



[2015]JMSC Civ. 56

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
CLAIM NO. 2010 HCV 0550**

BETWEEN

JULIET JONES

**Agent for and on behalf
of Leroy Jones of Rocky
Point, Lionel Town P.O.
Clarendon**

AND ATTORNEY GENERAL OF JAMAICA

1st DEFENDANT

**AND PA LAWSON ENGINEERING &
CONSTRUCTION LIMITED**

2nd DEFENDANT

Mr Linton Gordon, Ms Carlene McFarlane, and Ms Pearline Bailey for the Claimant instructed by McLean and McFarlane. Ms. Deidre Pinnock for the Director of State Proceedings.

Heard : 24th February 2015, 17th March 2015 and 27th of March 2015.

Assessment of Damages, 85% whole person disability, loss of sensation and movement in lower limbs, loss or restricted sexual function.

SHELLY-WILLIAMS J, (Ag)

Introduction

[1] This is an assessment of damages concerning a claim filed by Ms Juliet Jones on behalf of her father Leroy Jones. She did so pursuant to a Power of Attorney signed on the 26th day of May 2008. The claim concerned injuries received by the claimant on the 26th of May 2008. On that day the claimant Mr. Leroy Jones, who was 59 years old at the time, left his work at New Yarmouth Sugar Factory and whilst riding his bicycle fell into a hole created by the second defendant who was the agent/servant of the Crown. The 1st defendant admitted liability on the 10th of October 2014.

[2] The evidence concerning the medical condition for the claimant was gleaned from the medical reports of Dr. Hitlin Kyaw, medical officer of the Lionel Town hospital dated the 8th of July 2009, Dr. Safiya Franklin dated the 17th of November 2009 and Dr Paul Wright dated the 9th of November 2010. The claimant's injuries include:

- a) Multiple scars on face arising from multiple abrasions to face
- b) Laceration to right angle of mouth
- c) Laceration to upper and lower lid margins extending to tarsal plates;
- d) Loss of teeth
- e) Hypertension
- f) Loss of sensation and movement in lower limbs;
- g) Cervical spondylosis with central cord syndrome.
- h) This resulted in 85% disability of the whole person which is not expected to improve in time. The disability range was broken down into;
 - a) Upper extremity function – 6% in the non-dominant hand.
 - b) Upper extremity function – 25% disability in the dominant hand;
 - c) Lower extremity function – 35% whole person disability due to gait.
 - d) Neurogenic bladder function – 30% whole person disability;
 - e) Neurogenic bowel function – 35% whole person disability;
 - f) Neurogenic sexual function – 15% whole person disability;
 - g) Neurogenic respiratory function – 21% whole person disability;

h) Peripheral nervous system – right ulna nerva palsy 13% upper extremity – 8% whole person disability.

[3] The Claimant's injuries included;-

- a. An eye injury that was treated in the Mandeville hospital.
- b. Loss of sensation and movement in lower limbs.
- c. Loss of teeth, unable to eat "hard food".
- d. Numerous scarring on face.
- e. Incontinence of urine and stool.
- f. Hypertension,
- g. Nuerological deficits.
- h. Loss of sexual function or restricted sexual function.
- i. Gross wasting of his quadriceps muscles.
- j. Right ulna nerve palsy.
- k. Clonus of both lower limbs with dorsi flexion of both ankles.

Special Damages

[4] No objection was taken to the claim for special damages except for loss of income, travelling expenses, future medical care and loss of future earnings.

Loss of Income

[5] The claimant gave evidence that prior to the accident he not only worked at the sugar factory as a Distillery worker but he also worked as a tailor at his home. The claimant produced a salary slip showing the sum he earned at the sugar factory prior to the accident. That salary slip showed a net income of \$3,862.79. The claimant indicated that he worked overtime from which he earned the sum of \$4,000 weekly. He did not produce any documentary evidence supporting this claim.

[6] The evidence given was that the sum of \$3,862.79 was paid to the claimant weekly which amounts to \$15,451.04 per month. The claim is for loss of income for 69 months which the defendant did not take issue with. The sum of \$1,066.121.76 is awarded for loss of income from the sugar factory.

