



[2024] JMSC Civ. 08

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2021CV05233**

<b>BETWEEN</b>	<b>DESMOND KENT</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>NAVADA WILLIAMS</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>MARLENE THOMPSON</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN OPEN COURT**

Mr. Matthew Phillips instructed by JNW Taylor and Associates appearing for the Claimant

Defendants absent and unrepresented

Heard: November 30<sup>th</sup>, 2023 and January 29<sup>th</sup>, 2024

**ASSESSMENT OF DAMAGES — Personal Injury — Pedestrian hit by motor vehicle — Motor vehicle collision — Negligence — Pain and suffering and loss of amenities — Special damages — Tenderness over 9<sup>th</sup> ribs — Fracture to 9<sup>th</sup> left rib — Chronic Pain — Post-Traumatic Stress Disorder — Moderate tenderness over left and right anterior 7<sup>th</sup> ribs.**

**T. HUTCHINSON SHELLY, J**

**BACKGROUND**

[1] The Claimant in his suit filed on December 9<sup>th</sup>, 2021 is seeking to recover special and general damages for personal injury, loss and damage arising from a motor vehicle accident which occurred on October 19<sup>th</sup>, 2019, along Jackson Road in the

parish of Saint Andrew, while he was in the process of crossing the road. The 1<sup>st</sup> Defendant was the servant/agent of the 2<sup>nd</sup> Defendant and was the authorized driver of the motor vehicle at the material time. The 2<sup>nd</sup> Defendant was the owner of the white Toyota Probox motor vehicle with registration number **PJ7809**. The Claimant asserts that as a result of the negligence in the 1<sup>st</sup> Defendant's driving, management or control of the said motor vehicle, the collision occurred.

[2] The Claim Form and Particulars of Claim were served on the 2<sup>nd</sup> Defendant, Marlene Thompson on the 21<sup>st</sup> day of December 2021. The 2<sup>nd</sup> Defendant failed to file an Acknowledgment of Service in response to the claim. Consequently, Default Judgment was entered against her in default of Acknowledgment of Service on the 9<sup>th</sup> of March 2022 in **Judgment Binder 778 Folio 84**. In furtherance of that judgment, the Claimant has approached this Court for damages to be assessed.

[3] The Assessment of Damages was held on the 30<sup>th</sup> of November 2023. The Claimant gave evidence as to the quantum of damages that he believes the Court should award. The matter proceeded uncontested as the 2<sup>nd</sup> Defendant made no appearance and was unrepresented during this hearing.

## **ISSUE**

[4] The main issue to be determined is the quantum of damages which should be awarded to the Claimant for injuries suffered and other related losses as a result of the Defendants' negligence.

## **THE CLAIMANT'S EVIDENCE**

[5] In his witness statement, which was permitted to stand as his evidence-in-chief, the Claimant explained that while he was traversing the road in the vicinity of Jackson Road along Windward Road in the parish of Kingston, a vehicle stopped and allowed him to cross. As he was crossing the road, the 1<sup>st</sup> Defendant overtook the vehicle that had stopped and collided in the left side of his body. The impact of

this collision propelled him into the air and he landed on the windshield of the 2<sup>nd</sup> Defendant's vehicle, causing it to shatter.

[6] Immediately following the collision, he began to experience pain and discomfort in the area around his ribs and he felt pain all over his body. He was transported to the Kingston Public Hospital where an x-ray was performed on his ribs. The results showed that he had a broken rib. He was prescribed painkillers and released from the hospital with instructions to get bed rest.

[7] The Claimant subsequently received a Medical Report dated August 28<sup>th</sup>, 2020 from the Kingston Public Hospital which had been prepared by Dr. Racquel Storer. The report detailed injuries to the right and left side of the Claimant's chest. On October 19<sup>th</sup>, 2020, the Claimant sought medical attention from Dr. Justina O'Gilvie, as he was still experiencing severe back pain. He was treated by her and subsequently provided with a Medical Report. Mr. Kent informed the Court that he paid a total of **Thirty-One Thousand Dollars (\$31,000.00)** for these Medical Reports. He explained that he was unable to provide these receipts to the Court as he had provided them to his previous attorney and they were never given back to him.

