

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L. S 034/2001

BETWEEN	NEVILLE SMITH	PLAINTIFF
AND	DAVE CLARKE	FIRST DEFENDANT
AND	ORAL DESULME	SECOND DEFENDANT

Mr. Linton Gordon instructed by Frater, Ennis & Gordon for
the plaintiff

No appearance for the defendants

ASSESSMENT OF DAMAGES

HEARD JUNE 24, 26, 27 and June 28, 2002

Sykes J (Ag)

The plaintiff is a school teacher. He is also a part time mechanic. He is a member of the Jamaica National Reserve. No evidence was given of his age. On October 5, 1996 the plaintiff, who is the owner of nissan sunny motor car, was driving on Marcus Garvey Drive in a line of traffic heading in the direction of the then existing Three Mile roundabout. He was coming from the Portmore Causeway. He stopped. He felt a bump in the rear of his car. He came out. He saw that his car was hit by another nissan driven by the first defendant and owned by the second defendant. Needless to say the plaintiff's car was damaged and he

himself soon felt the after effects of the seemingly innocuous bump in the rear of his car.

The same day of the accident he began suffering stiffness in the neck. Two days later he began having pains that radiated from the shoulder and into the neck.

The plaintiff sought to recover damages from the defendants by filing his writ of summons and statement of claim on March 14, 2001. He claimed the following as special damages:

- | | |
|----------------------------------|-------------|
| 1. visits to Doctor M. Broderick | \$2,200.00 |
| 2. cervical collar | \$ 391.95 |
| 3. medication | \$ 636.70 |
| 4. cost of assessor's report | \$ 2,346.00 |
| 5. cost of repairing car | \$10,000.00 |

He also claimed general damages, interest as well as legal costs.

The second defendant was personally served with the writ of summons on May 11, 2001. He did not enter an appearance and neither has he filed a defence. Interlocutory judgment was entered on October 3, 2001 against the second defendant. On May 10, 2002 the notice of assessment and a notice under **section 31E** of the **Evidence Act** were posted to the second defendant by registered mail.

I will deal with the special damages first. The plaintiff was first seen by Dr. Broderick on November 18, 1996. He complained of pain in the posterior aspect of his neck. He was examined and X rayed. The examination and X ray showed that there was no fracture or dislocation.

Pain killers were prescribed but they did not help. Eventually the doctor recommended that he should wear a

cervical collar. The medical report dated January 27, 1997 indicates that the plaintiff will need to be seen periodically for an indefinite period because he suffered a whip-lash injury, the effects of which may be prolonged. The prognosis has proven to be correct. The plaintiff said that as recently as two weeks ago he had to wear the collar because of the recurrence of the pain in the neck.

The plaintiff made four visits to the doctor between November 18, 1996 and January 20, 1997. The total cost of these visits was \$2,200.00. Receipts were tendered in support of this figure.

The prescribed medication cost \$636.70 as indicated by the receipt tendered in evidence.

The cervical collar was purchased for \$391.95. This was supported by a receipt.

The cost of the assessor's report turned out to be \$846.00 and not \$2,346.00. The receipt produced showed the lower figure. This means that the amount claimed has not been proven and so the plaintiff can only recover \$846.00.

The plaintiff said that he repaired the car at a cost of \$10,000.00. The repairer is now dead and he did not give the plaintiff a receipt. The car suffered damage to the right rear light, the rear bumper, the panel above the rear bumper, right rear fender and trunk lid. Although this figure was not supported by a receipt I do not find that the sum is excessive. It seems quite reasonable. The plaintiff said that the sum included labour and material.

I will now deal with general damages. The plaintiff testified that he suffered stiffness in the neck on the day of the accident. He began feeling pain two days later. He went to the doctor the week after the accident because of the pain he was experiencing. He could not drive his car

because he could not turn his neck without great discomfort. The pain he felt radiated from his shoulder to his neck. During the time of his discomfort he could not play football; neither could he engage in automechanics, a vocation he does from time to time. The injury prevented him from fulfilling his duties with the Jamaica National Reserve. He could not carry large back packs as required by the National Reserve. He was prevented from engaging in a rifle shooting competition.

