terrence D. Bernard dated April 26, 2011.
- Exhibit 5 - Invoice prepared by Dr. Terrence D. Bernard dated May 9, 2011 in the sum of \$24,000.00.
- Exhibit 6 - Letter from Dr. Dwight Lowe to Dr. Lucien Jones dated March 1, 2007 evidencing report of Medical Status of Barbara Wright.
- Exhibit 7 - Correspondence between Dr. Gilian Wharfe, head Sub-department of Haematology and Mrs Stephanie Reid, Chief Executive Officer of the University Hospital of the West Indies dated May 18, 2006.
- Exhibit 8 - Invoice of Dr. Bernard dated March 9, 2011.
- Exhibit 9 - Medical Docket bearing Registration No. 1183240.
- Exhibit 10 - Expert Report of Dr. Aggrey Irons dated October 23, 2013.
- Exhibit 11 - Expert Report of Dr. Gillian Wharfe dated 5th October, 2016.

[3] The particulars of injury pleaded by the Claimant are depersonalization, abdominal swelling, low platelet count, hypertension, post traumatic stress disorder (hereinafter referred to as “PTSD”) and major depressive disorder. The Claimant describes what happened to her in her witness statement dated 5th February, 2015 and by way of oral testimony. According to her, on the 4th March 2006 she became a patient at the Defendant’s Hospital as she was diagnosed with having a low blood count and persistent bleeding. Further, that a HIV test revealed that she was negative and an ultrasound reflected that she had fibroids.

The essence of her complaints lies in the fact that whilst being treated she was transfused with blood incompatible to her own and that this occurred on two occasions.

- [4] She alleged that during the transfusion, servants and/or agents of the Hospital reported that she had an abnormally high temperature and her temperature was in fact very high and during the night that followed she experienced intolerable pain throughout her body. Further, that she had sleepless nights and experienced depersonalization. The pain and suffering, she alleges, continued for days and it was not until later that she was briefed on what happened and was advised that she was experiencing a low platelet count. She also indicates that she experienced temporary blindness which lasted for at least two days and since then her vision has not been the same. Further, that she was discharged from the Hospital on April 10, 2006 and was readmitted on May 2, 2006 and on May 12, 2006 a hysterectomy was performed on her and she was discharged on May 22, 2016. In cross-examination, when she was asked by counsel for the Defendant as to when she first became aware of having Immune Thrombocytopenia (hereinafter referred to as "ITP"), she insisted that this was after the blood transfusion.
- [5] She alleges that she is still suffering from flashbacks and the uncertainties of any lasting effect of the transfusion but she has no money to attend upon a haematologist to find out about any negative effects on her body and as a consequence she lives in fear that one day she will find out about the negative effects and so she continues to feel anxiety, aches and pains and she keeps on remembering the incident as if it happened yesterday.
- [6] In a supplemental witness statement also dated 5th February 2015 she speaks about the effects of the negligent transfusion including the fact that her relationships with family members have become strained. Further, that she has never experienced pain at this level before in her life. She also mentions the fact that interactions with other persons outside her family have also been greatly

weakened and she no longer feels attractive and is unable to enjoy certain normal pleasurable activities like sexual intercourse with her partner, because knowing that she has a condition, she would have to communicate her physical and psychological disorder to her partner. The anxiety in being constrained in that manner, she says is unbearable.

- [7] She also seeks to rely on the medical reports of Dr. Aggrey Irons and Dr. Terrence D. Bernard. Dr. Bernard, medical doctor and consultant psychiatrist, indicates that on receipt of instructions from the Claimant's attorneys-at-law, he assessed the Claimant and found that she was suffering from PTSD and major depressive disorder. Dr. Bernard opined that she has a global assessment of functioning rating of approximately 60 and this will result in moderate difficulty in social and occupational functioning. He recommends that she receive both talk therapy and medication therapy for 3 to 5 years.
- [8] A medical report from Dr. Aggrey Irons was tendered into evidence as an exhibit by the Defendant. Dr. Irons indicated that he examined the Claimant on June 18, 2014 and on July 9, 2014 and found that she was "fully oriented in time, place and person" and there was no evidence of malingering. He opined further that she suffered from moderate resolving PTSD which is directly related to her experiences at the University Hospital of the West Indies and that the condition is amenable to treatment with supportive psycho therapy and cognitive therapy.
- [9] The Defendant relied on the evidence of Dr Gilian Wharfe whose medical report dated October 5, 2016 was tendered into evidence and her witness statement dated April 9, 2015 was allowed to stand as her evidence in chief on the Defendant's case. Both recited the same observations and findings. She indicated that she is a practicing consultant haematologist employed to the University Hospital of the West Indies and was head of the sub-department of haematology of the University of the West Indies (which is located on the Hospital compound), at the time of the Claimant's admission into the hospital. Further, that she was one of the doctors involved in the Claimant's diagnosis and