[8] Mr. Kent stated that as a direct result of his injuries and the pain he was experiencing, he was unable to perform his usual domestic chores and had to be assisted by his adopted son. He also pleaded expenses for transportation in the sum of **Ten Thousand Dollars (\$10,000.00)** for trips to the Kingston Public Hospital. Mr. Kent testified that he paid for medication prescribed for his injuries but could not locate these documents.

### **SPECIAL DAMAGES**

[9] Special damages are compensatory and are designed to return the Claimant to the position that he/she was in prior to the injury based on measurable dollar

amounts of actual loss. They are normally reduced to a “*sum certain*” at the trial.<sup>1</sup> It is an established principle that special damages, 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 strictly. (see for e.g. Lawford Murphy v Luther Mills (1976) 14 JLR 119). The authorities demonstrate however that the Court has some discretion in relaxing the rule in the interest of justice, based on the particular circumstances of the case. (See for e.g. Julius Roy v Audrey Jolly [2012] JMCA Civ. 63.

[10] The Particulars of Claim outlines the sums claimed for Special Damages as follows:

1. Medical Report .....	\$34,500.00
2. Police Report.....	\$3,000.00
3. Transportation expenses .....	\$10,000.00
<b>Total .....</b>	<b>\$47,500.00</b>

[11] The sum of **Thirty-Four Thousand Five Hundred Dollars (\$34,500.00)** was pleaded as medical expenses in respect of the cost of the Medical Reports prepared by Dr. Racquel Storer and Dr. Justina O’Gilvie. Regrettably, for the reasons outlined above, Mr. Kent was unable to produce any proof of this expenditure. While the Court sympathizes with his predicament, an evidential basis for an award in this sum would have to be provided. Additionally, there was some uncertainty as to the actual sum paid as the pleadings stated the sum of **Thirty-Four Thousand Five Hundred Dollars (\$34,500.00)**, but in his viva voce account, Mr. Kent quantified the amount as **Thirty-One Thousand Dollars (\$31,000.00)**. In the absence of cogent evidence on this point, no award can be made under this head.

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<sup>1</sup> **Barbara McNamee v Kasnet Online Communications RM Civil Appeal No. 15 of 2008.**

## Transportation

[12] In certain instances, there has been some relaxing of the requirements for documentary evidence to prove special damages, one such area is where transportation expenses are sought. In the decisions of Attorney General of Jamaica v Tanya Clarke (nee Tyrell), SCCA No. 109/2002 and Desmond Walters v Carlene Mitchell [1992] 29 JLR 173, the Courts have found that a Tribunal may use its discretion and knowledge of the vagaries of the local transport industry to arrive at a just award.

[13] In his pleadings, Mr. Kent seeks an award in the sum of **Ten Thousand Dollars (\$10,000.00)** for this expense. In his viva voce account however, he stated that he made twelve (12) trips between his home and the hospital. He also stated that the cost of each one-way trip was **One Hundred Dollars (\$100.00)** on the bus and the overall amount spent was **Two Thousand Four Hundred Dollars (\$2400.00)**. In assessing his claim on this point, I was mindful of the contradiction between his pleadings and evidence but determined in the circumstances to consider his evidence as provided in Court. Although there was no documentary proof provided in support of this sum, I find that the amount of **Two Thousand Four Hundred Dollars (\$2,400.00)** is reasonable in the circumstances. I accept that the trips to the Kingston Public Hospital were necessary as they were for the sole purpose of obtaining medical treatment for the injuries sustained. Accordingly, the sum of **Two Thousand Four Hundred Dollars (\$2400.00)** is awarded for this loss.

## Police Report

[14] Although the sum of **Three Thousand Dollars (\$3000.00)** was pleaded for this expense, the Claimant elected not to pursue same, accordingly, no award is made for this claim.

