



2018 [JMSC] Civ 60

In the Supreme Court of Judicature of Jamaica

In Civil Division

Claim No. 2013HCV02394

BETWEEN LEOPOLD DAVIDSON CLAIMANT
AND TAFARI WALLACE DEFENDANT

Allia Leith-Palmer instructed by Kinghorn and Kinghorn for the Claimants.

Suzette Campbell instructed by Burton-Campbell and Associates for the Defendant.

Assessment of Damages- Quantum- Medical Evidence

Heard: December 4, 2017 and April 20, 2018

Gayle, J.

1. This suit arose from a motor vehicle accident which occurred on the 7th day of May 2012 along the Salt Pond Road, in the parish of St. Catherine between motor vehicle with registration number 6866 FH driven by Leopold Davidson and motor vehicle with registration 9253GB and driven by Tafari Wallace.
2. On the 18th April 2013 Leopold Davidson filed Particulars of Claim seeking damages for negligence on the 23rd July 2013; a defence was filed by the defendant Tafari Wallace.
3. On the 24th March 2017 Mr. Tafari Wallace filed documents admitting liability but disputing quantum.
4. The matter came on for assessment of damages on the 4th December 2017. The following documents were tendered into evidence.

Exhibit 1 the medical certificate of Dr. Ravi Prakash Sangappa as amended.

Exhibit 2 The invoice from Oasis Health Care Limited in the sum of \$33,300

Exhibit 3 an invoice from Pines Imaging Centre in the sum of \$2900 and marked paid

Exhibit 4 Radiology report from Pines Imaging Centre.

The first Witness

5. The Claimant Mr. Leopold Davidson was sworn and his witness statement dated November 14, 2017 was allowed to stand as his examination-in-chief after it was identified by him under cross-examination by Ms. Campbell for the Defendant.
6. He said his job caused him to be active and that he had health insurance. He did not ask the driver of the other car to take him to doctor and he did not ask the police to take him to doctor. He said, he drove from the scene of the accident.
7. He said Dr. Stewart examined him when he went to Dr. Stewart office where his son and his wife was.
8. He said, he did not say in his witness statement that Dr. Stewart examined him.
9. He said, the correct evidence is that Dr. Stewart examine me and gave me a prescription. He said he did not consider his injury serious and was not considering legal action.
10. He said, he misplaced the receipt because he was not considering legal action.
11. He said, Dr. Stewart did not examine in depth. A preliminary thing was done.

12. He said, the first time he saw Dr. Sangappa was sometime in September 2012. It was some four months past before I seek medical attention from Dr. Sangappa.
13. The reason I did not go back to Dr. Stewart the pain killer was working and also I bought over the counter ones. I did not consider my condition serious.
14. Dr. Sangappa gave me medication, not prescription. I don't recall the name of the medication. Every time I go for treatment they asked if it finish and give me more. I don't remember the name of the physiotherapist. I know is a licensed physiotherapist. I suffered injuries in the accident. It is not correct that the first time I saw any Doctors was in September 2012. Re-examination none.

2nd Witness

15. Rachell Donaldson gave witness statement to my attorney. Witness statement stand as examination-in-chief.

Cross examination by Mrs. Campbell.

16. She said, her husband drove her to the station.
17. She said, my son and I was treated by Dr. Stewart. He gave me prescription to fill. I was present when Dr. Stewart examined my husband.
18. I did not go to all of my husband visits to Oasis. I was at the first visit. I have been to more than one visit. I saw my husband purchase medication. I do the purchase of medication.
19. I don't recall purchase of any medication at Oasis. The Doctor gave him medication but I purchase medication on prescription from Dr. Stewart. I agree its 4 months after accident my husband went to Oasis. Re-examination. None.

Submissions:

20. Miss Campbell submitted that Mr. Donaldson was not injured in the accident. That Dr. Stewart did not examine Mr. Donaldson and the date of accident or any time.
21. Ms. Palmer submitted that Mr. Davidson was injured as a result of the accident and that Dr. Stewart examined him on that day. There is no evidence that the Claimant had intravenous scar injuries and Dr. Sangappa recommend physiotherapist for Mr. Donaldson.
22. The issues to be determined on a balance of probabilities are
 - 1) Whether Mr. Davidson was injured in the accident
 - 2) And if yes what is the amount of damages.

Finding and Reasoning

23. The resolution to these questions hinges totally on the evidences of the claimant, his witness and the exhibits tendered and is thus a question of fact to be resolved purely on credibility.
24. In light of this their demeanour – was of critical importance to me and so I have listened to them keenly and observed them closely while giving their testimony from the witness box.
25. I have examined all the evidence adduced by the Claimant and offer due regard to the written submission by both attorneys.
26. I find that the Claimant Mr. Davidson and his witness are credible and I accept their evidence on a balance of probabilities.