treatment. She expressed that the Claimant was admitted to the Hospital on March 4, 2006 as an emergency admission with severe thrombocytopenia, severe menorrhagia and resulting anaemia and that her clinical diagnosis was ITP and she was assessed as having uterine fibroids which are a common cause of menorrhagia.

- [10]** Dr. Wharfe admitted that the nursing staff did not follow the established protocol related to blood transfusion and so the Claimant received packed red cells of the incorrect group on March 5, 2006. Despite this error, she indicated that the Claimant did not suffer any discomfort or long term physical effects. She says based on what she read in the medical docket, the Claimant's temperature was only elevated on the night of March 9th and it was in the normal range between March 4th and March 9th. In reliance on the medical docket, she avers that there were no complaints voiced by the Claimant and no obvious distress noted and that there was no record of depersonalization.
- [11]** Dr. Wharfe expounded on the potential effects of steroids used to treat the Claimant's condition which include nervousness, steroid psychosis, mood swings, cataracts, glaucoma and impaired glucose tolerance. These, according to Dr. Wharfe, are only related to the medication and not the transfusion. She outlined the steps taken to avoid injury based on the transfusion and pointed out that tests confirmed the absence of any medical sequelae from the mismatch. Further, that in particular, the alleged injuries of abdominal swelling, low blood platelet, temporary blindness and hypertension were not caused by the mismatch but rather could be caused from the ITP and its treatment and or drugs used to treat ITP. Moreover, she expressed that she does not see any note in the docket that the Claimant reported any blindness.
- [12]** Although the entire medical docket was tendered into evidence, in the absence of any information from the nurses or doctors who made these notes and the circumstances under which the notes were made I am unable to place significant

weight on it save for the documents contained therein which were already tendered as exhibits.

Submissions on behalf of the Claimant

- [13] Counsel for the Claimant submitted that the Court should find that the Claimant was unshaken in her evidence and accept that she felt intolerable pain, experienced depersonalization and continues to suffer from PTSD. She commended the medical report of Dr. Bernard to the Court as being reflective of the experiences and trauma suffered by the Claimant. She placed reliance on the case **Joan Morgan & Cecil Lawrence v Ministry of Health, UHWI and the Attorney General of Jamaica** delivered on 19 December 2007 and reported in Khan's Volume 6 at page 220, as being a case that is didactic on how the Court should treat with psychological injury. It was submitted that the Claimant's injuries, though similar, were more extensive than those suffered by Joan Morgan as the Claimant's case was not one of misdiagnosis but rather of actual physical intervention in the body. This transfusion, she contended, caused physical changes in the Claimant's body, pain and discomfort. Further, that the Claimant's mental injuries spanned a longer duration, being some nine years before assessment. Further, that whilst Joan Morgan can be certain of the lack of lasting biological effect, this is not so in the Claimant's case as she has not been re-assured of the absence of any negative impact on her body.
- [14] Reliance was also placed on an English case **Morgan v Gwent Health Authority, Court of Appeal**, Dec. 8, 1987, an English case in which the Claimant was transfused with the wrong blood. The Court of Appeal in that case considered not only the anxiety suffered by the Plaintiff but also the anxiety that she will continue to suffer. An award of £8,000.00 made but on appeal it was increased to £20,000.00 which now updates to £53,000.00 which is equivalent to JM\$8,534,855.00. Based on that authority counsel for the Claimant submits that an appropriate award for General Damages is \$10,000.000.00.