The plaintiff said that he was not able, during a period of great discomfort, to fulfill all his marital responsibilities to his wife. His broad grin while testifying foreshadowed the actual evidence that he and his wife are now more than happy.

Happily he has now fully recovered save for the recurrent pain. When the pain recurs he wears the cervical collar. He had to wear the collar as recently as two weeks ago. Since December 1996 he has worn the collar no less than four occasions.

In seeking to assist the court Mr. Gordon cited the case of *Jean McLennon v Stanley Williams & Young Lee*, [Suit No. C.L. 1992/M 287] Khan, Ursula, *Recent Personal Injury Awards Made In The Supreme Court of Judicature of Jamaica Vol. 4, page 161*. In that case the plaintiff suffered whip-lash injury, spasm and tenderness in cervical vertebrae and had a residual disability assessed at 6% of the whole person. The court there awarded \$170,000.00 for pain and suffering and loss of amenities. The damages were assessed on November 18, 1993.

It seems however that the case of *Desmond Poyser v Superior Party Hireage Ltd. & Hylton Smith* [Suit No. C.L. 1991/P158] Harrison & Harrison, *Assessment Of Damages For*

Personal Injuries, (1997) page 86 is more helpful. In that case the plaintiff suffered whip-lash injury with pain in neck, shoulder and back. For pain and suffering the plaintiff was awarded \$40,000.00. The assessment was done on May 14, 1992. These injuries are very similar to the injuries in the instant case.

I also examined other cases to see the range of awards for whip-lash injuries. In *Roy Campbell v Rendell Cameron* [Suit No. C.L. 1988/C361], Harrison's (supra) at page 85, the plaintiff suffered whip-lash injury, a fracture to the no. 6 cervical vertebra and wore a cervical collar for two months. He was awarded \$16,800.00 for pain and suffering and loss of amenities. The assessment was done February 6, 1991.

In *Francine Francis v Karel Nicholson* [Suit No. C.L. 1985/123A], Harrison's (supra) at page 85 the plaintiff suffered pain and stiffness in the neck and shoulders and headaches. The general damages for pain and suffering and loss of amenities were \$8,600.00. Damages were assessed on May 30, 1991.

In *Yvonne Shoucair v Hector Hinds Levi Smith* [Suit No. C.L. 1988/S186] Harrison's (supra) at page 84 the plaintiff received a whip-lash injury; pain in the face, neck and lower back for one week. She received an award of \$10,000.00 for pain and suffering and loss of amenities. Damages were assessed on September 27, 1990.

The cases of *Poyser* (supra), *Campbell* (supra), *Francis* (supra), and *Shoucair* (supra) are much closer to the instant case than the one cited by counsel.

In relying on these cases I am mindful of the advice of the Court of Appeal in *Devon McFarlane (by his next friend, Violet Curry) v Frederick Barnett and others* (1991)

28 J.L.R. 536. There Gordon J.A. who delivered the judgment of the court indicated that in the assessment of damages there should be consistency in "awards for comparable damage" (see page 538F).

In *McFarlane's case* (supra) the court approved the use of consumer price index tables developed by the Statistical Institute of Jamaica as one way of "determin[ing] the present value of earlier awards" (see page 538I-539A). These tables according to the learned Justice of Appeal "now provide [a] 'precise and sophisticated method to find the quantum of the money of the day, taking into account inflationary trends in the economy'" (see page 539A).

After updating the awards using the consumer price index I have taken into account evidence that the pain is likely to recur from time to time and has in fact recurred. This was stated in the medical report. He has testified that since December 1996 he has had to wear the collar at least four times because of the recurrence of the pain. The most recent episode being two weeks before the hearing of this matter. His wife was deprived of the full benefit of her husband's virility which must have caused him some anxiety.

For general damages I award the sum of \$250,00.00 at three percent interest from the date of service of the writ to the date of judgment. This is for pain and suffering and loss of amenities. For special damages I award the sum of \$13,873.65 at three percent interest from the date of accident to the date of judgment. Costs to the plaintiff in accordance with schedule A of the Rules of the Supreme Court (Attorneys at law's Costs) Rules 2000.