IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013HCV 04796

BETWEEN	**June Hyman**	**CLAIMANT**
AND	**Southern Regional Health Authority**	**1st DEFENDANT**
AND	**The Attorney General of Jamaica**	**2nd DEFENDANT**

Ms. Georgia Hamilton and Ashley Campbell, instructed by Georgia Hamilton & Co. appears for the claimant.

Mrs. Kristina Jones, instructed by the Director of State Proceedings, appears for the defendants and Mrs. Karlane Mcfarlane-Richards – Legal Officer of the 1st defendant is present.

Heard: September 28, 29 and 30 and October 9, 2026.

Negligence claim – Defendant's liability established - Assessment of damages – Interest on damages – Dispute about costs – Dispute as to whether inability to eat constitutes suffering or loss of amenity.

Anderson, K. J

[1] This claim was last heard in this court, on September 30, 2026.

[2] On that date, judgment on this claim, was then rendered, in favour of the claimant.

[3] What remains now, to be finally adjudicated on, for the purposes of this claim, are the damages, interest and costs, arising from that judgement.

Assessment of Special Damages

[4] In that regard, I will begin by addressing special damages. I have accepted the claimant's claim for loss of income for 6 months (24 weeks), due to her injuries, arising from the negligence in her evaluation, treatment and lack of appropriate follow-up care, by the 1st defendant.

[5] In the claimant's evidence there was no reference at all, made by her, to there having been any examination of her, by Dr. Ryan Wilson, arising from the injuries which she experienced, following on the negligent actions and inaction of Dr. Allen at the Junction Comprehensive Clinic, on April 26, 2010. Accordingly, the sum of $5,000 claimed for, in that respect, will be disregarded by this court. Special damages must, in general, be specially proven. Whilst receipts in proof, will not always be necessary, evidence whether oral or written, in proof, will always be necessary. That does not exist, in respect of the claim for the $5,000 paid to Dr. Wilson in respect of which, a receipt has been proferred, as proof. What the court does not know though, is what that examination is related to. Evidence should have been led by the claimant in that regard, if it could have been. That though, did not happen.

[6] The amended sum now being claimed for, as the payment to be made to Dr. Lee, will be awarded to the claimant in US dollars. That will be the sum of US$16,312.50.

[7] I accept the learned defence counsel's submission, that the claimant can and should recover damages for 5, rather than 7 round trips, to and from the Kingston Public Hospital, arising from her evidence. My earlier comments re the need for evidence, are equally apposite for that claim.

[8] Thus, the claimant will be awarded special damages, in Jamaican dollars and in the sum of J$271,604.16 and the U.S. dollars sum of U.S $16,312.50 and same

will be awarded along with interest, at the rate of 3% from April 26, 2010, to date of judgment – September 30, 2026.

Assessment of General Damages

[9] As regards general damages, the case of **Tanya Reid v Vanyard Dacres and Carla Dacres- CLR021/98**, has been relied on by the respective parties' counsel, as a useful starting point for the assessment of damages, in respect of this claim. I agree with them, in that regard. I also, do not think that that particular case is of such antiquity that it is required to be treated with, by this court now, with any more caution than is presently typical.

[10] In the **Tanya Reid case (op. cit.)**, which I must add, was helpfully provided to this court, by the claimant's counsel, as same was included in the claimant's bundle of authorities that was filed on May 27, 2025, the primary subject of that claim, was Ms. Tanya Reid. She had instituted that claim, arising from a traffic incident which resulted in a truck having hit into one of the sides of a car in which Ms. Reid had then been travelling, as a passenger. As a result of that incident, the claimant suffered injuries which can properly be described as severe. She was rendered unconscious for several hours and thus, also remained in hospital for approximately 48 hours following upon the said traffic incident's occurrence.

[11] Furthermore, as a result, she had to have surgery, in her mouth, to enable her mouth to open up more than it was opening, before that surgery. Her claim was instituted in 1998 and was tried over several days in September and October of 1999 and several days in 2000. In that case, the claimant claimed that up until the time when she testified, she could not, even as of then, fully open her mouth. The said traffic incident also caused her face to change how it looked, prior to that incident. She also suffered cuts and bruises to the left side of her face. The said incident also caused her to become permanently, partially disabled. The claimant was 23 years old, when that unfortunate traffic incident occurred, which was, on August 27, 1997. It was expected that the claimant would have to undergo surgery in the future and in fact, when damages were awarded by this court, in her favour, she was awarded $50,000 for her anticipated future medical expenses, related to that expected, future surgery.