## GENERAL DAMAGES

### Medical Evidence

- [15] The particulars of the Claimant's injuries were outlined in the Medical Summary Report which were entered into evidence. The Report from the Kingston Public Hospital indicated that Mr. Kent presented with injuries to the right side and left side of the chest following the motor vehicle accident on October 19, 2019. Upon examination, he was found to have elevated BP and tenderness over his left 9<sup>th</sup> rib. In terms of investigation, the x-ray performed on his chest revealed that he sustained a fracture to his left 9<sup>th</sup> rib. He was treated with Voltaren (**used to relieve pain and reduce inflammation – swelling and redness**), Losartan (**used to treat high blood pressure – hypertension**) and Amlodipine (**a calcium channel blocker used to treat high blood pressure – hypertension**). Thereafter, he was discharged.
- [16] Dr. Justina O'Gilvie's report of October 19<sup>th</sup>, 2020 confirmed that the Claimant had injuries to the right side and left side of his chest. He also had tenderness over the left 9<sup>th</sup> rib and his blood pressure was elevated. The doctor opined that the Claimant was suffering from chronic pain and Post-traumatic stress disorder (PTSD).
- [17] A physical examination revealed mild tenderness over the left posterior 9<sup>th</sup> rib and moderate tenderness over the left and right anterior 7<sup>th</sup> rib. The Claimant was diagnosed as having:
- Hypertension; and
  - Fracture of the 9<sup>th</sup> left rib.
- [18] In terms of his progress, Dr. O'Gilvie noted the following:
- i. He experiences symptoms of Post-traumatic stress disorder (PTSD) which occurs from fear of crossing roads, flashbacks and anxiety.

- ii. The traumatic event has hampered his daily lifestyle both mentally and physically.
- iii. He continues to experience constant pain to the site of fracture and to the right side of the chest. He has described this pain as intermittent, lasting for a one-hour duration. In terms of the severity of the pain, the Claimant expressed that it is in the range of 7-8 out of 10 in the days and 8-10 or a full 10 in the nights.

[19] In respect of his treatment, Dr. O’Gilvie noted that Mr. Kent was prescribed analgesics in the form of Voltaren and antihypertensive medication. He was also given Diclofenac for pain and Omeprazole for stomach protection from pain medication. He was also given a referral to undertake physical therapy.

## **SUBMISSIONS**

[20] Mr. Phillips relied on two (2) cases in support of the Claimant’s request for damages in the sum of **Two Million Dollars (\$2,000,000.00)**.

a. **Hall-Graham, Sharon v Dervan Lumsden, etal C.L. 2000/G 140**, the Claimant sustained fracture of all ribs from 2<sup>nd</sup> to 7<sup>th</sup> inclusive on left side of chest with double fracture of 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> ribs. She also had fracture of 2<sup>nd</sup>, 5<sup>th</sup> and 6<sup>th</sup> ribs on the right of her chest. In addition to the fracture of her ribs on both the left and right side of her chest, she also suffered from multiple abrasions and contusions on all four (4) limbs and chest. An award of **Eight Hundred and Fifty Thousand Dollars (\$850,000.00)** was made for pain and suffering and loss of amenities. This value was updated to **Four Million Eight Hundred and Twenty-One Thousand Three Hundred and Sixty-Nine Dollars and Twenty-Nine Cents (\$4,821,369.29)** using the current CPI for the month of December, 136.7.

b. **Lena Grey v Oral Beckford and Edgar Franklyn** [2017] JMSC Civ. 192 (Consolidated Action). Ms. Grey suffered from 7cm laceration to the forehead, 1cm laceration to the right leg, rotation of movement of leg normal, mild tenderness at right upper chest but no fractures. She was awarded General Damages for pain

and suffering and loss of amenities in the amount of **One Million Six Hundred and Thirty-Nine Thousand Nine Hundred and Twenty-Three Dollars and Sixty-Six Cents (\$1,639,923.66)** when the CPI was 91.8. This figure is updated to **Two Million Four Hundred and Forty-Two Thousand and Twenty-One Dollars and Thirty-Nine Cents (\$2,442,021.39)** using the CPI of 136.7 for the month of December.

c. In the same case, the Claimant **Densmark Grey**, a soldier, was 37 years old at the time of the accident. After the collision, he lost consciousness. He suffered from mild tenderness at the right lower chest and mild tenderness at lower back. On June 26, 2006, he was admitted to the Falmouth Hospital and discharged on June 29, 2006 with follow-up treatment at the surgical out-patient clinic. He was treated with pain medication and placed on sick leave for twenty-five (25) days, then light duties for seven (7) days upon resuming work. In May 2017, he was awarded general damages in the amount of **Six Hundred and Nineteen Thousand Seven Hundred and Thirteen Dollars and Ninety-Four Cents (\$619,713.94)** when the CPI was 91.8. This figure now updates to **Nine Hundred and Twenty-Two Thousand Eight Hundred and Twenty Dollars and Twenty-One Cents (\$922,820.21)** when the CPI of 136.7 for the month of December is utilized.

