

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2009/HCV 03883

BETWEEN	LASCELLES ALLEN	CLAIMANT
AND	AMECO CARIBBEAN INCORPORATED	1 <sup>st</sup> DEFENDANT
AND	PETER PERRY	2 <sup>nd</sup> DEFENDANT

S. Campbell instructed by Campbell & Campbell for Claimant

S. Pinnock and N. Dumett for Defendants

### **Assessment of Damages – Whiplash Injury**

**Lawrence-Beswick J.**

Heard: November 26, 2010, January 7, 2011

On February 8, 2009, through his admitted negligence, Mr. Peter Perry, the second defendant, caused the vehicle he was driving to collide into the vehicle being driven by Lascelles Allen, the claimant. Ameco Caribbean Incorporated, the first defendant, owned the vehicle.

By this action, Mr. Allen seeks to have an assessment of the damages he suffered as a result of the collision.

The parties agree on special damages in the amount of \$172,963.94 excluding loss of earnings and transportation costs.

#### **Loss of Earnings**

The evidence in his witness statement is that Mr. Allen, as a taxi operator, works six days weekly, from 6:00 a.m. to 8:00 p.m., averaging 14 trips per day. He transports four passengers in

each trip charging \$120.00 one way. Of this total of \$6,720.00 which he earns per day, he spends an average of \$2,250.00 per day for gasoline causing him to have \$4,470.00 net per day. He claims for 528 days, the period between the accident and when his neck had recovered from the injury.

Mr. Allen also has the expense of an average of \$4,000.00 about three times yearly for mechanical checks of his car, a \$10,000.00 road licence fee and \$30,000.00 for insurance premiums. This total expense is \$52,000.00 per year which is \$1,000.00 weekly or \$145.00 approximately per day. His daily earnings would therefore be \$4,470.00 less \$145.00 daily being \$4,325.00. For the 528 days claimed his earnings would thus be approximately \$2,283,600.00. Income tax at the rate of 25% would be \$570,900.00 resulting in \$1,702,700.00 as loss of earnings.

It is to be noted that his *viva voce* evidence disputes those earnings and he testifies that he makes no less than \$8,000.00 daily. However, in the absence of documentary evidence to support either amount claimed, I accept the original amounts as per his witness statement.

Ms. Pinnock, Counsel for the defendants submits that Mr. Allen could occupy himself otherwise as a tailor, which calling he had earlier pursued. However, there is no evidence that that remains a viable option, moreso since the uncontradicted evidence is that Mr. Allen had abandoned that occupation.

I accept the evidence that Mr. Allen, being 63 years old at the time, was unable to access a loan to replace the car which was damaged beyond repair.

There is no evidence of any effort being made by the defendants to replace the vehicle so as to allow Mr. Allen to pursue his taxi operations which had been aborted because of their negligence.

### **Transportation Costs**

Mr. Allen's evidence is that he travelled by taxi on 12 occasions to receive physiotherapy, each trip costing \$400.00, total being \$9,600.00 for the return trips.

I regard that as a reasonable amount and accept that evidence as true despite the absence of documentary evidence. I reject the submission that the pick-up truck which was registered in his name was available for his transportation. The uncontradicted evidence is that it was under the control of his son.

### **General Damages**

Mr. Allen suffered injuries to his side and neck and back. He was diagnosed with whiplash injury and is expected to have complete resolution of the injury, though relatively trivial trauma can cause a recurrence of his symptoms.

Within four months of the accident, by June 2009, he seemed to have recovered fully. He had had sessions of physical therapy.

Ms. Campbell, Counsel for the claimant, relied on two authorities in submitting that \$1.3 million was an appropriate award for general damages.

In **Dalton Barrett v Poinciana Brown**<sup>1</sup>, Mr. Barrett had injuries to face, hand, eye, back, shoulder and wrist. His award updates to \$1,234,4691.00.

In **Earl Lawrence v Dennis Warmington**<sup>2</sup> the updated award was \$1,387,218.00 where the claimant suffered whiplash and also lacerations to his head, hands and feet.

Counsel for defence in submitting that \$450,000.00 to \$550,000.00 was the appropriate award also relied on two (2) authorities. In **Peter Marshall v Carlton Cole**<sup>3</sup> an updated award

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<sup>1</sup> HCV 1358/2003 - Khan's volume 6 p. 104

<sup>2</sup> Khan's volume 5 p. 144

<sup>3</sup> Khan volume 6 at p. 109

of \$574,977.44 was made to compensate a whiplash injury with swollen wrist and hand and in **Pamella Thompson v Barrows**<sup>4</sup> an updated award of \$410,000.00 was made for mild whiplash to the neck.

Here, Mr. Allen, in addition to the whiplash injury complained of occasional numbness in the left hand. He has no permanent partial disability.

I regard \$600,000.00 as an appropriate amount for pain, suffering and loss of amenities.

**Damages assessed:**

**General Damages**

Pain, suffering and loss of amenities - \$600,000.00 with interest at 3% per annum from date of service of claim form to today.

**Special Damages**

Loss of Earnings	-	\$1,702,700.00
Transportation	-	9,600.00
Other agreed expenses re loss of motor vehicle and medical reports and treatment	-	<u>172,963.44</u>
Total		\$1,885,263.44

With interest at 3% per annum from February 8, 2009 to today.

**Costs** to the claimant to be agreed or taxed.

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<sup>4</sup> CL2006/T143

