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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

CLAIM No. W-129 of 2001

BETWEEN	**MARVETTE WILLIAMS (An infant suing by next friend and mother Marvalee Williams)**	**1st CLAIMANT**
AND	**MARVALEE WILLIAMS**	**2nd CLAIMANT**
AND	**GLADSTONE WILLIAMS**	**1ST DEFENDANT**
AND	**ERICK WILLIAMS**	**2ND DEFENDANT**

Mrs. Althea McBean-Wisdom and Miss Latoya Stephenson instructed by Frater, Ennis and Gordon for the Claimants.

The Defendants unrepresented and not present.

Heard: April 19 and 20, 2006

McDonald, J. Ag.

The Claimant Marvette Williams, a student, on the 28th March 2001 was in the process of crossing the Raymonds Main Road in the parish of Clarendon when she was hit down by a motorcar owned by the 1st Defendant and driven by the 2nd Defendant.

She sustained injuries and was taken to the Lionel Town Hospital where she was admitted for three days. She testified that while there she was put on a drip, given painkillers and injections.

At the insistence of her mother Mrs. Marvalee Williams she was removed from hospital and taken to the Haynes Medical Centre where she was treated by Dr. Campbell.

It was the complaint of the claimant that after receipt of the injuries she experienced vomiting and headaches, and she felt pain all over her body.

Skin on the left side of her face, on her elbows and her left legs were all torn off, and her fingers could not move properly.

Marvette Williams testified that up to the present she suffers from headaches and dizziness and still feels pain in her foot. The headaches occur three to four times per week.

She stated that two months after the accident she returned to school. She had headaches in school and could not concentrate. She ceased to participate in Physical Education as she could not go in the sun because of dizziness and headaches.

Mrs. Williams, her mother testified that Marvette's behaviour has changed since the accident. She states that Marvette "does not talk up to people again, ... and anything you say to her, she just get angry".

She further stated that sometimes Marvette looks out in space and laughs out "like she a get mad."

Two medical reports prepared by Dr. Campbell dated 29th May 2001 and 6th October 2005 were admitted into evidence as Exhibits I and II respectively.

Exhibit 1 states inter alia that on examination;

"She had swellings and superficial abrasions to the left side of her face, encompassing the zygomatic arch (cheek), nose-bridge and both eyelids. She also had a large area of abrasions over the upper, lateral aspect of her left thigh. She had marked tenderness over the left rib-cage. However she was conscious and oriented in time, space and person."

In the report Dr. Campbell speaks to seeing Marvette on three subsequent occasions for headaches, confusion and poor visual acuity. He also stated that her facial bone x-ray was normal.

Exhibit II addresses the C.T. Scan result which reveal "a normal examination of the skull base and brain.

The report continues as follows:

"Marvette has not shown a complete recovery of her pre-accident neurological status. She has not done particularly well academically and even now reports headaches and flashbacks of the accident.

In view of no brain or skull lesions being manifested, I believe Marvette should have no permanent disability, however, the duration of any post traumatic stress disorder is variable and she could continue in this status for sometime."

Mrs. McBean - Wisdom placed reliance on two authorities in support of the claim for General Damages.

These cases are Judine Kitson b.n.f. L. Kitson v. Everald Hoshin 3 Khans Report 230 and Ivan Theodore Tulloch v. Esso Standard Oil Stuart Marston – Harrison's Revised Edition of Casenote No. 2 Page 239.

She submitted that there were similarities between the injuries suffered by the claimant in Judine Kitson v Hoshin (supra) and those suffered by the claimant in the present case although the injuries of Marvette Williams were more severe.

In my opinion this case does not offer appropriate guidance in the computation of an award as the summary at paragraph B is ambiguous in that Dr. Cheeks was of the opinion that the claimant was in the dull normal range of intellectual performance but he did not think that the minor concussion she had sustained at the time of her accident accounted for her intellectual status. At the same time the summary continues by stating that

the head injury and hypoglycaemia at birth contributed equally 50% to her intellectual impairment.

In the case of Ivan Tulloch v. Esso Standard Oil Stuart Marston (supra) the injury to the 70 years old pensioner/claimant caused loss of consciousness for 20 minutes. There was extensive degloving laceration over the left frontoparietal area of the scalp. Large abrasion with bruising over the left parietal eminence of the skull, a large bruised area with two lacerations over the left hip, and an acute sprain of the right knee. General Damages were awarded in the sum of $5,000 for loss of amenities and $95,000 for pain and suffering.

Mrs. McBean-Wisdom calculated the updated award on $95,000 as amounting to $1,419,715.90 today (Using CPI. of 2297.1 for March 2006)

She submitted that the instant claimant suffered no sprain to the knee, but unlike the Claimant Ivan Tulloch she was affected by headaches, flashbacks of the accident and post traumatic stress disorder which could continue for sometime.

