

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2007H CV 3753

BETWEEN	CHEVANESE CLAYTON (An infant suing by Next Friend and Mother Heather Lawrence Clayton)	CLAIMANT
AND	McINTOSH MEMORIAL PRIMARY SCHOOL	1 ST DEFENDANT
AND	MINISTRY OF EDUCATION, YOUTH AND CULTURE	2 ND DEFENDANT
AND	“SOUTHERN REGIONAL HEALTH AUTHORITY BOARD” MANDEVILLE REGIONAL HOSPITAL	3 RD DEFENDANT
AND	MINISTRY OF HEALTH	4 TH DEFENDANT
AND	“BOARD OF MANAGEMENT” UNIVERSITY HOSPITAL OF THE WEST INDIES	5 TH DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	6 TH DEFENDANT

Mrs. T. Jordan instructed by Jacqueline Samuels-Brown for the Claimant.

Miss T. Dickens instructed by the Director of State Proceedings for the Defendant.

Heard on the 24th and 28th August 2009 and the 6th November 2009

Damage – Assessment - Injured at school - Loss of eye - General damages - Future medical expenses - Handicap on the labour market.

G. Brown, J (Ag.)

The Claimant brought an action to recover damages against the Defendants for negligence.

On the 30th November 2006 the Claimant was a student at the McIntosh Memorial Primary School in the parish of Manchester. During a recess period another student threw a ball causing it to hit the Claimant in her left eye. She was treated at the Mandeville Regional Hospital and also

the University Hospital of the West Indies. She lost total sight in her left eye. She was seven years old at the time of the incident and is now ten (7) years old.

The Defendant admitted liability and the issue before the court is the quantum of damage.

On the 3rd July 2008 the Claimant was examined by Dr. Zoe Wynter-Allison and on the 22nd July 2008 prepared a medical report which reads:

“I assessed Miss Chevanese Clayton as having:

- 1) A left Total Retinal Detachment with a significant Vitreous Hemorrhage from at least December 8, 2006. This is secondary to blunt injury of significant force to the globe, i.e., a blind left eye. There is also Rubeosis Iridis (abnormal vessels on the iris).
- 2) Her left eye is most likely undergoing Phthisis Bulbi (gradual shut-down of the ciliary body which results in low intraocular pressure and eventual shrinking of the globe).
- 3) Mild Myopia in her right and only eye.

At this time there is no medical or surgical procedure that can return vision to her left eye. She may require topical medication for life – a topical steroid (or non-steroidal) and a cyclopegic agent to minimize the inflammation and discomfort which accompanies rubeosis iridis and phthisis bulbi. If the globe does shrink, she may require a prosthetic device for cosmetic reasons only. She will require protective eyewear at all times and her spectacles will have to be changed at appropriate intervals. She must have at least annual examinations to ensure that her right eye remains normal.

Provided that her right eye remains normal, Chevanese should be able to function normally in school. She should not have any limitation with respect to educational and recreational activities.

Having one blind eye and one normal eye allows Miss Chevanese Clayton a Binocular Efficiency of approximately 75%.”

Counsel for the Claimant and the Defendant made written submissions.

SPECIAL DAMAGES

Special damage must be pleaded and proved. She claimed the sum of \$155,000.00 and produced receipts for most of the expenditure. In the Particulars of Special Damages the Claimant had failed to include a claim for transportation. However, a Notice of Intention to Tender Into Evidence Hearsay Statements filed on the 29th April 2009 and served on the Defendant included transportation receipts. The Defendant did not object to them when they were admitted into evidence. However, Counsel sought to claim an additional sum of \$34,565.00 for transportation. There was also a claim of \$6,150.00 for registration fees for UHWI which was not pleaded and the Claimant also had no receipt.

It was submitted that the additional sum of \$49,215.00 should be awarded for special damages in the absence of receipts. I do not find any merit to the submission.

The Claimant also sought a sum of \$8000.00 for cost of food (lunch) as a result of visits to the hospital. The Defendant submitted that there was no nexus between the tort committed and her need to buy lunch as the Claimant would have to eat whether or not she went to the hospital on the days in question. It is my view that the claim is a reasonable expenditure and therefore recoverable.

The Defendant challenged the sum claimed for medication/prescription. It was submitted that the Claimant was only able to provide a receipt in the sum of \$5,708.73. I must agree with the submission that only that amount had been proved.

