



[2024] JMSC Civ. 13

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2020CV01233

BETWEEN	ALEX BIGGS	CLAIMANT
AND	UNALYN ROBINSON-WILLIAMS	DEFENDANT

IN OPEN COURT

Mrs. Khadine Dixon instructed by Dixon and Associates appearing for the Claimant

Defendant absent and unrepresented

Heard: December 19th, 2023 and February 1st, 2024

ASSESSMENT OF DAMAGES – Personal Injury – Skull fracture – Facial Fractures – Blindness – Pain and suffering and loss of amenities – Special damages – Left orbit bone fracture – Traumatic optic neuropathy – Anterior based skull fracture – Injury to globe of right eye – Loss of consciousness.

T. HUTCHINSON SHELLY, J

BACKGROUND

[1] This matter which came before me for assessment of damages had its origins in a motor vehicle accident which occurred on the 11th of October 2015 at Rosedale Avenue, Kingston. The incident occurred when the Claimant who was then a minor was standing with friends along the side of the road when the Defendant entered her car which had been parked nearby. As she drove away from the gateway, the car veered in the direction of the Claimant, hitting and pinning him to a wall. The

Claimant lost consciousness and was rushed to the Bustamante Children's Hospital where he was admitted with severe injuries.

- [2] On the 14th of April 2020, a Claim Form and Particulars of Claim were filed by the mother of the Claimant acting in her capacity as next friend. The Claimant subsequently assumed conduct of the matter in his own right as he had attained the age of majority. The Defendant was served on the 20th of May 2020, but failed to file an Acknowledgment of Service. Default Judgment was entered on the 3rd of July 2020 after which the matter was listed for Assessment of Damages. The Defendant was served several documents to include, the notice of assessment, witness statement and medical reports but failed to attend or participate in the assessment.

SPECIAL DAMAGES

- [3] The Claimant requested compensation for special damages which were pleaded as the cost of medical reports, doctors' visits, prescriptions, imaging services, optical services and transportation. A number of documents were listed in the pleadings but the witness statement and viva voce evidence only made reference to four (4) of the receipts which were placed into evidence as follows:

1. Two (2) receipts from Bustamante Children Hospital in the sums of **One Thousand Dollars (\$1000.00)** and **Eighteen Thousand Dollars (\$18,000.00)** respectively for medical reports.
2. Receipt for Medical Report prepared by Dr Dwight Webster in the sum of **Fifty-Five Thousand Dollars (\$55,000.00)**.
3. Receipt for consultation with Dr Dwight Webster in the sum of **Ten Thousand Dollars (\$10,000.00)**.

- [4] It is an established principle of law that special damages, which are generally capable of exact calculation, must be specially pleaded and proved and therefore

in any action in which a claimant seeks to recover special damages, he has a duty to prove his loss strictly¹. The authorities have demonstrated however that the court has some discretion in relaxing the rule in the interest of fairness and justice, depending on the particular circumstances of the case². On my review of the receipts presented in respect of sums paid for the medical reports and consultation, I am satisfied that the Claimant spent the sum of **Eighty-Three Thousand Dollars (\$83,000.00)** as a result of these medical expenses. This sum is awarded as compensation for same. In respect of the other associated medical expenses, as observed above, while these were referenced in the pleading, the witness statement was silent on them and they were never placed into evidence. Regrettably, although the Claimant may have expended these additional sums, the Court is constrained to award only the sum which has been proved.

- [5] With respect to transportation expenses, whilst this was pleaded as **Sixty Thousand Dollars (\$60,000.00)**, the Witness Statement provided very sparse details on the issue as the Claimant stated that the cost of taxis would have been paid by his mother who has passed on. The only specifics which were provided was the revelation to him by his father that on one occasion, gasoline had been purchased in the sum of **Ten Thousand Dollars (\$10,000.00)**. While the general rule requires special damages to be specifically pleaded and proved, there have been instances where the Court may be called on to exercise its discretion to make an award having regard to what is reasonable in the circumstances and in doing so, the Court may use its experience to arrive at a just award: **Attorney General of Jamaica v Tanya Clarke (nee Tyrell)**, SCCA No. 109/2002; **Desmond Walters v Carlene Mitchell** [1992] 29 JLR 173.

¹ **Lawford Murphy v Luther Mills** (1976) 14 JLR 119

² **Julius Roy v Audrey Jolly** [2012] JMCA Civ. 63

[6] On my review of this expense, while there were no documentary records in support of same, I found that based on the nature and severity of the injuries and the existence of the medical reports, there is cogent evidence to show that he would have required the use of vehicles to transport him to the respective institutions to obtain medical assistance. The challenge however is the absence of specific details on this point, save and except for the reference to the sum spent on gasoline. I have carefully considered the Claimant's request for compensation as outlined above but the evidence does not support an award greater than **Ten Thousand Dollars (\$10,000.00)**.

