



[2019] JMSC Civ 198

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2012 HCV 00233

BETWEEN	ORANTIS LINDSAY	CLAIMANT
AND	DOMINIC SMITH	1 ST DEFENDANT
AND	DWIGHT SMITH	2 ND DEFENDANT
AND	DONNA SMITH	3 RD DEFENDANT

Ms. L. Palmer instructed by Kinghorn and Kinghorn for the Claimant

1st & 3rd Defendant absent and unrepresented

HEARD: May 12, 2015 and September 30, 2019

ASSESSMENT OF DAMAGES – PERSONAL INJURY

GRAHAM-ALLEN, J

[1] This is an assessment of damages against the 1st and 3rd defendants only. On May 12, 2015 pursuant to Rule 42.10 the court allowed a correction of the Attested Copy of Judgment in Default entered 1st March 2013 to be made in relation to the 1st defendant to read *“that the 1st defendant Dominic Smith filed an Acknowledgement of Service but failed to file a Defence.”* Judgment in Default of Acknowledgement of Service was entered against the 3rd defendant Donna Smith.

Award

Special Damages - \$62,000.00 with interest at 3% from August 6, 2011 to September 30, 2019.

General Damages - \$1,400,000.00 with interest at 3% from December 9, 2012 to September 30, 2019.

Costs to the claimant to be taxed if not agreed.

Background

[2] The claimant Orantis Lindsay claims damages for injuries and consequential expenditure and loss sustained by the negligence of the 1st defendant, the servant or agent of the 2nd and 3rd defendants.

[3] On August 6, 2011 the claimant was a passenger seated in the back seat of a motor vehicle lettered and numbered CG 1019. The vehicle was travelling along Stony Hill Road in the parish of St. Andrew.

[4] A motor vehicle numbered and lettered 1541 FW driven by the 1st defendant was travelling in the opposite direction collided into the right front section of the motor vehicle in which the claimant was a passenger.

Particulars of Personal Injuries

- [5] A.
1. Knee strain.
 2. Whiplash injury with grade 2 whiplash associated disorder.
 3. Soft tissue injuries to his left shoulder and back.
 4. Post traumatic headache.
 5. Post traumatic insomnia.

- B. The claimant was examined by Dr. Ijah Thompson on August 10, 2011. His provisional assessment revealed the injuries referred to at A above. Among the prognosis made was that the claimant's injuries are serious, with risk of permanent impairment. However, no disability assessment was made as further review was needed.

[6] The Hearing

Permission was granted to amend the sum claimed for medical expenses from \$53,000.00 to \$56,000.00 in paragraph 8 of the Amended Particulars of Claim filed December 6, 2012.

- [7]** The sum of \$6,000.00 incurred by the claimant for transportation expenses at paragraph 20 of his evidence-in-chief is reasonable in the circumstances and is so awarded.

- [8]** The total award for special damages is \$62,000.00.

Cases Considered

- [9] Ronald Bowen v Mark Wallace and Industrial Chemicals Limited [2010] HCV 01073.**

Personal injuries: soft tissue injury, muscular ligament damage to the left shoulder, muscle spasm of the neck. General Damages awarded was \$975,000.00 which updates to \$1,299,416.51.

Trevor Benjamin and Henry Ford and Wilburn Palmer and Richard Nicholas and Deverton Meeks [2005] HCV 02876.

Personal injury – soft tissue injury with no PPD.

General Damages awarded was \$700,000.00 which updates to \$995,466.15.

Analyses

[10] The cases considered provided reasonable guides as to the award made to the claimant in this case. Using these cases, the court came to the view that the award would have to be above the awards in the two (2) cases considered. The claimant in the instant case had other injuries in addition to soft tissue injuries.

[11] It was submitted that an award of \$1,400,000.00 would be reasonable to compensate the claimant for the injuries he sustained.

Conclusion

[12] The court assesses damages against the 1st and 3rd defendants as follows:

Special Damages - \$62,000.00 with interest at 3% from August 6, 2011 to September 30, 2019.

General Damages - \$1,400,000.00 with interest at 3% from December 9, 2012 to September 30, 2019.

Costs to the claimant to be taxed if not agreed.