I therefore make the award as follows:

- | | |
|--|-------------|
| a) Medications/Prescription | \$5,708.73 |
| b) Prescription and Protective Glasses | \$43,850.00 |

c) Transportation	\$23,300.00
d) Medical Reports	\$18,500.00
e) Doctors visit and consultation	\$3,500.00
f) UHWI registration fees	\$4,200.00
g) Registration fees Cuban Eye Cr.	\$300.00
h) Registration fees for visits to Mandeville Hospital	\$2,600.00
i) Cost of Ultra Sound	<u>\$4,140.00</u>
<u>TOTAL</u>	<u>\$106,098.73</u>

GENERAL DAMAGES

It was submitted by Counsel for the Claimant that a reasonable sum for pain and suffering and loss of amenities would be \$10,000,000.00 as she “has been psychologically affected by the accident and the subsequent loss of her vision.”

She cited the following cases to support her submission:

- 1) Owen Small v United Estates Ltd. (Khan Volume 5 at page 219)
- 2) Pat Bellifanti v NHT and others (Khan Vol. 5 at page 221)
- 3) Barrington Newton v Verol Gordon and Rupert Stewart (khan Vol. 6 page 183)

Counsel for the Defendant on the other hand submitted that a reasonable sum to be awarded is \$2,000,000.00. She cited the following cases to support her argument:

- 1) Christopher Forbes v Alcan Ja. Ltd. (Suit No. C.L. 1984/F147 unreported)
- 2) Movado Wilson v Caribbean Apparel Group Jamaica. Ltd.

It was her opinion that “the case of Movado Brown was more in keeping with that of the instant case, in that the primary and major injury suffered by the respective Claimants is the loss of sight in the left eye.” Thus, it “ought to be instructive in arriving at a reasonable sum for compensation to the Claimant.”

In Beverley Dryden v Winston Layne SCCA 44/87 (unreported) delivered June 12, 1989, Campbell J.A. had said:

“... Personal injury awards should be reasonable and assessed with moderation and that so far as possible comparable injuries should be compensated by comparable awards.”

The Claimant’s injuries were similar to those sustained by the Plaintiff in Movado Wilson v Caribbean Apparel Group Jamaica Limited. The Court awarded the sum of \$60,000.00 for pain and suffering and loss of amenities. This sum updates to \$1,598,499 using the current CPI of 142 as advanced by the Defendant. The case of Owen Small v United Estates Ltd is clearly distinguishable. I therefore accept that the sum of \$2,000,000.00 is a reasonable award.

Handicap on the Labour Market

This is an item of general damage that is speculative and more so in an infant. There must be some evidence upon which a court can make an award as the infant has not yet commenced working. The Claimant is a 10 year-old student and there was no evidence to suggest that the loss of the eye will be handicapped on the labour market.

It was submitted on behalf of the Claimant that a sum of \$2,119,680.00 should be awarded for Handicap on the Labour Market.

The Defendant on the other hand recommended that a sum of \$500,000.00 would be appropriate for an infant Claimant.

I agree entirely with the approach adopted by Counsel for the Defendant as set out in her written submissions and award the sum of \$500,000.00.

Future Medical Expenses

This item of general damages relates to the replacement of eye glass (protective eye wear) and the purchasing of eye drops.

- 1) The Claimant is required to see the Ophthalmologist at least once per year at a cost of \$3,500.00 per visit.
- 2) She would be required to change her eye glasses at appropriate intervals.
- 3) She may be required to purchase topical medication for life. However this is not presently purchased on a monthly basis.

I therefore make the award as follows:

A) Ophthalmologist visits (\$3,500.00 x 15)	\$52,500.00
b) Eye wear (\$23,050.00 x 15) =	\$345,750.00
c) Eye medication (\$1341.00 x 15)	<u>\$20,115.00</u>
Total	<u>\$418,365.00</u>

In the circumstances and considering the cases cited I make the following awards:

Special Damages	\$106,098.73
<u>General Damages</u>	
Pain and suffering and loss of amenities	\$2,000,000.00
Handicap on the labour market	\$500,000.00
Future medical expenses	\$418,365.00

1. Special Damages: interest at 3% from the 30th September 2007 (date of the accident) to the 6th November 2009 (the date of judgment);
2. General Damages: interest at 3% from the 24th September 2007 (date of the filing of the claim) to the 6th November 2009 (the date of judgment).