



[2018] JMSC Civ 86

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2013 HCV 03659

BETWEEN	SILBERT MILLER	CLAIMANT
AND	PHILLIP JACKSON	DEFENDANT

IN OPEN COURT

Mr. Steven Jackson instructed by Bignall Law for the Claimant.

The Defendant absent and unrepresented.

Heard: 9th May and 22nd May, 2018.

DAMAGES- ASSESSMENT OF – PERSONAL INJURY

SIMONE WOLFE-REECE, J (Ag.)

BACKGROUND

[1] The claimant has come before this court to have damages assessed against the defendant. The claimant brought a claim filed on June 20, 2013 against the defendant for negligence for personal injuries arising from a motor vehicle accident which occurred on or about the 21st day of March 2012 along Decoy Main Road in the parish of St. Catherine. As a result of this collision the claimant suffered injury.

- [2] On November 18, 2013 the claimant obtained judgment in default of acknowledgment of service against the defendant. Georgia Allen the process server, by way of an affidavit sworn to on May 10 2018 provided evidence of the proof of service hearing the assessment of damages.

EVIDENCE

- [3] The assessment of damages was heard on 10th May 2018. The claimant was sworn and his further witness statement dated 24th October 2016 was allowed to stand as his evidence in chief.
- [4] He stated that on the day in question it was a bright sunny day and the roadway was clear, that whilst driving along the Decoy Main Road in the parish of St. Catherine and upon approaching a bend in the road an International motor truck coming from the opposite direction, driven by the defendant, swerved and came into the path of his vehicle causing a collision.
- [5] He further stated that his vehicle was pushed off the road and he immediately felt a pain to the right side of his body. He sought medical treatment immediately.
- [6] Four medical reports and one physiotherapy report (exhibits 2-5) were tendered and admitted into evidence. The first doctor who treated the claimant on the 21st March 2012 at the Port Maria Hospital, Dr. Duvaine Mighty, by way of a report dated April 23, 2012 (exhibit 2) opined that the claimant suffered from trauma to the right hip and thigh secondary to a motor vehicle accident and soft tissue injury to the right hip and flank. He was treated with injections and prescribed with oral analgesics for pain. Dr Mighty concluded that it was not likely that the patient (claimant) would suffer any permanent disability as a result of these injuries.
- [7] Dr Ravi Prakash Sangappa in a report dated September 9, 2014 (Exhibit 3) stated that he first saw the claimant on April 5, 2012. He opined that the injuries sustained by the claimant were as follows:

- (a) Injury to the lower back. Bruise all over the lower back extending from the left side up to the right flanks. Vertebral tenderness from the region L2-L5. A large haematoma extending from the midline up to the anterior superior iliac spine measuring about 15 x 20 cm
- (b) Injury to the right hip:- tenderness over the right hip joint region and right flank
- (c) Injury to the right thigh:- had a bruise of 10 x 5 cm over the posterior aspect of the right thigh

- [8] Dr. Sangappa advised that the claimant's treatment should entail the taking of analgesic, muscle relaxant and referred the claimant to physiotherapy. The claimant as a result did six physiotherapy sessions.
- [9] Exhibits 5a and 5b were medical reports of Dr. Andrew G. Ameerally, a Consultant Orthopaedic Surgeon, who saw the claimant on 30th April 2015. His diagnosis was that the claimant had a paraspinal muscle strain of the lumbar region.

SUBMISSIONS & ANALYSIS

- [10] Counsel Mr. Jackson submitted three cases to the court for consideration in determining the general damages. The first case is **Talisha Bryan v. Anthony Simpson and Andre Fletcher** [2014] JMSC Civ.31. In that case the injury suffered was whiplash injury to the neck and lower back strain. She was similarly treated with analgesics, muscle relaxants and advised to do physiotherapy. In 2014 Lindo J (Ag.) as she then was, awarded a sum of \$1,400,000.00 for general damages, pain and suffering and loss of amenities. This award when updated would amount to a sum of \$1,621,568.63.
- [11] The second authority submitted to the court was **Dalton Barrett v. Poncianna Brown and Leroy Bartley** Claim No. 2003 HCV 1358. The claimant in that case suffered the following injuries; tenderness around the right eye and face,

tenderness in the lumbar spine and tenderness in the left hand. Due to continuous and persistent pain for almost eight months he was further diagnosed by an orthopaedic surgeon as having mechanic lower back pains and mild cervical strain. He was awarded in November 2006 the sum of \$750,000.00 for general damages which today would be updated to \$ 1, 867,847.82.

[12] The final authority submitted for consideration was **Kavin Pryce v. Rapheal Binns and Michael Jackson** [2015] JMSC Civ. 96. In this authority the Claimant's injuries were cervical strain, lower back strain soft tissue injuries to the left thigh and a left knee sprain. The award for general damages in 2015 was \$1,500,000.00. This award updated today would amount to \$ 1,659,901.87.

[13] To arrive at an award for general damages the Court has relied on the medical evidence through the reports of Dr. Mighty, Dr. Sangappa and Dr. Ameerally. Mr. Jackson submitted that the sum of \$1,700,000.00 was reasonable. Having assessed the evidence and the authorities before me I am of the view that \$1,300,000.00 the injuries assessed in join cases appeared to be much more serious than that of the claimant is a reasonable award based on the injuries sustained.

[14] The claimant pleaded special damages in the sum \$284,000.00. The principle that special damages must be specifically proved is often referred to as trite law. This has been established in many authorities such as **Lawford Murphy v. Luther Mills** (1976) 14 JLR 19. The claimant in the instant case was only able to prove special damages in the sum of \$123,856.00

[15] The assessment of damages for the injury and loss incurred by the claimant are as follows:-

(a) General Damages for Pain and Suffering and Loss of Amenities awarded in the sum of \$1,300,000.00 with interest at a rate of 3% from 29th September 2013 (date of service of the claim form) to 22nd May 2018.

(b) Special Damages awarded in the sum of \$123, 856.00 with interest at 3% from 21st March 2012 to 22nd May 2018.

(c) Costs to the Claimant summarily assessed at \$70,000.00.