



[2014] JMSC Civ. 85

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

**CIVIL DIVISION**

**CLAIM NO. 2012HCV02716**

<b>BETWEEN</b>	<b>KIMESHA THOMAS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>SYLVESTER SYDNEY ROSE</b>	
	<b>t/a CLASSIC FOOD WHOLESale</b>	<b>DEFENDANT</b>

**Ms. Danielle Archer instructed by Messrs. Kinghorn & Kinghorn for the Claimant  
Defendant in Person**

**Assessment of Damages**

**Heard: January 22 and 24, 2014**

**LINDO J. (Ag.)**

- [1]** This claim is brought by Ms. Thomas arising out of an incident which took place on May 28, 2011 at premises owned and controlled by the defendant. She claims that while on the premises a 'pallet' fell on her back from upstairs and she suffered loss and damage.
- [2]** The defendant did not file an acknowledgement of service or a defence and on September 3, 2012 the claimant sought and obtained judgment in default of acknowledgement of service and defence, with damages to be assessed.
- [3]** On January 22, 2014 when the matter came on for assessment of damages, the defendant was present and unrepresented. The claimant was sworn and her

witness statement filed on June 19, 2013 was admitted as evidence- in-chief after it was duly identified by her.

**[4]** In amplification of her statement, the claimant gave evidence of her visits to two doctors and a physiotherapist. The medical reports of Dr. Nesbeth dated August 10, 2011 and Dr. Ravi Prakash Sangappa dated September 27, 2011 as well as the report of the physiotherapist dated August 10, 2011 were tendered in evidence as Exhibits 1, 2 and 3, respectively.

**[5]** Dr. Nesbeth's report indicates:

“1. Severe swelling and tenderness to lower back from thoracic vertebrae to the coccyx(tail bone), with radiation to the left and right gluteus maximus (buttocks).

2. Multiple bruises on lower back”

Dr. Nesbeth noted that the claimant recovered slowly with no residual damages.

**[6]** Dr. Sangappa's report indicates that he saw the claimant nine days after the accident. He notes that the claimant had a healing abrasion of 5x4cm to the lower back with swelling and tenderness over the right side of the lower back. He saw the claimant for a final review on July 19, 2011 and noted that she had shown fair recovery from her lower back strain and “would likely experience occasional episodes of lower back pain for the next 3 -6 months”. He had referred her to physiotherapy and he expressed the view that she would benefit from continuing physiotherapy exercises at home.

**[7]** The report of the physiotherapist is that the claimant underwent four sessions after which she was discharged without pain and advised to continue the exercises at home. The physiotherapist indicated that the cost of each session is \$1,500.00 and the cost of the report is \$5,000.00.

- [8] In assessing the general damages, I am guided by the unreported case of 2011HCV00705 **Bruce Walford v Garnett James Fullerton & Anor** referred to by counsel for the claimant in which D. Batts J, on December 13, 2012 made an award of \$700,000.00 for lower back pain with abrasion to the gluteal region as well as the unreported case of 2009HCV00247 **Horace Williams v Buckley & Anor** in which C. McDonald J, on December 18, 2009, awarded the sum of \$750,000.00 to the claimant who had complained of pain to his back and was unable to work for two weeks.
- [9] In these two cases, the injuries to the claimants are similar to that suffered by the claimant in the instant case but the duration of pain and suffering was two weeks. In this case, the doctor anticipated full recovery within 8 -10 weeks. In the case at bar, the claimant has been affected to the extent that as at the date of giving her witness statement, the evidence is that she was unable to wear shoes with heels and when she sits for long periods, lifts anything or does any strenuous activity she had pains in her back. I believe an award of \$1,200,000.00 is reasonable in the circumstances.
- [10] For special damages, the claimant has supported the claim by receipts which have been tendered in evidence. The sum of \$69,000.00 has been strictly pleaded. I will therefore make an award for \$69,000.00.
- [11] The claimant has incurred costs in bringing these proceedings. The matter was adjourned on two occasions to facilitate the filing of an application by the defendant to set aside the judgment. To date no application has been made and this has led to a delay in the matter.
- [12] I will therefore summarily assess the costs at \$100,000.00
- [13] Damages are therefore assessed as follows:

General damages in the sum of \$1,200,000.00 with interest at 3% from June 12, 2012 to January 24, 2014

Special damages in the sum of \$69,000.00 with interest at 3% from May 28, 2011 to January 24, 2014

Cost to the claimant in the sum of \$100,000.00