[15] Counsel for the Claimant also submitted that this is an appropriate case for an award for Aggravated Damages. She drew parallels with the case of **Appleton v Garrett** [1996] P.I.Q.R P1, 1996 a case in which the Plaintiffs were intentionally misled by the Defendant to undergo unnecessary medical treatment and the Court awarded the Plaintiff 15% of the award for General Damage as an award for Aggravated Damages. Counsel for the Claimant argued that a similar award should be made in this case for several reasons. Among those reasons, she submitted was the fact that neither the Claimant nor her relatives were made aware of the negligent conduct until several days after the transfusion. Further, that the Claimant felt that the Defendant's servants and/or agents did not treat her fairly as they reacted to her pain and discomfort with annoyance and impatience and were insensitive and cruel and in particular that she was advised that the incorrect blood transfusion was worse than being diagnosed with HIV and that she would die or have a stroke.

[16] It was submitted that these actions of the Defendant's servants and/or agents caused the Claimant great emotional discomfort and indignation and therefore greatly aggravated the damages. An award of \$1,500,000.00 was submitted as an appropriate award for Aggravated Damages.

Submissions on behalf of the Defendant

[17] Under the head Pain and Suffering it was submitted that based on the Claimant's existing medical conditions before being admitted into the Defendant's hospital, that proper care and treatment was provided to her while in the care of the Defendant. It was also submitted that the known side-effects of the treatment (such as administering steroids and chemotherapy), and the total abdominal hysterectomy surgery, would on a balance of probabilities be the cause of the complaints made by the Claimant. Counsel for the Defendant asked the Court to find that there was no medical evidence to prove that the negligent blood transfusion was the cause of the injuries complained of by the Claimant. Further, that no award ought to be made in relation to pain and suffering, save for the pain and suffering connected to psychological injury. In respect of psychological

injury, Counsel submitted that in light of the opinions of Dr. Bernard and Dr. Irons several cases are instructive and that an award of \$500,000.00 is reasonable. Below I have set out the cases relied on:

- **Vanura Lee v Petroleum Company of Jamaica Limited and Juici Beef Limited** 2003 HCV 1517 (unreported) wherein the Claimant reported having suicidal thoughts and an assessment by Dr. Abel found her to be suffering from PTSD and major depressive disorder as a result of the accident. Dr. Doorbar found her to be suffering from depression, recurrent episodes and nightmares of the fire, 'anxiety state' and very severe social and personal disruption. The amount awarded now updates to \$837,574.32.
- **Angeleta Brown v Petroleum Company Limited and Juici Beef Limited** 2004 HCV 1061 (unreported) was a case in which the Claimant was found to be suffering from major depression-moderate and PTSD. An award was made which now updates to \$775,821.19.
- **Lavern Anderson v Marksman Limited and Kaiser Bauxite Company and Jamaica Bauxite Mining Limited t/a Kaiser Bauxite Co. Ltd. C.L. A-052 of 2000** (unreported) in which the Claimant suffered from significant problems in memory and concentration as well as marked depression in her emotional state which contributed to neurological and neurophysical insults and accompanying PTSD. An award was made which now updates to \$1,284,463.89.

[18] With respect to Aggravated Damages counsel for the Defendant submitted that there is no evidence to prove any aggravating circumstances relating to the negligent transfusion and accordingly no award for aggravated damages ought to be made.

[19] Under the head Future Medical Expenses it was submitted that an award should be made to the Claimant only for the therapy sessions based on the expert report

of Dr. Irons. In relation to Special Damages counsel submitted that exhibits 5 and 8 are duplicates and in any event no negotiated cheques were tendered to prove that the payment was made.

Analysis

[20] Based on the Claim made and the submissions advanced I will consider General Damages under the heads of Pain and Suffering and Loss of Amenities, which will include both physical injury and psychological injury and Aggravated Damages. Future Medical Expenses and Special damages will be dealt with under separate heads.

[21] The purpose of an assessment of damages is to arrive at a figure that will provide adequate compensation to the Claimant for the damage, loss or injury suffered as was enunciated by Lord Blackburn in **Livingstone v Rawyards Coal Co. [1880 Appeal CAS.25]** in these terms:

“I do not think there is any difference of opinion as to it being a general rule that, where any injuries to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get that sum of money which will put the party who has been injured, or who has suffered in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation”.