[12] The claimant claimed general damages in the **Tanya Reid case** for pain and suffering and loss of amenities. She claimed and clearly, the court accepted that she could no longer swim, as she used to, or play tennis, as she used to and that she did not want to go out to watch movies, or be outside, albeit that she was then working as a bank teller, which also caused her to feel very self-conscious, while at work.

[13] Ultimately therefore, in the **Tanya Reid case**, Ms. Reid was awarded by this court, for pain and suffering and loss of amenities, the sum of $1,375,000 – but notably, the sum of $375,000 was awarded as general damages to Ms. Reid, arising from her shoulder injuries.

[14] The award by this court, in the **Tanya Reid case**, was made on August 17, 2000. At that time the Current Price Index (CPI), was 21.3. Presently, the applicable CPI, is 153.60. That is the latest CPI – August, 2026.

[15] The claimant in the present claim which is now under consideration by this court, has claimed for pain and suffering and loss of amenities and has specified that which she alleges, in simple summary, constitutes all of same, she has specially delineated therein: '*Inability to eat solid foods for seven (7) months*.' The claimant's counsel urged upon this court, that the claimant's inability to eat solid food for 7 months, which the claimant did give unchallenged evidence to this court about constituted a loss of a very significant amenity and that, in the circumstances, the claimant should be compensated by means of this court's forthcoming order, for same.

[16] Defence counsel, in her oral closing submission, submitted to this court, that the claimant's inability to eat solid food for 7 months, constitutes part of the claimant's suffering and not the loss of an, '*amenity*.'

[17] Quite frankly, I think that a person's inability to eat solid food for 7 months, can be classified as both an aspect of that person's suffering, as well as the loss of an amenity.

[18] Loss of amenity is the part of general damages, for how an injury reduces someone's ability to enjoy life, do everyday tasks, or keep up hobbies and activities. The suffering from an injury which has occurred to someone though, also will typically operate to reduce the injured person's ability to enjoy life and carry out his or her, everyday tasks.

[19] What this court must not do though, is make an award of damages, which either, unduly over-compensates the claimant, or unduly, under-compensates the claimant. Also, in that regard, the claimant should not be compensated twice for either any aspect of the resulting suffering, or any aspect of the resulting loss of amenity (ies).

[20] Typically therefore, what is alleged as a loss of amenity, is a loss that would not typically be recognizable as having contributed to the overall losses suffered by a claimant. That is why same must be specifically averred in the claimant's particulars of claim. Example as per the Tanya Reid case – inability to enjoy going out and watching movies, inability to play tennis any longer; inability to swim, any longer; inability to exercise, any longer, by jogging or walking, for example.

[21] As such whether the claimant's claim for inability to eat solid food for 7 months, is part of the claimant's suffering, or the loss of an amenity of the claimant, ultimately, in this claim, need not be finally resolved. The claimant will be awarded compensation for same and in that regard, the claimant will be awarded general damages for pain and suffering. Within that sum to be awarded, will be compensation, for the claimant's inability to eat solid food for 7 months, just as there will also be compensation afforded to her, for all other specified pain and suffering and loss of amenities. That award will simply be described, using the term, *'general damages'* and will not have any itemized specification.

[22] Unlike in the **Tanya Reid case** though, in which the injuries caused to the claimant, were more severe in aspects which are not relevant to the present claim, in that case, the claimant was 23 years old at the time of the award, in this claim, the claimant is now nearly 57 years old, as she was born on November 11, 1969. In aspects of this claim, which are, by comparison with the **Tanya Reid case**, relevant

for present purposes, the claimant's injuries in this claim, are more severe than were those which Tanya Reid had to endure.

[23] Also, in the **Tanya Reid case**, the general damages sum awarded to the claimant, for the injuries to her face and mouth, was in the sum of $1,000,000.00 since as I have already stated, the claimant in that case, was awarded $375,000 as general damages, arising from the injuries to both of her shoulders, which for some time, arising from the medical treatment which she had then received from an orthopaedic specialist, required Ms. Reid to wear a clavicle brace.

