



[2014] JMSC Civ.31

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
CIVIL DIVISION  
CLAIM NO. 2011HCV05780**

**BETWEEN                      TALISHA BRYAN                                      CLAIMANT**

**AND                                      ANTHONY SIMPSON                                      1<sup>ST</sup> DEFENDANT**

**AND                                      ANDRE FLETCHER                                      2<sup>ND</sup> DEFENDANT**

**Ms. Danielle Archer instructed by Kinghorn & Kinghorn for the Claimant  
2<sup>nd</sup> Defendant absent and unrepresented**

**Assessment of Damages – Personal Injury**

**Heard: March 3 and 13, 2014**

**LINDO J. (Ag.)**

[1] This matter concerns an assessment of damages against the 2<sup>nd</sup> defendant arising out of the claim against the defendants for damages as a result of a motor vehicle accident which took place on the 2<sup>nd</sup> day of April 2010 along the Church Pen main road in the parish of St Catherine. The Claimant claims that she was a back seat passenger in the motor vehicle owned by the 2<sup>nd</sup> defendant and driven by the 1<sup>st</sup> defendant when it collided in the rear of another vehicle.

[2] On January 5, 2012 the claimant obtained judgment in default of acknowledgement of service and defence against the second defendant. Proof

of service of the notice of assessment of damages was provided by the affidavit of Petro Evans sworn to on the 26<sup>th</sup> day of February, 2014.

- [3] At the hearing on March 3, 2014, the claimant was sworn and her witness statement dated February 20, 2014 was allowed to stand as her evidence in chief. She stated that she had her baby with her, someone assisted her out of the vehicle after the collision and after sitting on the sidewalk for a while she started feeling pains in her neck. She further stated that she was taken to the Good Shepherd Medical Complex in Old Harbour where she was examined by a doctor, given an injection and advised to do an x-ray which she did on the following day at Pines Imaging Centre. She also indicated that on April 12, 2010 she visited the Oasis Health Centre because she continued having pain in her neck and the pain in her back was getting progressively worse.
- [4] She stated that she was sent to do physiotherapy and by May 2010 she started feeling better “but the pains did not leave me permanently” as she still experiences occasional lower back pain especially when she sits for an extended period or bend to pick up an object.
- [5] The medical report of Dr. Ravi Prakash Sangappa dated June 17, 2010 refers to the treatment the claimant received at Good Shepherd Medical Centre in Old Harbour and the fact that she did x-ray and physiotherapy. The doctor concluded that she had whiplash injury to neck and lower back strain, she was treated with analgesics and muscle relaxant and advised to do physiotherapy exercises at home.
- [6] For special damages, the sum of \$53,450.00 has been pleaded. However, the claimant has only been able to strictly prove the sum of \$17,500.00. The exhibits tendered provided evidence of the number of sessions of physiotherapy the claimant underwent as well as the visits to the doctor. There is evidence that she visited the health centre and doctors. She has not provided any proof of payment

for transportation. I accept that transport operators do not give receipts so I am prepared to make an award of \$5,000.00 for transportation expenses. The total award for special damages is therefore \$22,500.00

[7] Having considered the awards for general damages made in the cases referred to by Counsel for the claimant, I am of the view that they provide a reasonable guide as to the award to be made to the claimant in this matter. In **Trevor Benjamin v Henry Ford Claim No. 2005HCV02876**, Anderson J. in March 2010, awarded \$700,000.00 for soft tissue injuries and in **Wilford Williams v Nedzin Gill & Anor. Claim No. 1999CLW00169**, Theobalds J. in 2000 awarded \$350,000.00 to the claimant for a whiplash injury. These awards when updated would be \$946,743.28 and \$1,319,039.00, respectively. The injuries suffered by the claimant in this case seem to be more serious than that suffered by Mr. Benjamin and Mr. Williams as she also suffered lower back strain.

[8] I therefore assess damages against the 2<sup>nd</sup> defendant as follows:  
General damages for pain and suffering and loss of amenities in the sum of \$1,400,000.00 with interest at 3% from the date of service of the claim to March 13, 2014.

Special damages in the sum of \$22,500.00 with interest at 3% from the date of the accident to March 13, 2014

Costs to the claimant summarily assessed in the sum of \$80,000.00