[7] The claimant gave evidence that he had been a tailor for a number of years and at the time of the accident he had a “pants length” for the same person who assisted him out of the hole. The daughter of the claimant, Juliet Jones, gave evidence that she “born come see” her father as a tailor. Based on the evidence I am satisfied that the claimant was a tailor. The claimant gave evidence that he made around 15 pants per month for \$600 each which amount to \$9,000 per month. This claim is for 69 months. The sum claimed is for \$621,000 however, in light of the fact that no receipts were presented to the court, half the sum claimed will be awarded i.e. \$310,500.00.

Travelling Expenses

[8] The claimant gave evidence that he visited the doctor on a number of occasions after the accident. The claimant has 85% whole person disability and as such requires assistance for all activities. He is wheel chair bound and unable sit up for longer than half an hour. The claimant’s mode of transport prior to the accident had been a bicycle. Counsel for the defendant submitted that the claimant should be awarded half of the sum being claimed as receipts had not been provided. Public transportation is a form of transportation that does not lend itself to the production of receipts. The claimant would require transportation to take him to and from the doctor. I do not find that the sum being claimed is unreasonable and I award the sum claimed of \$103,500.00.

Medication for Hypertension, Physiotherapy, Additional Care, Pampers and Catheters

[9] No documents were presented in relation to these claims so no award will be made.

Future Medical Care

[10] Counsel for the claimant submitted that a sum should be awarded for future medical care especially in light of the fact the claimant has lost his teeth and now can only consume certain types of food. No evidence as to the cost of these foods was

produced to the court nor were any documents admitted into evidence to support this claim so no award will be made for this claim.

Handicap on the Labour Market/Loss of Future Earnings

[11] There were no submissions in relation to the loss of future earnings from the claimant. The submission made by counsel for the defendant was that the defendant would have exceeded the retirement age at the time of the trial and as such no award should be made. This submission has merit with regards to claimant's employment as a distillery worker. I however note that the claimant was also a tailor. I would award the sum of \$216,000 being the income of the claimant over a 2 year period. This is awarded using the multiplier/multiplicand method and using the multiplier of 2.

General Damages

[12] I have perused the submissions of counsel for the claimant and the defendant. The cases submitted by both sides were helpful but I considered two cases in particular. Firstly, there was the case of **Everett Sutherland v Anthony Gordon** reported at Khan Volume 6 page 168 heard on the 4th July 2007. In that case the award for general damages was \$16 million which, when updated, would amount to \$31 million. In that case the claimant suffered bilateral c5 laceration fracture with internal subluxation of c5 on c6 and flail chest. Mr. Sutherland suffered from neurogenic bladder/bowel, hypertension and diabetics.

Mr Leroy Jones suffered from similar injuries except a flail chest injury. Counsel for the defendant submitted that the flail chest injury is a serious one and as such the court should not rely on this case.

[13] I also considered the case **Imogene Jackson v High View Estate and Nathaniel Byfield** which was reported at Khans Volume 5 at page 124. In that case the claimant suffered a complete dislocation of the cervical spine and a severe comminuted fracture of the right acroimo-clavicular joint. Ms Jackson was assessed as having permanent disability rating of 85% of the whole person as her paralysis involved her

whole body and lower extremities, difficulty in moving her right upper arm and lack of control of her bodily functions. The claimant was awarded \$2,600,000 for pain and suffering and loss of amenities in 1997. This when updated amounts to \$13,295,454.55.

[14] In reviewing the cases it is observed that Mr. Leroy Jones has additional injuries that were not suffered by Miss Imogene Jackson. These injuries include loss of teeth, laceration to right angle of mouth, multiple scars on face and laceration to upper and lower lid margins extending to tarsal plates. I have chosen to use the case of **Everett Sutherland** as that is the case where the injuries of the claimant are similar to that of the claimant. A reduction of the sum awarded by 30% was made due to the flail chest injury as well as diabetics suffered by Mr Sutherland which the claimant did not suffer. I would award the \$21,700,000.00 as general damages.

Conclusion

General Damages	\$21,700,000.00.
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Special Damages

Medical	\$50,000,
a. X rays and/MRI	\$74,750.00
b. Helper	\$1,702,000.00.

Loss of income Distillery Worker	\$1,066,121.76
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Loss of income from tailoring	\$310,500.00
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Travelling expenses -	\$103,500.00
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ORDER

General damages of \$21,700,000.00 from the 20th of April 2010 the time of service to the 27th of March 2015 at 3% per annum.

Special damages in the sum of \$3,306,371.76 from the 26th of May 2008 to the 27th of March 2015 at 3% per annum.

Handicap on labour market of \$216,000.00

Cost – To be agreed if not taxed.