[22] In making a determination as to an appropriate quantum I am guided by the dictum of Sykes J. in the case of **Phillip Granston v The Attorney General of Jamaica 2003 HCV 01680 (unreported)**, where at page 24 he said:

“...in assessing damages there is a subjective and an objective component. The subjective aspect is the specific effect on the particular claimant. The objective element focuses on similar injuries in the past. The goal of looking at past awards is to make sure that awards are consistent but the desire for consistency cannot be used to suppress awards that are properly due to the injured party even if that award is outside of the past cases”.

[23] I am cognizant that although guidance must be sought from previously decided cases, because each victim is unique, I have to consider all the individual circumstances of this Claimant. The quantification of an award is far from being

an exact science, in fact it has been referred to by McDonald Bishop J.A. (as she then was) in the **Angeleta Brown** case (supra) as an attempt at “measuring the immeasurable” and “calculating the incalculable”. It is with these principles in mind that I embark on this process.

Pain and Suffering and Loss of Amenities

Physical Injury

- [24] Under this head it is necessary that I first arrive at some findings of fact as to the nature and the extent of the injury sustained by the Claimant. According to the Claimant she suffered a number of injuries as a result of the wrong blood transfusion. According to the Defendant the injuries sustained were consequent upon a pre-existing condition and not the wrong blood transfusion. This is the main area of disagreement.
- [25] The Claimant has not relied on any medical evidence to substantiate the nature of the physical injuries that she alleges resulted from this wrong transfusion. It is only her account of the injuries that is being relied on to substantiate an award under this head.
- [26] Dr. Wharfe on the other hand is an expert witness called by the Defendant to support its case. There were suggestions of bias on her part, based on her position as an employee of the Defendant and although I found some parts of her testimony to be somewhat questionable, I found other aspects to be credible. She gave evidence that on admission it was noted that the Claimant had severe thrombocytopenia and a diagnosis of ITP and menorrhagia. The Claimant however insists that it was after the transfusion that she became aware of this condition. This is despite her reliance on correspondence between Dr. Wharfe and Stephanie Reid in which Dr. Wharfe reports that on admission the conditions mentioned were noted. On this point I prefer the evidence of Dr. Wharfe and find as a fact that the Claimant was admitted with the conditions mentioned.

[27] However, the evidence of Dr. Wharfe that the Claimant did not suffer any discomfort is somewhat questionable. She arrives at this finding based on an examination of the docket which does not reflect any complaints being made by the Claimant. I do not place much weight on this as it doesn't even comply with the basic rules of evidence which restricts hearsay evidence. The Claimant on the other hand has spoken of her personal experiences and I have assessed her and found her to be truthful in that regard. I accept that she suffered high temperature and experienced intolerable pain throughout her body. I also accept her evidence that she experienced depersonalization and had sleepless nights. I accept also that this lasted some days. I accept that these experiences commenced the night following the transfusion.

[28] I find that the time of commencement of those experiences suggests on a balance of probabilities that they were as a result of the wrong blood transfusion. Moreover, the Defendant's case also suggests a finding that the wrong blood transfusion was likely to be the cause of these injuries. This is because although this transfusion took place on the 5th March, according to Dr. Wharfe, it was not until the 7th March that the haematology service became aware of the error and it was then that investigations were done to assess any complications emanating from the incorrect blood after which necessary steps were taken to avoid injury. Based on the fact that no steps were taken to avoid injury before the 7th March and based upon when the pain commenced, I accept that the pain and suffering complained of up to that time are more likely than not to have resulted from the error in blood transfusion.

[29] Dr. Wharfe also opines that despite the error in transfusion the patient did not suffer any long term physical effects. Further, that the abdominal swelling, low blood platelets, temporary blindness and hypertension were not caused by the mismatch. The Claimant has not presented any evidence to refute this suggestion. It is trite law that he who avers must prove. The Claimant has provided no evidence to prove that these injuries were caused by the mismatch. In light of the fact that she had a pre-existing condition it would have been even

more important for her to present evidence that the injuries were caused by or aggravated by the mismatch and not by her pre-existing conditions.

[30] The Claimant has complained of temporary blindness but Dr. Wharfe has indicated that impaired vision is among the possible side effects when patients are treated with steroids for ITP. The Claimant complains of reduced sex drive but there has been no medical evidence to support this but this seems to be related more to psychological rather than physical injury. There is also no evidence to support the allegation that the Claimant's weight gain resulted from the incompatible blood transfusion. It is also of note that the temporary blindness, weight gain and reduced sex drive were not pleaded as part of the Claimant's case.

