

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 2006/0766

BETWEEN	DELORA ANDERSON	CLAIMANT
AND	JEFFREY MCLEOD	1 ST RESPONDENT
AND	PAUL MCLEOD	2 ND RESPONDENT

Ms. Dowding instructed by Williams and Young for the claimant

Mr. P. McLeod present and unrepresented

Mr. J. McLeod unrepresented

Heard: April 17 and October 30, 2009

Assessment of Damages - Neck Injury

Lawrence-Beswick J

1. Ms. Delora Anderson (the claimant) claims to have suffered injuries and loss and incurred expenses as a result of a motor vehicle accident on April 2, 2000 in which a car, driven by Mr. Jeffery McLeod (1st respondent) and owned by Mr. Paul McLeod (2nd respondent) collided into her car which she was driving.

The McLeods have not disputed her claim and on June 5, 2006 judgment was entered against them in default of acknowledgement of service. Ms. Anderson now seeks to have an assessment of the damage which she suffered.

2. The most recent medical report of 2008 indicates that 47 year old Ms. Anderson is suffering from chronic cervical pain which is expected to worsen. She describes her pain

as so intense that daily she takes the strongest nerve medication available, along with about six (6) other medicines in order to have some relief. Even so, when there is no relief she has to be taken to the hospital.

3. She describes her pain as being so severe that it has awakened her at nights and since 2000 she has had to visit various medical specialists and has had to undergo physiotherapy. Sometime after the accident, Ms. Anderson moved to the island of Anguilla and incurred additional expenses in returning to Jamaica to access her doctors when she experienced extreme episodes of pain and/or stiffness of the neck.

4. Ms. Anderson's unchallenged evidence is that her activities have become limited. She cannot perform basic household chores, lift heavy objects or sit for very long. Her footwear is restricted to flat shoes only.

Her intimacy with her husband has been badly affected and she does not feel like a complete woman. Her uterus had to be removed because a side effect of the nerve medication was that her uterus became unhealthy. She is depressed.

5. Ms. Anderson's evidence is that she is a paralegal and legal secretary and now has to use an ergonomically designed chair at work to provide additional support for her body.

6. Ms. Anderson claims general damages for the unending pain and suffering. Her Counsel submits that a reasonable amount would be \$3.8 to \$4.2 million. The authorities on which Counsel relies for this submission show awards for painful neck injuries in current amounts ranging between \$2 and \$4.5 million.

7. In addition, Ms. Anderson claims special damages in the amount of \$462, 884.51 which includes medical expenses and loss of earnings. Her Counsel concedes that the

evidence only supports an award of \$J201, 221.15, ECC\$1,160.60 and US\$1,429.74 as per the exhibited receipts.

8. The medical reports show that Ms. Anderson's sufferings were:
 - a. severe chronic whiplash injury;
 - b. moderate-sized broad based central disc herniation at C5-C6 moderately indenting central thecal sac;
 - c. annular tear at C3-C4 of spine
 - d. extremely large midcentral disc herniation at C3-C4 markedly indenting ventral thecal sac and ventral surface of spinal cord;
 - e. extra-osseous calcification in the anterior longitudinal ligament at the C-5 and C-6 level;
 - f. loss of cervical lordosis.

I accept this as being accurate.

9. Although there is no indication of the extent of any permanent partial disability, the unchallenged evidence is that the injury is severe and has spanned several years. I have considered all authorities submitted, and in particular, **Kathleen Earle v. George Graham et ors** (unreported) and at Khan's vol.4 p.173 where an updated award of \$2.63 million was made to a teacher who suffered 6% permanent partial disability as a result of a chronic whiplash injury. Her injury had reached a plateau, unlike Ms. Anderson's.

I regard the amount of \$2.8 million as being appropriate for the claim for pain and suffering by Ms. Anderson.

10. The award therefore is:

General Damages in the sum of \$2.8 million with interest at the rate of 6% per annum from the date of service of the claim form to June 21, 2006 and at 3% per annum from June 22, 2006 to today.

Special Damages in the sum of J\$201,221.15, EC\$1,160.60 and US\$1,429.74 with interest at the rate of 6% per annum from April 2, 2000 to June 21, 2006 and at 3% per annum from June 22, 2006 to today.

Costs to the claimant to be agreed or taxed.