

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**IN****CLAIM NO. HCV 2419/2005****BETWEEN RICHARD WILLIAMS CLAIMANT****A N D GARFIELD PRENDERGAST DEFENDANT**

**Mr. Sheldon Codner instructed by
Kinghorn & Kinghorn for the Claimant.**

The Defendants unrepresented not appearing

Heard: April 19 and 21, 2006

McDonald, J. Ag.

In this action the Claimant seeks damages for negligence against the Defendant, the owner and driver of a motor vehicle which struck the motor vehicle in which the Claimant was a passenger. This collision occurred on the 20th March, 2005.

After the accident the Claimant was taken to the Linstead Hospital where he was treated and sent home on the following morning.

Liability is not in issue and the assessment of damages to be awarded to the claimant now falls for consideration.

The injuries sustained by the Claimant as a consequence of the accident were pleaded in the Particulars of Claim as follows:--

- (i) Multiple laceration to the scalp
- (ii) Multiple laceration to the left side of the face
- (iii) Partially severed left ear
- (iv) Abrasion to the left shoulder
- (v) 2 scars (2 cm) to the left parietooccipital region (scalp)
- (vi) 1 scar (4 cm) to the left infraorbital region (face)
- (vii) 1 scar (3 cm) to the left zygomatic region (face)

- (viii) one circumferential scar to the left ear;
- (ix) one scar (4 x 10 cm) to the anterior aspect of the left shoulder
- (x) one scar (8 x 3 cm) to the left iliac region (hip)
- (xi) Tenderness over the anterolateral capsule to the right ankle aggravated by varus stress.
- (xii) Crepitus in the metacarpophalangeal joint of the right thumb with laxity of the ulnar collateral ligament.
- (xiii) Soft tissue injury to the neck
- (xiv) Sprained right ankle and thumb
- (xv) Loss of the cervical lordosis
- (xvi) Muscle spasm

The medical report of Dr. Rory Dixon dated May 11, 2004 tendered and admitted as Exhibit II, confirmed the injuries pleaded

In his report Dr. Dixon's assessment of the claimants impairment reads as follows:

“Mr. Richard Williams sustained multiple injuries for which he was incapacitated for at least six weeks. He is expected to recover satisfactorily within three months. With respect to the right thumb he is at risk of developing osteoarthritis of the MPJ with continued heavy use of the hand which is the only means by which he earns a living. This may occur within five years resulting in a 5% whole person impairment.”

Mr. Codner submitted that an award of \$1.6 million for General Damages would be appropriate in the circumstances.

He placed reliance on three cases in support of this head of damages.

These cases are:-

Clarke v. Partner Foods Limited v. Marlon Scotland 5 Khans Report page 112.

Samuels v. Michael Davis – 4 Khans page 151.

Hartley v. Norman o/c Leslie Monelal o/c Dazzie. – 4 Khan's page 151.

In Clarke v Partner Foods Limited supra, the claimant, a policeman sustained – (1) bruises to ankle, right knee and right shoulder. (2) Pain and swelling of right index finger (3) open injury to right index finger and (4) compound fracture of right index finger.

He underwent operative fixation of the fracture of the proximal phalanx of the right index finger, and later underwent another surgical procedure to fix the fracture.

He suffered from a permanent partial disability of 25% of the function of the right hand or 4% of the whole body.

Dr. Ali stated in the report that the index finger was the claimants trigger finger and that his use of a firearm was thereby affected.

On the 12th June 2000, he was awarded \$565,000 for pain and suffering and loss of amenities. The current value of this award is \$989,676 (using CPI of 2297.1 for March 2006).

I am of the opinion that this case provides a useful guide, although the injuries suffered by that claimant are more serious than those suffered by Mr. Williams.

In Clark v. Partner Foods Ltd. the whole person impairment is fixed whereas in the instant case a prognosis is given. The prognosis may or may not turn out to be accurate, but must be taken into account. Bearing this in mind as well as all the circumstances of the case I find that an award of \$950,000 would be reasonable compensation for this claimant's pain and suffering.

In my opinion *Samuels v. Michael Davis* does not proffer assistance in the calculation of an award, as the injuries suffered by the claimant are far less serious than those suffered by the present claimant. Likewise *Hartley v. Norman* does not offer assistance in making an award as the injuries and resultant disabilities are not closely related to those suffered by Mr. Williams.

The claim for special damages were particularized as follows:

(1)	Transportation expense	\$2,000.00
(2)	Medical expense	\$16,621.00
(3)	Costs of Police Abstract	\$1,000.00
(4)	loss of earnings for 12 weeks	
	@ \$10,000 per week	<u>\$120,000.00</u>
	Total	\$139,621.00

Transportation expenses

The Claimant testified that he expended \$2,000 for taxi fare to and from Dr. Dixon's office. He said that he lives 5 – 6 miles from the Doctor's office. Dr. Dixon's medical report speaks to him examining the claimant on April 20, 2005.

I accept that this sum is recoverable and was expended, and allow the sum of \$2,000 as claimed.

Medical expenses

Evidence was given by the Claimant in support of these expenses and eight receipts were tendered and marked Exhibits 1(a) – (h) in proof of these expenditures. I award \$16,621.00 for medical expenses.

Cost of Police Abstract

The police report was tendered in evidence as Exhibit III. No receipt was produced for this expenditure. The amount of \$1,000 claimed is allowed.

Loss of Earnings

The Claimant gave evidence that he worked as a carpenter, was self-employed and had never been employed to a Company. He said that it was about 3 months after he left hospital that he was able to resume work as a carpenter. The medical report corroborates his evidence in that it speaks to the expectation of the claimant making a satisfactory recovery within 3 months.

He has produced no documentary evidence in support of his claims for loss of earnings.

The Court is aware of the rule requiring strict proof of income.

In Bonham Carter vs. Hyde Park Hotel Limited (1948) 64 JLR Lord Goddard at page 178 said:-

“On the question of damages, I am left in an extremely unsatisfactory position. 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.”

In *Ratcliffe v. Evans* (1892) 2 QB 524 at 532 Bowen LJ said:

“As much certainty and particularity must be insisted on both in pleading and proof of damages as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

The Court is aware that judicial authorities have shown that there can be a relaxation of this principle and the cases of *Grant v. Motilal Moonan Ltd. and Another* (1988) 43 WIR 372 and *Desmond Walters v Carlene Mitchell* (1992) 29 JLR 173 readily come to mind.

I would put the present Claimant in the same category for the purposes of making a determination as to whether or not to make an award in the absence of documentary proof as a sidewalk or a pushcart vendor, handyman or car washer.

This claimant is self-employed and in my opinion would not be expected to keep records or accounts of his earnings, neither is he in receipt of a salary.

I award him \$120,000 for loss of earnings.

Judgment is awarded in favour of the claimant in the sum of \$1,089,621.00 being

Special Damages	-	\$139,621.00
General Damages	-	
Pain and Suffering	-	\$950,000

Interest on Special damages at 6% p.a. from 20th March, 2005 to 21st April, 2006. Interest on General Damages at 6% p.a. from 5th September, 2005 to 21st April 2006.

Costs are awarded to the claimant in the sum of \$40,000 pursuant to Part 65. Appendix B Table 1 of the Civil Procedure Rules 2002.