[31] I am therefore of the view that there should be an award under this head to account for pain and suffering for the days following the transfusion, the sleepless nights, the high fever and for depersonalization. In determining the number of days, I find the correspondence between Dr. Wharfe and Mrs. Stephanie Reid to be of assistance. In that correspondence Dr. Wharfe reported that "the cross-match was difficult for a few days but by the Friday after admission this was no longer a problem". It is noted that the Friday after admission was March 10th, five days after the transfusion. This is a useful guide for this Court.

[32] There were no Jamaican cases cited which deal with an award for pain and suffering resulting from an incompatible blood transfusion. In fact all of the local cases cited deal with pain and suffering resulting from other identifiable physical injury. In considering what is an appropriate award under this head I have to seek to arrive at a figure that will provide the Claimant with reasonable solace for the pain and suffering endured.

Psychological Injury

[33] The Claimant alleges that she suffered PTSD and major depressive disorder. There is not much contest as to whether she suffered from PTSD, the contest is

in the gravity of the PTSD. Medical evidence has been presented by both sides. Dr. Bernard had two face to face interviews with the Claimant, one on March 22, 2011 and the other on June 19, 2015 as well as a telephone conversation with her on April 14, 2011. He spoke to the haematologist at the University Hospital of the West Indies and he had a telephone interview with her sister-in-law.

[34] On the other hand Dr. Irons examined her first on June 18 and then on July 19, 2014. Her interaction with Dr Bernard was closer in time to the incident. I am of the view that he would have been better able to assess her and I therefore give more weight to his report than that of Dr. Irons and find as a fact that she did in fact suffer from PTSD and major depressive disorder and that the level of severity is moderate to severe for both.

[35] I also accept Dr. Bernard's report that she has a level of incapacitation and that her "Global Assessment of Functioning rating is approximately 60 which will result in moderate difficulty in social and occupational functioning for example occasional anxiety attacks, few friends and conflict with peers". The report of Dr. Irons is not to be disregarded. It is common knowledge that a Court can accept a part of a witness' testimony and reject a part. He too opined that she suffered PTSD.

[36] The law is now well established that a Claimant who has suffered from PTSD and other psychological or psychiatric injuries can be awarded damages, the quantum of which will be dependent on the magnitude of the injury. In the **Joan Morgan** case (supra), Ms. Morgan suffered from frequent flashbacks with phobic behaviour, anxiety and depression specific to alleged misdiagnosis, PTSD specific to being informed that she was HIV positive, in need of psychotherapy and pharmacotherapy, severe anxiety, depressive symptoms, severe self doubt, preoccupation with flashbacks and fear of dying and consistent preoccupation with health of unborn children and severe PTSD.

[37] The injuries of the Claimant are similar to at least three of the nine consequences reported by Joan Morgan's Doctors. Despite that I do not find favour with the

submissions of counsel for the Claimant that Ms. Wright's injuries are more serious and distinguishable because of the weight gain, abdominal swelling and aches and pains. I do however accept that the Claimant's psychological injury has spanned a longer period of time, particularly because of the finding of Dr. Bernard that even up to the time of writing his witness statement in July 2015, that the Claimant was in need of future treatment.

[38] The case of **Morgan v Gwent Health Authority** (supra) was similar to the instant case to the extent that the Claimant was given a blood transfusion from the wrong blood group. It is noted that in that case the wrong blood transfusion was not found out until two years later and no antidote was given and so it raised the level of antibodies in her blood to a very high level. It is of note that four years post the incident the symptoms were still evident. The Court of Appeal opined that a major factor that ought to be reflected in the proper damages in that case was the anxiety which the Plaintiff will have for the rest of her unmarried life.

[39] This case is of assistance also in reiterating the necessity of making an award where the effect of the transfusion is one of anxiety. In any event I am already convinced that the Claimant herein should be given an award for psychological injury. The use of English cases is usually acceptable in assessing damages where there are no cases in this jurisdiction which provide guidance. Although no cases local cases have been cited which deal with wrong blood transfusion, there are cases which deal with psychological injury resulting from other types of trauma.

