

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.2001/C234

BETWEEN	BERNICE CLARKE	PLAINTIFF
A N D	CLIVE LEWIS	1 <sup>ST</sup> DEFENDANT
A N D	LYNEIRE ASHMAN	2 <sup>ND</sup> DEFENDANT

ASSESSMENT OF DAMAGES

Mr. J. Vernon Ricketts for Plaintiff.

Defendants not appearing or represented.

Heard: 11<sup>th</sup> April, 2003

**Brooks, J.**

The plaintiff in this action suffered injury on the 28<sup>th</sup> January, 2002 while travelling along the Border Main Road in Westmoreland in a motor vehicle owned by the 2<sup>nd</sup> Defendant and driven by the 1<sup>st</sup> Defendant.

At the beginning of the hearing Mr. Ricketts on behalf of the Plaintiff discontinued the action against the 1<sup>st</sup> Defendant and requested that damages be assessed only in respect of the 2<sup>nd</sup> Defendant.

The Plaintiff testified that she lost consciousness while in the vehicle at or about the time when a collision with another was imminent. This was at about 8:00 a.m. and she awoke in the Black River Hospital later that day.

She said she felt pain all over her body but particularly in her head, her eyes, her shoulder and her foot. X-Rays were done and she was discharged from hospital in the evening of the following day. She said that she suffered pain throughout her hospital stay and wasn't able to sleep because of the pain. She said that she received tablets while in hospital.

Upon her discharge she went the following day to her private doctor, Dr. Japeth Ford who treated her with tablets, but she had to go to him three times because of the persisting pains all over her body.

She said she felt these pains for three months during which time she couldn't pursue her trade as a higgler, buying and selling men's and women's clothes.

She says that she still suffers from the effects of the injury as she still has headaches when walking in the sun which activity her trade demands and also she cannot walk as far as she used to. She sometimes has pains in her back as well.

In proof of special damages Ms. Clarke testified that she incurred travelling expenses from the Black River Hospital and to and from the private doctor. She claims the sum of \$3,500.00 for those expenses and I find that they have been proved. Similarly although she testified as to a greater expense for medical and hospital expenses, her testimony was

credible and I find that the \$5,350.00 claimed under this head has been proved as pleaded. No proof was provided to support the claim for the expense for the medical report.

The major item of special damages was however, her loss of income where she claimed losses totalling \$264,000; being twelve weeks at \$22,000.00 per week.

I found her to be a frank and candid witness and accept that she traded in clothing by purchasing her goods in Kingston and going to St. Elizabeth and Westmoreland to sell them.

She testified that she would make a profit of between \$15,000.00 – and \$20,000.00 per week and that her travelling expenses were, (by my calculations) \$3,700.00 per week. She also had to stay some place in St. Elizabeth for five days per week but the cost of that was not identified.

The difficulty with her claim is that although she purchases her goods from wholesalers and that she testified that she pays income tax, she provided no documentation in proof of her claim in the areas of her income and costs of input.

Plaintiffs are required to strictly prove their losses and whereas the Court has the discretion to make an award if the circumstances excuse the

presentation of documentation, I am of the view that this is not such a case. I regret therefore that I am unable to make an award for lost income.

For General Damages Mr. Ricketts relied on the medical reports presented on behalf of the Plaintiff which showed that she had suffered serious but not life threatening injuries. A mild cerebral concussion was the diagnosis and both doctors who saw the Plaintiff agreed that there would be no permanent disability.

Counsel referred me to the case of Henry Bryan vs. Noel Ho-Shue and Anor. Vol 5 Khan 177 in which, for similar injuries, an award of \$350,000 was made in September, 1997, which when updated to today's money is equivalent to approximately \$500,000. Mr. Ricketts urged an award of \$600,000 on the basis that the Plaintiff has testified to continuing pains and that the reports said the injury was serious.

The Bryan case also had a continuing aspect for that Plaintiff though his was in respect of epigastric pain.

In the circumstances although I do not find a material distinction between the injuries in the two cases but I find that Miss Clarke is still affected in her trade by the injury and as a result I award \$550,000 for General Damages for pain and suffering and loss of amenities.

In summary therefore:

Damages are assessed as follows.

Special Damages \$8,850 with interest thereon at 6% per annum from 28/1/02 to 11/4/03.

General Damages \$550,000 with interest thereon at 6% from 16<sup>th</sup> May, 2002 to 11/4/03.

Costs to the Plaintiff in the sum of \$40,000 as per part 65 of the CPR 2002.