[24] In the present claim, the claimant has nonetheless, also undergone a medical condition which was not properly treated with, at the Junction Comprehensive Clinic, by the dentist – Dr. Gillian Allen, either on April 26, 2010, or on May 5, 2010, when the claimant attended there for follow-up medical care, because she was still then, experiencing severe pain in her mouth, even though, on April 26, 2010, the said Dr. Allen had extracted what dental experts describe as, '*tooth no.16'* and which the claimant has describes as, 'her wisdom tooth.' That tooth had, according to the claimant, been shaking when she attended the Junction Comprehensive Clinic for treatment arising from the shaking of that tooth and from the pain which she was then experiencing, in the general area of her mouth, where that tooth no.16 was located, prior to its extraction, by Dr. Allen.

[25] Interestingly enough, the evidence of the defendants' expert witness has shown that the said Dr. Allen had recorded, on paperwork at the clinic, upon her treatment and diagnosis of the claimant's complaint/concerns, to her that she (Dr. Allen) recognized that the claimant was then afflicted with a detrimental dental condition known as, ' periodontal disease,' the claimant was not informed of that, by Dr. Allen and no x-rays of her mouth was ever ordered or suggested to be done, nor even remotely recommended to be done. Thus, the claimant has been awarded judgment against the defendants for damages for negligence.

[26] I am now at the stage where I am to assess damages, interest and costs, arising from that negligence.

[27] I have accepted that said negligence caused the claimant for quite some time, to be unable to properly open her mouth. Surgery in her mouth had to be done, in order to rectify that the existing inability of hers. The claimant had also, in the present case, to remain in hospital, undergoing treatment and at one stage, was taking between 19 and 20 pills, a day, as prescribed medical/dental treatment, arising from the pain which she was then experiencing. The claimant experienced infection in her mouth and it was her unchallenged evidence, that 'pus' had to be discharged from her mouth, while she was then a patient at the Mandeville Regional hospital. The claimant had gone to several doctors/dentists, in both public and private practice capacities when they examined her, had xrays done of her mouth and prescribed medication to her, as treatment.

[28] It must be stated at this juncture that the claimant's overall treatment by several different members of the medical and in particular, the dentistry profession, was, to put it as simply as possible, but nonetheless starkly, absolutely appalling. That though, all began with the negligent treatment of the claimant on April 26, 2010, at the hands of Dr. Gillian Allen, who was then a dentist working at the Junction Comprehensive Clinic. That is why the claimant's claim for damages for negligence, brought against the defendants, has succeeded. I am satisfied to the requisite standard that the claimant did everything that she reasonably could, to mitigate her pain, suffering and the alleged loss of amenity and other losses which resulted as a consequence and therefore, to mitigate the overall loss for which she must now be compensated, by order of this court, which the defendants will be required, by virtue of the rule of law, to comply with.

[29] The claimant gave evidence of having experienced a severe swelling on the left side of her face, in the area where the left side of her mouth is located.

[30] Many of the claimant's symptoms arising from her negligent dental treatment at the Junction Comprehensive Clinic, at the hands of Dr. Allen and the negligence also, in the lack of proper follow-up care, continued without any significant abatement thereof, until very late June of 2010. So that would have been nearly 2 months after she first received negligent treatment by the then employee of the 1st defendant – Dr. Gillian Allen.

[31] All of those things as noted, have been taken into account by me, for present purposes, in assessing general damages.

[32] I am of the view that overall, the pain, suffering and loss of amenity caused to the claimant in this claim, should be comparable, albeit a bit, not significantly, higher than the award made to Tanya Reid, in respect of the negligence which resulted in injuries to Tanya Reid's mouth and face. It must be recalled that Tanya Reid was awarded by this court, as general damages, $1,000,000, for pain and suffering and loss of amenities, in respect of same.

[33] For present purposes, I think that an award which is 10% higher than that, in real terms and which will be updated further, taking into account the CPI in August of 2000 and the present CPI, which is as of August 2026, should constitute an adequate general damages award to the claimant.

[34] When updated using the current CPI, the sum of $1,000,000, updates to $7,932,394.37 approximately. That is therefore, the sum which will be awarded to the claimant in this claim, as general damages, with effect from the date when the claim form was served, that being August 29, 2013.

[35] Both the general and special damages will attract and be awarded at an interest rate of 3% with effect from the applicable respective dates, until the date of judgment, which was, as the parties are aware, September 30, 2026.

Delay in bringing the claim to trial and costs of claim

[36] Interestingly, even though the claimant's counsel contended as strongly as she could have to the contrary, it was the equally firmly presented contention of the defence counsel, that there was undue delay by the claimant in bringing this claim to trial.

[37] That was the basis for learned defence counsel's submission to this court, that the claimant should not be awarded costs for the entire pendency of this claim, whereas it was an entirely opposite contention, in that respect, which was made by the learned claimant's counsel.

