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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

11/11/13

CLAIM NO. 2000/M-012

BETWEEN	ANGELLA MOORE	CLAIMANT
A N D	EDWARD TATE	1 <sup>ST</sup> DEFENDANT
A N D	DALBERT MCDONALD	2 <sup>ND</sup> DEFENDANT

Ms. Suzette Wolfe and Ms. Celia Barclay instructed by Crafton S. Miller and Co. for the claimant.

Mr. Ian Robins instructed by Tenn Russell Chin Sang Hamilton and Ramsay for the defendant.

Heard 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> April 2008

Campbell, J.

1. On the 9<sup>th</sup> November 1997, the claimant, a cashier at a New Kingston restaurant, was on her way from work to her home in Westchester Crescent, Portmore. She had boarded the vehicle in Half-Way-Tree, but had fallen asleep before the bus had reached Three Miles. Her witness statement claims that she woke up some three days later in the Kingston Public Hospital.
2. One Charmaine Brown had given a witness statement to the effect that whilst standing at a bus stop at the zinc factory she had observed a white Toyota Hiace bus coming very fast, swaying from side to side, she said she heard a screeching sound, then a sound as if a tyre had blown out. The claimant had alleged in her witness statement that the bus was very packed. People were even hanging out of the door.
3. The defendants had consistently denied liability, contending that the accident in which the claimant suffered her injuries were as a result of "inevitable accident" which arose, notwithstanding the exercise of all reasonable care by the

defendants. The driver, the 2<sup>nd</sup> defendant, did not provide an account of how the accident occurred.

4. Not surprisingly, at trial the defendant did not contest liability. This hearing proceeded as an assessment of the claimant's damages.

The claimant gave sworn evidence and was cross-examined. She was probed as to her efforts at securing employment and retaining it prior to the accident. She said that after the accident she had returned to work in February 1998, but was unable to work. She remained at home for a further three weeks before returning to work in March 1998, but was laid off because she was physically unable to cope.

5. Her next employment was at a nursing-home as a practical nurse in 2005, but was dismissed because she was unable to lift the patients. Attempts to secure employment since have not met with success. She testifies that she still feels pain; she requires assistance in dressing herself and experiences pain when she sleeps in a particular position.

6. Ms. Wolfe submitted that, the injuries of the claimant were catalogued in the reports of four doctors. Drs. Donaldson, Mullings and Than, who had attended her at the Kingston Public Hospital. Her injuries were in three main areas, mandible, fractured left humerus and her liver.

#### Mandible

7. In respect of the mandible, Dr. Donaldson had assessed her condition as being unconscious, on the 9<sup>th</sup> November 1997, with an undisplaced fracture of the mandible with left side swelling. On the 21<sup>st</sup> November, he had treated the claimant by reduction and fixation with Risdom wire procedure. On the 2<sup>nd</sup> December, 1997, there was further reduction and fixation of the mandible with arch bars and elastic Traction. On December 9, it was noted traction in tact - no pain in jaw. By January 22, it was noted that the claimant had pain, was able to open mouth 2.5 c; by February 5<sup>th</sup> she was able to open her mouth 80%. She was discharged on the 25<sup>th</sup> from his care. The doctor opined that there was the possibility of discomfort later on. The witness states that she has to be careful how she yawns, because her jaw will lock up on her and that is painful. She has suffered a 25% loss of jaw movement.

## Multiple Trauma Injuries:

### Fractured humerus

8. Dr. Mullings noted in his report dated 27<sup>th</sup> November 1998, the patient sustained multiple trauma injuries, (1) head and facial injuries; (2) blunt abdominal injury with liver laceration; (3) fractured left humerus with a wrist drop. A transverse fracture of the left humerus with neuropraxia of the left radial nerve was made. Plaster of Paris was applied and eventually removed on December 7, 1997 and replaced with a sling. The fracture was noted healed on the 13<sup>th</sup> February and the neuropraxia resolved. *The prognosis was no disability is present and the patient was unlikely to have further problems.* He noted that she had decreased range of movement. She has testified that she is unable to dress herself and to reach up beyond a certain point. Dr. Than concurred with Dr. Mullings assessment.

### Laceration of the Liver

9. The laceration of the liver is borne out in all the medical reports; the claimant testifies that she has problems sleeping in certain positions. It was submitted by counsel for the claimant that *an award for damages should provide fair compensation* to see to her care and comfort for the rest of her lifetime and safeguard her against possible foreseeable consequences bearing in mind the injury sustained.

10. Counsel relied on the case of **Derrick Downer Khan** page 133, where an award of \$140,000 was made on the 23<sup>rd</sup> November 1988, updated was \$3,763,274.34, in that case the instant plaintiff had suffered head injury with loss of consciousness, fracture of left humerus, laceration of the liver. I agree with Counsel for the defendant that this case can offer little assistance in that, the injuries were much more serious. Derrick Downer had developed epilepsy and had suffered a hematoma of the tail of pancreas.

11. The case of **Audrey Craig v Sydney Thomas Lee**, similarly of no assistance, where a blind plaintiff had suffered compound fracture of the right tibia and fibula, lacerations to the right leg with abrasions to the knee and shoulders. There was a 10% disability. Damages were agreed at \$112,000.00 inclusive of costs, \$106,000.00 *being for pain and suffering*, updated this figure represents

\$1,843,953.60. The injuries here were admittedly not as severe as in the instant claimant's case.

12. The injuries in *Clive Gordon*, where the plaintiff was totally disabled for a period of eight (8) months as against a partial disability of two (2) months (when arm removed from sling), and suffered a 1.5cm shortening of the right lower limb. A disability which in our society not being accustomed to serious wartime injuries that are commonplace in the United Kingdom, is likely to attract stares and undue comments. Brown's case is more serious than that of the instant claimant

13. In *Harry Sobers Sobram v Ruby Bicknell*, claimant suffered a closed fracture of the right humeral shaft, laceration of the right knee, open comminuted fracture of the right femur and separation of the symphysis pubic, *he was in traction for thirteen (13) weeks* for his leg injury, and approximately eight (8) weeks for the arm injury. There was minimal brain damage. He was assessed at 10% disability as against the instant claimant who was assessed at 7%. An award of \$150,000.00 updated this represents \$1,800,253. 81.

14. Dr. Cheeks had opined, he being the last of the doctors to have examined the claimant, that she had a slight deficiency in recent memory function and mental agility. *Further, there was a reduce range of motion especially for abduction which is reduced by approximately 30 degrees. And pain in the upper arm.* As already noted, Dr. Cheeks combined a 2% of the whole person and for the neuropraxia of the radial nerve and a 5% and of the whole person impairment for the impairment of the memory function. The claimant is 43 years of age. She states that she has not sought further medical attention because she has been advised by her physio-therapist, that she would have to break her hand to reset it, in order to be rid of the pain. This is a course she is unable to contemplate. I am of the view that the injuries in the instant claim are more severe than those in the case of Sobram.

15. I make an award of \$2,150,000.00 for pain and suffering.

Special Damages	\$465,050.00
Handicap on Labour Market	\$300,000.00

Interest on General Damages at the rate of 3% from 28<sup>th</sup> January 2000 to 18<sup>th</sup> April 2008.

Interest on Special Damages at the rate of 3% from 9<sup>th</sup> November 1997 to 18<sup>th</sup> April 2008.

Costs based on Table 1 and 2 Appendix b and Appendix c of CPR OF \$150,000.00.