[21] Counsel acknowledged that the injuries of the Claimant in the instant case are not as severe as **Hall-Graham, Sharon** who suffered from multiple fractures to several ribs. He also submitted that unlike Ms. Grey in **Lena Grey**, Mr. Kent had a fractured rib and experienced mild tenderness over the left posterior 9<sup>th</sup> rib and moderate tenderness over the left and right anterior 7<sup>th</sup> ribs.

## **DISCUSSION/ANALYSIS**

[22] In arriving at a decision on the appropriate award that should be made to Mr. Kent, I did not find all the authorities cited to be useful and/or relevant. The **Lena Gray** matter which is part of the consolidated cases is distinguished from the instant claim as the nature of the injuries sustained by **Lena Gray** are entirely different



from those suffered by the Claimant in the instant claim. A similar observation is made in respect of the case of **Densmark Grey**. In respect of the case of **Hall-Graham, Sharon**, the only similarity to this Claimant is that the fracture sustained was to the rib but **Hall-Graham's** injuries were far more extensive. Additionally, the prognosis and recovery period for her was far greater. I am also mindful of the fact that although Mr. Kent has reported ongoing challenges, he has not sought any further treatment.

**[23]** Counsel also submitted that Mr. Kent is entitled to an award for Post-traumatic stress disorder (PTSD) based on the Medical Report of Dr. Justina O'Gilvie. The issue with this diagnosis is that the Court was not provided with any evidence to this effect from a trained psychiatrist who would be an expert in this area and able to properly diagnose this disorder and provide an assessment on its severity. Dr. Justina O'Gilvie's qualifications outline that she is a Physician and Surgeon, and as such, she is unqualified to provide this diagnosis. In light of the foregoing discussion, it is my considered view that Mr. Kent cannot be granted an award under this head of damages.

**[24]** In addition to the authorities cited by Counsel, the Court also considered the case of **Ricardo Pellington (by next friend Karen Pellington) v Cecil Bowen** Suit No. C.L 2001/P 036. In that matter, the claimant was hit from behind by a truck. He fell to the ground and seemed to have been either disoriented or was unconscious. He was taken initially to the Kingston Public Hospital and then transferred to Bustamante Hospital for Children where he was hospitalized for one week with pain in his left side. He subsequently spent three (3) months at home recuperating following his release from the hospital. His injuries were tenderness over the left side of chest and abdomen, fracture of 6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> ribs on left side with a haemothorax on the same side, contusion of the left lung and an approximate 10% disability. In July 18, 2002, he was awarded General Damages in the amount of **Three and Ninety Thousand Dollars (\$390,000.00)** when the CPI was 24.1. This figure now updates to **Two Million Two Hundred and Twelve Thousand One**

**Hundred and Fifty-Seven Dollars and Sixty-Seven Cents (\$2,212,157.67)**  
using the CPI of 136.7 for the month of December.

[25] Whilst the case of **Ricardo Pellington** is not on all fours with the case at bar, it nonetheless provides significant guidance on the issue of the appropriate award which should be made for general damages. On comparison of this authority with the case at bar, I was satisfied that there was greater similarity between them, though the injuries of **Ricardo Pellington** were slightly more severe. Allowing for an adjustment to take account of this difference, I am satisfied that an appropriate award for pain and suffering in all the circumstances is **Two Million Dollars (\$2,000,000.00)**.

#### **ORDER**

[26] As such, damages are assessed as follows:

1. Special Damages are awarded in the sum of **Two Thousand Four Hundred Dollars (\$2,400.00)** with interest at the rate of 3% from October 19<sup>th</sup>, 2019 to November 30<sup>th</sup>, 2023.
2. General Damages are awarded for pain and suffering in the sum of **Two Million Dollars (\$2,000,000.00)** with interest at the rate of 3% from December 21<sup>st</sup>, 2021 to November 30<sup>th</sup>, 2023.
3. Costs to the Claimant to be agreed or taxed.
4. Claimant's Attorney to prepare, file and serve the Judgment herein.