GENERAL DAMAGES

[7] Between 2017 and 2018, a total of five (5) reports were prepared in this matter by Doctors at the Bustamente Children's Hospital. These reports outline their findings on examination of the Claimant as well as the treatment provided. Dr Trevor Prince, an Ophthalmology Resident produced two (2) reports. Dr Su Yin Htun, a Consultant Oral and Maxillofacial Surgeon provided one (1) report. Dr Charmaine Muthra prepared a report on behalf of Dr G. Liburd, a Consultant Neurosurgeon. The final report was prepared by Dr Colin Abel, a Consultant Surgeon. The more significant findings are as follows:

1. Bilateral periorbital swelling with difficulty opening the eyes.
2. Abrasion Rt. Side of face
3. 1cm lateral Rt. Forehead lateral aspect
4. 6cm jagged laceration Rt. Scalp temporal aspect
5. 1cm laceration Lt. ear posterior aspect
6. Bleeding from both ears and nostril
7. Left orbit bone fracture
8. Multiple facial bone and skull base fracture with no displacement

9. Traumatic Optic Neuropathy
10. Ptosis
11. Anterior based skull fracture
12. Fracture maxillary sinus
13. Fracture orbital bones
14. Injury to globe of Rt. Eye
15. Mild head injury
16. Loss of consciousness

[8] On the 13th of June 2018, the Claimant was assessed by Dr Dwight Webster, a Consultant Neurosurgeon. His report dated the 17th of September 2018 was entered into evidence as Exhibit 3. In this report, Dr Webster outlined the following findings:

1. 2% whole person impairment
2. Post traumatic blindness to left eye
3. Head trauma with post-traumatic headaches

[9] In explaining the impact on his quality of life, Mr Biggs stated that the injury caused him to be absent from school for eight (8) months. On his return, he found it difficult to concentrate, suffered from constant headaches and had difficulty seeing the chalkboard even when he sat at the front of the class. Currently, he is unable to see from his left eye and has overused the right causing it to become fatigued and blurry and he has to wear glasses. Prior to this injury, he was physically active and would participate in sporting activities. He had even joined his school track team. Following this incident, he was unable to continue with these activities because of discomfort in his head and eyes. He continues to experience severe headaches and dizziness.

[10] Two (2) authorities were cited by Mrs Dixon in support of the request for General Damages in the sum of **Twenty Million Dollars (\$20,000,000.00)**. The first was **Audley Gilbert v The Attorney General of Jamaica** [2017] JMSC Civ 165. The date of this award was November 3rd 2017 and the CPI then was 94.7. In that case, the medical report revealed that the Claimant had suffered the following injuries:

1. Left vitreous haemorrhage; left retinal detachment and left anterior uveitis;
2. Left intumescent anteriority dislocated lens with acute glaucoma in the left eye;
3. Two operations on his left eye:
 - a. 13/10/01 - to remove dislocated lens
 - b. 23/10/01 - a modified anterior vitrectomy for high intraocular pressure in his left eye;
4. Total left retinal detachment with no perception of light in his left eye; and
5. Total blindness to left eye.

General Damages was awarded in the sum of **Five Million Dollars (\$5,000,000.00)**. When updated using the December CPI of 136.70, this award would now be in the sum of **Seven Million Two Hundred and Seventeen Thousand Five Hundred and Twenty-Nine Dollars and Three Cents (\$7,217,529.03)**.

[11] The other decision cited was **Dwayne Tyrell v Orayne Manning consolidated with Jerome Dunstan v Orayne Manning** [2019] JMSC Civ 57. The date of that award was the 5th of April 2019 and the relevant CPI was 98.3. The Claimant was given an award in the sum of **Three Million Dollars (\$3,000,000.00)**. The injuries suffered by him were noted as:

1. basal skull fracture, and lateral orbital wall fracture;
2. a fracture of the left zygomaticomaxillary complex fracture, to his face;
3. he underwent a surgery with titanium mini-plates and screws; and
4. Class one chronic cervical sprain with resulting 1% whole person impairment.

When updated with the December CPI of 136.70, this award would be in the sum of **Four Million One Hundred and Seventy-One Thousand Nine Hundred and Twenty-Two Dollars and Sixty-Eight Cents (\$4,171,922.68)**.

