



[2016] JMSC Civ. 112

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2012HCV01341**

<b>BETWEEN</b>	<b>AVA-GAYE SMITH</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>HENRY'S TRANSIT LIMITED</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>JEROME SIMMS</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**Paul Edwards instructed by Bignall Law for the claimant**

**Defendant not present or appearing**

**Heard: June 24 and 28, 2016.**

**Damages - Assessment of – Upper back strain, left shoulder strain - No permanent disability**

**Tie, J (Acting)**

**[1]** On October 4, 2011, the claimant, a pedestrian, sustained injuries when a coaster bus owned by the first defendant and driven by the second defendant collided into her. The first defendant was served and has failed to participate since the commencement of this action. The claimant having satisfied the court that the defendant company was served with notice of the assessment of damages, the hearing of the assessment of damages proceeded.

**[2]** The claimant's witness statement dated March 6, 2015 was allowed to stand as her evidence in chief. Therein she explained that she was walking along Burke Road in

Spanish Town in the parish of St Catherine and entered the compound of the Texaco Gas Station where upon a coaster back collided into her whilst passing. She sought medical attention from Dr Prakash Sangappa who treated her with analgesics and muscle relaxants and she was referred for physiotherapy.

[3] A medical report from Dr. Sangappa was tendered and admitted into evidence, a 'Notice of intention to tender in evidence hearsay statement contained in a document pursuant to the Evidence (Amendment) Act' having been filed and served.

[4] The said medical report of Dr Sangappa covered the claimant's history of treatment with him which commenced on the day of the incident. At that time she was diagnosed with having an upper back strain as well as a strain to the left shoulder. She was reviewed by the doctor in December of that year and was deemed to have shown fair recovery with the pain to her back and shoulder having subsided.

[5] A report from registered physiotherapist Sathya Gogineni was also tendered and admitted into evidence, it having been included in the documents covered by the 'Notice of intention to tender in evidence hearsay statement contained in a document pursuant to the Evidence (Amendment) Act.' Ms Smith received one physiotherapy treatment and was discharged thereafter as she had minimal pain, and according to the report indicated that she was unable to attend further sessions due to her school schedule.

[6] As regards the claim for special damages, all items claimed have been strictly proved save for those relating to transportation and 'extra help'. Whilst the general principle as regards special damages is that they must be specifically proved, it is not an inflexible principle and the circumstances of each case must be examined. As noted by Harris JA in **Julius Roy v Audrey Jolly (2012) JMCA Civ 53**, "*Special damages must be specifically proved – see **Bonham-Carter v Hyde Park Hotel**, 64 LTR 177 However, this is not an inflexible principle. Although specific proof is required for special damages, there may be situations, depending on the circumstances of the case, which accommodate the relaxation of the principle. In some cases, the incurring of some expenditure may not be readily capable of strict proof. As a consequence, the court may*

*assign to itself the task of determining whether strict proof is an absolute prerequisite in the making of an award: see **Attorney General v Tanya Clarke (Nee Tyrell)** SCCA No 109/2002 delivered 20 December 2004; **Walters v Mitchell** (1992) 29 JLR 173; **Ashcroft v Curtin** [1971] 3 All ER 1208; **Grant v Motilal Moonan Ltd & Anor** (1988) 43 WIR 372 and **Central Soya of Jamaica Ltd v Freeman** (1985) 22 JLR 152. In its endeavour to arrive at a reasonable conclusion, the court seeks to satisfy the demands of justice by looking at the circumstances of the particular case: see **Ashcroft v Curtin**. Therefore, to demand strict adherence to the principle laid down in **Bonham-Carter** may cause some injustice to a claimant who had legitimately suffered damage.”*

[7] The fact that the claim for transportation has not been strictly proved is excusable given the nature of public transportation and the fact that receipts are generally not issued. I am of the view however that her evidence only supports an award of \$1,300 as opposed to the sum of \$5,000 claimed. I am also of the view that the claim as regards ‘extra help’ must be dismissed as the claimant gave no evidence in this regard. I am of the view that the sum of \$53,800 is justified under the head of special damages.

[8] As regards general damages I have considered the decisions that were presented on behalf of the claimant of **Anna Gayle Anderson v Andrew O’Meally** (Claim no 2005 HCV01255), **Lovlyn Johnson v Jeremy Peart and Wilfred Campbell** (Claim no 2011HCV07822), and **Bruce Walford v Garnett James Fullerton et al** (Claim no 2011 HCV 00705). I find that the claimants in the various cases presented suffered injuries more serious than those suffered by Ms Smith. In the **Anderson** case for instance, the claimant was assessed as possibly having a prolapsed intervertebral disc and experienced persistent pain. Likewise, in the case of **Walford** the claimant experienced extreme pain and was unable to work for two weeks.

[9] I find the case of **Johnson** to be a more appropriate guide. The claimant therein suffered a strain to her hip and lower back. She was awarded the sum of \$800,000.00 for general damages, which when updated amounts to \$797,903.93. I am of the view that the sum of \$800,000.00 is reasonable to compensate the claimant for her injuries sustained.

**[10]** I therefore make the following award:-

For general damages, the sum of \$800,000.00 with interest of 3% per annum from December 2012 to June 28, 2016.

For special damages, the sum of \$53,800.00 with interest of 3% per annum from October 4, 2011 to June 28, 2016.

Cost to the claimant to be agreed or taxed.