[40] I move now to examine the cases provided by the Defendant. In the **Vanura Lee** case (supra), Ms. Lee reported having suicidal thoughts and an assessment by Dr. Abel found her to be suffering from PTSD and major depressive disorder as a result of the accident. Dr. Doorbar found her to be suffering from depression, recurrent episodes and nightmares of the fire, anxiety state and very severe social and personal disruption. The amount awarded now updates to \$837,574.32.

[41] In the **Angeleta Brown** case (supra) she was found to be suffering from major depression-moderate and PTSD. An award was made which now updates to \$775,821.19. In reliance on these two cases an award of \$1,000,000.00 was made to the Claimant in the **Lavern Anderson v Marksman Limited and Kaiser Bauxite Company and Jamaica Bauxite Mining Limited t/a Kaiser Jamaica Bauxite Co. Ltd.** (supra) for significant problems in memory and concentration as well as marked depression in her emotional state which contributed to neurological, neurophysical insults and accompanying PTSD. This award now updates to \$1,284,463.89.

[42] The Claimant's case is distinguishable from those cases, particularly because the PTSD caused to the Claimants in the mentioned cases resulted from accidents in respect of which they were fully aware of the extent of their injuries. In this case the Claimant herein has indicated that much of her worries stem from the uncertainty regarding the full extent of the injury caused. In addition, she has suffered with PTSD for a much longer period of time being approximately nine years

[43] In arriving at an appropriate award I find guidance in all the cases relied on. Although none is on all fours with the instant case, they provide guidance as to the quantification of the award. I bear in mind the principle enunciated by Campbell J. in **Beverley Dryden v Winston Layne SCCA 44/87** (unreported) delivered 12th June 1989 that personal injury awards should be reasonable and assessed with moderation.

[44] Other cases that I find helpful are as follows:

- **Natoya Swaby & Andrew Green v Southern Regional Health Authority [2012] JMSC Civ. 151** - Claimant found to be suffering from PTSD consequent upon the loss of her day old baby's body, whose body was never shown to her and remains unaccounted for. She was found to be suffering from PTSD and mild to moderate depression. An award was made in reliance on the **Joan Morgan's** case which was discounted by

30% and so amounted to a sum of \$3,861,686.64 for general damages. This figure now updates to \$4,787,348.85.

- **Karen Reid v Harbour View Medical Centre and the Ministry of Health and the Attorney General's Department [2014] JMSC Civ.56** where the Claimant was misdiagnosed with having HIV and remained misdiagnosed for two years. During that time her HIV status was in the public domain, her relationship with her child's father came to an abrupt end as he denied paternity and she had to take anti-retroviral drugs for over two years and also had to undergo c-section which left a scar. She was found to have suicidal thoughts and depression. In reliance on the **Joan Morgan** case, which was increased by 40%, she was awarded \$8,850,000.00 to account for pain and suffering and loss of amenities. This figure now updates to \$9,728,370.79.
- **Ryan Henry v Kingston Container Terminal Services Limited [2015] JMSC Civ. 154** - After suffering physical injuries during a work place accident the Claimant was assessed as having chronic PTSD, complicated by depression and anxiety (although having failed a malingering test). An award of \$1,182,926.00 in July 2015 was made under the head PTSD which now updates to \$1,234,448.99.

[45] The case I find to be most similar to the instant case is the **Joan Morgan** case, although I find that the psychological injuries in that case are twice as severe as in the instant. In the circumstances, I am prepared to make an award of \$3,500,000.00 for psychological injury.

[46] Taking into account the pain and suffering endured from the transfusion, the excruciating pain, high fever and depersonalization I find that an additional figure of \$500,000.00 should be added to this to make the total award under the head Pain and Suffering and Loss of Amenities to be \$4,000,000.00.

Aggravated Damages

[47] In addition to general damages a party who has suffered personal injury may claim Aggravated Damages. In **Walton Richards v Woman Detective Corporal Campbell Williams C.L.R 019/1996**, the Court outlined the circumstances under which an award is made for Aggravated Damages at page 19 as follows:

“Where the behaviour of the defendant is such that it is perceived to injure the claimant’s feelings of dignity and pride, an additional award can be made...this type of award is made in exceptional circumstances.”