[12] Mrs Dixon submitted that while there is some similarity between the Claimant's injuries and the injuries suffered by the Claimants in these authorities, Mr Biggs' injuries were more extensive and serious in nature. She argued that although **Dwayne Tyrell** also suffered multiple facial fractures, the Claimant's orbital fracture could not be corrected by surgery and the disability suffered by him was greater. Counsel submitted further that the **Audley Gilbert** decision is only comparable in terms of the blindness factor as he did not sustain all the other injuries suffered by the Claimant such as facial fractures, fracture of the skull, loss of consciousness and post-traumatic headaches. Counsel also highlighted the increasingly deteriorating vision in Mr Bigg's right eye and the change in his appearance which was occasioned by the lacerations and ptosis. The Court was also asked to consider the account of the Claimant in terms of his loss of amenities as not only was his education affected but he is no longer able to engage in the physical activities which he once participated in. Counsel asked for an award of **Twenty Million Dollars (\$20,000,000.00)** in order to properly compensate the Claimant for this loss which he experienced at age 10. She acknowledged that a payment had been received from the Insurance Company in the sum of **Two**

Million Dollars (\$2,000,000.00) and proposed that the award could be adjusted to reflect this payment.

[13] The aim of an assessment of damages as enunciated by Lord Blackburn in **Livingstone v Rawyards Coal Co.** [1880] Appeal CAS.25 is to arrive at a figure that will provide adequate compensation to the Claimant for the damage, loss or injury suffered. It is therefore trite law that the sum of money that should be awarded as General Damages ought to be a sum which as “**nearly as possible**” puts the Claimant in the same position he would have been in if he had not sustained the wrong.

[14] In seeking to arrive at an appropriate award for pain and suffering and loss of amenities, the Court is also mindful of the remarks of Lord Hope of Craighead in **Wells v Wells** [1998] 3 All ER 481 at 507: -

“The amount of award for pain and suffering and loss of amenities cannot be precisely calculated. All that can be done is to award such sum within the broad criterion of what is reasonable and in line with similar awards in comparable cases as represents the court’s best estimate of the claimant’s general damages.”

[15] On a review of the authorities cited, I found that while the nature and severity of the injuries sustained by the Claimants in the **Dwayne Tyrell** and **Audley Gilbert** cases were somewhat similar to those of this Claimant, there are in fact significant differences which would impact any award which could be considered by the Court. While **Dwayne Tyrell** also sustained fractures to the head and was assessed with a disability, the Claimant was found to have facial fractures as well. In fact, the Claimant’s fractures extended from the base of his skull to the orbital bones and maxillary sinus. On a comparison of **Dwayne Tyrell’s** injuries with those of the instant Claimant, there could be no disagreement with Counsel’s assertion that Mr Bigg’s injuries would be considered as being more severe and the award would have to reflect this.

[16] In respect of the **Audley Gilbert** decision, I agree with the submissions of Learned Counsel that the greatest similarity between that case and the case at bar is the loss of vision as the other injuries sustained by Mr Biggs would clearly place him in a more severe category for the purposes of an award. While neither authority was exactly on point, they nonetheless provided great assistance in terms of what would be the appropriate award where one individual has been unfortunate enough to have suffered all these injuries. Unlike the Claimants however, Mr Biggs was a minor when this devastating loss occurred and the impact in terms of his loss of amenities has to be viewed in that light as well. Both **Dwayne Tyrell** and **Audley Gilbert** were already adults engaged in their respective relationships and livelihoods, Mr Biggs on the other hand was a student in primary school who based on the evidence has lost out on a number of opportunities in terms of his education and extracurricular activity at which he had shown promise.

[17] As such, I am satisfied that an appropriate starting point for the award would be in the sum of **Twenty Million Dollars (\$20,000,000.00)** which is the combined value of the awards given in both cases with an upward adjustment to reflect the greater injuries sustained and loss of amenities. The insurance payment of **Two Million Dollars (\$2,000,000.00)** would then be deducted which would result in a final figure of **Eighteen Million Dollars (\$18,000,000.00)**. In light of the foregoing discussion, I am satisfied that this sum reflects an appropriate award for pain and suffering and loss of amenities.

[18] Accordingly, damages payable to the Claimant are assessed as follows:

1. Special Damages in the sum of **Ninety-Three Thousand Dollars (\$93,000.00)** with interest at a rate of 3% per annum to be applied from the 11th October 2015 to the 19th of December 2023.
2. General Damages in the sum of **Eighteen Million Dollars (\$18,000,000.00)** with interest at a rate of 3% interest to be

applied from the 20th of April 2020 to the 19th of December 2023.

3. Costs to the Claimant to be taxed if not agreed.
4. Claimant's Attorney to prepare, file and serve the Judgment herein.