[38] That such a submission was made by the defence counsel, was both interesting and quite surprising to this court, though that was not caused by such a contention being a novel one, or one without any legal foundation whatsoever.

[39] Instead, it was both an interesting and surprising contention of the defence counsel, because she did not make any contention whatsoever, in similar manner, as regards the expected award of interest on damages.

[40] In the renowned case of **Central Soya Jamaica Ltd. and Junior Freeman – Supreme Court Civil Appeal NO. 18/84,** Rowe, P relied on the following English cases – **Wright v British Railways Board (1983) 2 All ER698, at 701 per Ld. Diplock**; and **Birkett v Hayes (1982) 2 All ER 710, at 717, per Watkins, LJ**, to state, as follows: '*Where a plaintiff has been guilty of unreasonable delay in bringing his action to trial, it may be appropriate for the trial judge to make a corresponding reduction on the period for which interest is given*.'

[41] That is what makes the defence counsel's submissions re costs, both interesting and surprising and even though, I will address same specifically and in greater detail than I am now doing, it is nonetheless important, for it now to be stated that thus, since there was no equivalent, or equal submission by defence counsel on interest, such a contention on costs, is to my mind, entirely incompatible with the defence making no submission in terms of interest on damages – this even though the learned defence counsel told this court, during her oral closing submissions, that she was aware that the court can modify the time period during a claim, for which interest on damages will be awarded.

[42] Arising from her failure to have raised a similar, or the same contention in respect of interest on damages, she (the defence counsel) has undermined her contention re costs, since the inconsistency in approach, is palpable and creates doubt in this court's mind as to whether the learned defence counsel's submission re costs, should even be treated with seriously by this court. Nonetheless, that is exactly what this court has done, with respect to same.

[43] In her submission on costs, the claimant's counsel has submitted that the typical costs award should be made in the claimant's favour, as regards the costs of this

claim. According to her, the claimant has acted diligently in seeking to move this claim forward and it is not due to any fault on the claimant's part, which caused her not to have been able to obtain the services of an expert witness, in support of her claim, earlier than she in fact did.

[44] According to the claimant's counsel therefore, there was nothing that the claimant either did, or did not do, which is or was offensive to the rules of court, or which caused delay in respect of this claim. The matter, which is this claim, was unable to have been pursued in court, more quickly by the claimant, because she did not have an expert witness until Dr. Michael Lee eventually was retained and became her expert witness. This claim was instituted in 2013. Dr. Lee was retained by the claimant to provide expert evidence to this court. I have inferred from what is revealed in exhibit 18, that he was so retained in or about November 2022.

[45] The defence counsel though, for her part, submitted that there was much more that the claimant could have done, to have prosecuted her claim, more quickly, bearing in mind that this claim has initially set by this court, to have been tried on October 23 & 24, 2019. As the claim evolved though, trial did not begin until a date in late September of 2026. Thankfully, by virtue of the keen and diligent work of this court, judgment on this claim was already been rendered in the claimant's favour. That was rendered on September 30, 2026.

[46] In fairness to the defence counsel though, she has accepted, on more than one occasion, during the trial of this claim, that the defence was also neglectful in terms of its failure to have pursued its defence to this claim in a timely manner.

[47] The court's records reflect that the claimant filed and served her witness statement outside of the time prescribed by this court at C.M.C. for same to have been done. Same also reflects that the defendant's defence was not in fact filed within time. Same was filed out of time, albeit with the court's permission. It also reflects that this court had, in accordance with the relevant court rules, struck out the respective parties' statements of case and that later on, relief from sanctions were granted by this court, to the respective parties.

[48] The defence counsel relied heavily on the provisions of **rule 64.6 of the C.P.R.** It should be noted that the basic starting point of that rule of court, is that the general rule is that the court must order the unsuccessful party to pay the costs of the successful party. See **rule 64.6 (1) of the C.P.R**. in that regard.