[48] One of the complaints made in the **Walton** case was that of allegations of comments made by a senior officer, but the Judge found that there was no evidence to support the complaints made by the Claimant and made no award under that head. I am also guided by the case **Leeman Anderson v The Attorney General of Jamaica CLA 017 of 2002**, decided July 16th 2004 where Sykes J. indicated that Aggravated Damages are awarded where the Defendant’s conduct is sufficiently outrageous to merit condemnation and punishment and that the outrageous behaviour usually carries features of malice, fraud, cruelty, insolence and the like.

[49] In the case **Denese Keane-Madden v Attorney General of Jamaica et al. [2014] JMSC Civ. 23**, Edwards J. had to consider whether or not to award a sum for Aggravated Damages in the circumstances set out below:

“The Claimant averred that she was insulted, ridiculed, subjected to various indignities, denied phone calls, legal representation and access to family. That she was placed in custody under horrible and dehumanising conditions, denied sanitary conveniences, denied change of clothing, denied food and that sniffer dogs were let loose on her. During the evidence none of this was proved or accepted as true. In the round there was no action of the state which was proved to be arbitrary and excessive in this case. There are no aggravating features. Her treatment at detention and arrest does not reach a standard requiring compensation”.

[50] In **Karen Reid v Harbour View Medical** (supra) Lindo J. at paragraph 18 expressed the following:

*“... The Claimant is also claiming for aggravated damages for the defendant’s failure to promptly disclose the test result. The claimant’s evidence is that the doctors and nurses “somehow must have known” that she was not HIV positive. In coming to a determination on that issue, I place reliance on the judgment in the case of **Rookes v Bernard** [1964] 1 All ER 367 at 407 F-G where Lord Devlin said “... moreover it is very well established that in cases where damages are at large, the jury,(or the judge) if the award is left to them can take into account the motives and conduct of the defendant where they aggravated the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to ignore the plaintiff’s proper feelings of dignity and pride. They are matters which the jury can take into account in assessing the appropriate compensation.”*

[51] Counsel for the Claimant has relied on the case **Appleton v Garrett [1996] P.I.Q.R PI.** (supra) but that case is clearly distinguishable as what influenced an award for Aggravated Damages was the fact that the actions of the Defendant were found to be deliberate and carried out in bad faith. In this case there is no evidence that the Defendant’s servants and or agents were malevolent or spiteful in not giving the test results to the Claimant or otherwise nor is there any evidence that the servants and/or agents of the Defendant reacted to her discomfort with annoyance or impatience. I am of the view that even if these allegations were proven it would not be sufficient to ground an award for Aggravated Damages. In the circumstances, I do not find in this case that the circumstances fall within the standard required for an award under this head.

Special Damages

[52] Counsel for the Defendant has taken issue with some of the figures claimed. Dr. Bernard’s invoices were tendered into evidence as exhibits.. Even though there are no cheques to substantiate the fact that these figures were paid that does not affect my ability to award these figures as these figures represent expenses. Based on the invoices presented I am of the view that the sum of \$84,000.00 has been proved.

Future Medical Expenses

[53] Dr. Bernard's report recommending future care was based on an evaluation done in 2011. He then opined that she needed thirty sessions over a period of two years. In 2015 he makes a recommendation of 3-5 years care. I find this somewhat inconsistent as four years prior he had recommended at least two years and now is recommending up to five years. However, Dr Irons is also of the view that her condition requires treatment and so I accept that an award for Future Medical Expenses is appropriate. I accept the first indication of Dr. Bernard of two years and make an award with that in mind. I am prepared to make an award for 30 therapy sessions at \$8000.00 per session which equals \$240,000.00. Without any proof of actual medication and what it will amount to I am prepared to award \$5000.00 per month for a period of 24 months which equals \$120,000.00.

Disposition

[54] Damages are assessed as follows:

- I. General Damages awarded to the Claimant in the sum of \$4,000,000.00 with interest at a rate of 3% from August 31, 2011 to December 7, 2016;
- II. Special Damages awarded to the Claimant in the sum of \$84,000.00 with interest at a rate of 6% from March 5, 2006 to June 21, 2006 and at a rate of 3% from June 22, 2006 to December 7, 2016;
- III. Future Medical Expenses awarded to the Claimant in the sum of \$360,000.00; and
- IV. Cost to the Claimant to be agreed or taxed.