27. I find that the claimant Mr. Davidson went to Dr. Stewart office where his son and wife was and himself was examined by Dr. Stewart and given a prescription and that the prescription was filled.
28. I find that Mr. Davidson was under pain continuously and sought medical attention at Dr. Sangappa.
29. I find that this was four months after the accident. I find that the Claimant got physiotherapy for some six (6) sessions and that Dr. Sangappa gave him medication.
30. I find that he was injured during the accident.
31. I find that he told Dr. Stewart of the pain he was feeling.

Special Damages

32. The principle of law is that special damages must be strictly pleaded and proved.
33. The claimant attorney in her written submission is making an application to amend the Claimant's particular of claim for Special Damages. To reflect the claimant's physiotherapy expenses of \$10,800.00 same was not pleaded but the invoice exhibit 2 from Oasis Health Care was attached to the Claimants' Particulars of Claim and the defendant was always aware of this sum and not taken by surprise or will suffer no prejudice.
34. The Claimant relies on ***Shaquille Forbes v Ralston Baker etal. Claim No. 2006HCB02938.*** The court declared that the particulars of claim can be amended at any time before judgment is delivered even after the close of a party's case and that the Claim for Special Damages be as follows:

1.	Medical report	\$15000.00
2.	Doctor's visits	\$ 7,500.00

3.	Physiotherapy	\$10800.00
4.	Pines Imaging Centre	\$ 2,900.00
5.	Transportation	<u>\$ 5,000.00</u>
	Total	<u>\$41,200.00</u>

35. Ms. Campbell in her written submission submitted that the claimant must provide proof to the court of that sum incurred. The invoice Exhibit 2 is an invoice for service. There is no indication that the sum was paid and that no amendment was applied for and that the only sum the claimant was entitled to recover is \$2,900 being the sum proved by a receipt.
36. I would have been prepared to grant the amendment asked for by the Claimant based on the authority presented. This additional item of special damages do not constitute a fresh claim. This amendment would be necessary for the purpose of determining the real question in controversy, that is to say, the quantum of damages.
37. There is no evidence before the court that the items on exhibit 2 was paid for only the x-ray for \$2,900 was paid for Exhibit 3.
38. An invoice is a request for payment and a receipt is a documentation that payment has been made.
39. The court refuse to grant the amendment it would serve no useful purpose.
40. I am prepared to grant the sum of \$2,900 for special damages it was specifically pleaded and proved.

Pain, Suffering and Loss of Amenities

41. The injuries suffered by the Claimant are outlined in the medical report of Dr. Ravi Prakash Sangappa dated February 28, 2013. The injuries are as follows:
- 1) Mild tenderness over right shoulder
 - 2) Resolving right shoulder strain

42. The claimant relies on the following authorities in support of claim for general damages:

Samorah Reno v Neil Smith and Kenneth Renton unreported delivered on 23rd February, 2001. The plaintiff in this case had pain in shoulder and neck and was absent from work for one month. An award of \$800,000.00 was made. C.P.I at the time of award was 137.1. The present C.P.I is 245.8. when updated \$1,434,281.58.

Devon Collie v. Wayne Gray and Nadine Jones [2015] JMSC Civ. 49. The plaintiff in this case had pain to right chest and shoulder, muscle strain in neck. An award of \$500,000 was made. The C.P.I. at the time of award was 222.7. The present C.P.I. is 245.8 updates to \$561.864.49.

43. That the Claimant undergoes six sessions of physiotherapy, and was in pain from the time of accident and was treated for seven months and at paragraph 22 of Claimant witness statement he still felt pain in the shoulder occasionally.
44. The defence relies on ***Francine Francis v Karrel Nicholson*** page 85 *Harrison's Assessment*. The Claimant suffered pain and stiffness in the neck and shoulders and headaches. An award of \$8,600.00 which updates to \$268,941.47. ***Paula Yee v Leroy Grant*** page 204 *Harrison's Assessment*. The Claimant suffered bruises across the abdomen, hips and right side of neck, ankle sprain and cut on palm of left hand. Pain lasted for two weeks. Awarded \$5,000 which updates to \$212.262.82.
45. Having examined the authorities presented to the Court I think a reasonable award of \$650,000.00 for Pain Suffering and Loss of Amenities would be reasonable. Taking into consideration the Claimant felt pain in the shoulders occasionally and his treatment lasted for seven months.

Damages

General Damages

46. The sum of \$650.000 at the rate of 3% from the 1st June 2013 to date of trial.
47. Special damages in the sum of \$2,900 at the rate of 3% from 7th May 2012 to date of trial.
48. Cost to Claimant to be agreed or taxed.