[49] This court though, is empowered by **rule 64.6 of the C.P.R** to alternatively, make various orders as regards the costs of a claim. To do so though, would be an exceptional course for this court to take, bearing in mind the general rule aforementioned. In that regard, this court must always, carefully consider the overall interests of justice, as also, the particular factors specified in rule 64.6 (4) **(a) rule 64.6 of the C.P.R** –*'The conduct of the parties both before and during the proceedings.'*

[50] Under **rule 64.6 (5) (c) of the C.P.R**, this court may make an order that a party must pay, '*costs from or until a certain date only*.' Thus, for present purposes, the defence counsel is seeking for this court's costs award in the claimant's favour to begin from as of: December 8, 2022 and end upon the conclusion of this claim. The net effect of such an order, would therefore be that for over the first 9 years of this claim, the claimant would not be awarded the costs of the claim which she has succeeded in proving, to the requisite standard, notwithstanding that by the defence counsel's own admission, the delay in this claim having gone to trial, can properly be attributed to all parties.

[51] I find that that particular contention of the learned defence counsel, is without merit. How could it be in the interests of justice to limit the claimant's recovery of costs, because of delay in trying this claim, which is due to the fault of all of the litigants, even if such fault is due to varying degrees of neglect? Surely, that cannot be so.

[52] This court is mindful of the need for it to address and deal with this claim, justly, which involves this court ensuring that it is dealt with expeditiously and fairly. This court is also though, very mindful that, as per **rule 1.3 of the C.P.R** – *'It is the duty of the parties to help the court to further the over-riding objective.'*

[53] To my mind, all parties concerned, save and except for this court, failed in their duty to expeditiously deal with this claim and thereby, help this court, which is

responsible ultimately, for driving the litigation process, to deal with this claim, expeditiously.

[54] The learned counsel for the claimant did refer me to the claimant's application to vacate the trial date and the affidavit of an attorney who was then employed at her office, namely: Roxanne Bailey. This court has carefully read and considered and taken judicial notice of that application and affidavit in support.

[55] I did not find that affidavit of attorney Bailey to be helpful for the purposes of supporting the claimant's counsel's contentions to the effect that her client had no real fault in terms of the delay in bringing this claim to trial.

[56] Whilst that affidavit of attorney Bailey does refer to the claimant's need to undergo future surgical intervention, arising from the neglectful treatment which she received from the first defendant, that cannot be a reason for any delaying bringing a claim to trial. In a claim, a claimant can always claim for future medical care, which arises from the negligence proven at trial, provided that such future medical care is deemed as being a reasonably foreseeable consequence of that negligence, so that the claimant can be returned to leading as normal a life as he or she had prior to that neglect having occurred, then the claimant will be ordered by this court, to recover for same.

[57] I think that the delay in pursuing this claim before now, was caused, in part, by the failure of the claimant, via her counsel – Ms. Hamilton's law firm, to have properly secured the intended evidence of an expert witness, before a claim was even filed. That is the course that should have been taken. If that was the course taken, then there should have been no delay arising from the claimant having been unable, until, quite a long time after this claim had been filed, to secure the services of her only expert witness – Dr. Michael Lee.

[58] Attorney Bailey's affidavit evidence has disclosed that attorney Hamilton's law firm was retained by the claimant, in or around July of 2011. The claim was instituted in 2013. The claimant would have had up until a date in late April of 2016, to have brought this claim, before the limitation period, as per Jamaica's **Limitation Act**, would have precluded the claim from being pursued.

[59] Nonetheless, even though I am of the considered view that all parties were neglectful in the carrying out of their duty to assist this court in resolving this claim in a timely manner, it cannot be in the interests of justice, to visit the consequences of that neglect, solely on the claimant's shoulders.

[60] It is true that the defendants will have to pay the entire costs of this claim. That is so though, because the claim was vigorously, albeit, ultimately, unsuccessfully defended. To require the defendants to only pay part of the costs of this claim, would be to, at least in significant part, reward the defendants for their neglect.

[61] On the other hand, the claimant is not being rewarded by this court, for any neglect on her part, in bringing, this claim to trial, in a timely way. In truth, she is not being rewarded at all. An award of damages, costs, interest, should not be viewed as equivalent to a reward. It is nothing other than compensation ordered by this court, arising from the claimant's loss. The defendants must compensate the claimant for same. This court will therefore, now order accordingly.

ORDERS

1. The claimant is awarded general damages, as against the defendants in the sum of $7,932,394.37, at an interest rate of 3%, with effect from August 29, 2013 until September 30, 2026.

2. The claimant is awarded special damages in the Jamaican dollars sum of $271,604.16 and the U.S dollars sum of $16, 312.50, at an interest rate of 3%, with effect from April 26, 2010, until September 30, 2026.

3. The costs of this claim are awarded to the claimant and such costs shall be taxed, if not sooner agreed.

4. The claimant shall file and serve this order.

Hon. K. Anderson, J.