She urged the Court to consider an award of $2 million as being appropriate.

I am of the view that a reasonable award for pain and suffering would be $1,650,000 in the circumstances. No evidence has been adduced relating to loss of amenities.

I will now give consideration to the claim for special damages.

Special Damages claimed were particularized as follows:-

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(a)	Hospital bills	1,320.00
(b)	Doctor bills	5,700.00
(c)	X-Ray	200.00
(d)	Medication	6,576.00
(e)	Police Report	1,000.00
(f)	Transportation $500x8	4,000.00
(g)	Uniform lost	1,000.00
(h)	Schoolbag lost	1,200.00
(i)	School shoes lost	700.00
(j)	Loss of earnings $6,000 per week for 6 weeks	36,000.00
(k)	CT Scan	15,500.00
		$73,196.00

Hospital Bills

Mrs. Marvalee Williams exhibited receipt in proof of this expenditure. The amount of $1,320 is allowed.

Doctor Bills, medication and CT Scan

Receipt dated 13th October, 2005 in the sum of $10,0000 was exhibited for medical expenses (since 28th March, 2001 to date).

Applying the principles enunciated in Thomas v. Arscott (1986) 23 JLR 144, this court cannot award a greater sum than $5,700.00 unless there was an amendment to the pleadings to reflect the increased amount.

The same principle applies in respect of the claim for medication and CT Scan. The claimant cannot recover more than the sum pleaded despite evidence that she spent a greater amount.

The Court therefore allows $6,576.00 for medication and $15,500 for CT Scan.

Transportation

It is Mrs. Marvalee Williams' evidence that taxi was the mode of transportation used by the claimant when she was leaving hospital and for visits to the Doctor. Mrs. Williams makes reference to eight occasions on which taxi was used at a cost of $500 per return trip.

There is no documentary evidence supporting this expenditure.

The medical reports dated 29th May 2001 speak to Marvette being seen by Dr. Campbell on the 30th March 2001 and on three subsequent occasions during her convalescence. The report dated 6th October, 2005

makes reference to a visit in 2005 to Dr. Campbell where it is stated that the claimant "even now reports headaches and flashbacks of the accident."

I accept Mrs. Williams' evidence that taxi was used to transport Marvette to the Doctor and that it was reasonable for her to incur that expense. The Court also takes judicial notice of the fact that it is not usual for taxi drivers in Jamaica to issue receipts to their passengers.

I award the sum of $4,000 for transportation cost.

I allow the sum of $1,000 for uniform lost, $1,200 for schoolbag lost and $700 for school shoes lost.

Loss of Earnings

Mrs. Marvalee Williams testified that at the time of Marvette's accident she was doing buying and selling. She used to sell at Rocky Point and Alligator Pond and earned $6,000 per week selling children's clothes, peas and onions.

As a result of the accident she had to stay at home with Marvette for six weeks. She said that when Marvette first went home she had to help her to go to the bathroom.

She has provided no documentary proof in support of this claim for loss of earnings. No breakdown was given to the Court as to how the figure of $6,000 was arrived at or whether that sum was a gross or net amount.

It is a well established principle of law that special damages have to be specially pleaded and proved –

In Bonham Carter v. Hyde Park Hotel Ltd. (1948) 64 JLR 177 Lord Goddard said-

> ***"Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the Court, saying 'This is what I have lost; I ask you to give me these damages.' They have to prove it."***

Judicial authorities have shown that there can be a departure from this principle and the cases of Radcliffe v. Evans (1892) 2 QB 544; Grant v Motilal Moonan Ltd. and Another (1988) 43 WIR 372 and Desmond Walters v. Carlene Mitchell (1992) 29 JLR readily come to mind.

The court has taken into account the lifestyle of Mrs. Williams and the type of business she operated and finds that it is unlikely that she would have kept books of account, and clearly she would not be in receipt of salary slips to produce to the Court.

I accept Mrs. Williams as a witness of truth and find that she did cease working for a six-week period to care for Marvette. However, the sum of $36,000 has to be adjusted by 25% for income tax leaving a net sum of $27,000.00.

Judgment for the Claimant in the sum of $1,712,996 being General Damages of $1,650,000 with interest thereon at the rate of 6% p.a from 11th September 2002 to 20th April 2006 and Special Damages of $62,996.00 with interest thereon at the rate of 6% p.a. from 28th March 2001 to 20th April 2006.

Costs to the claimant in the sum of $40,000 pursuant to Part 65 Appendix B Table 1 of C.P.R. 2002.