



[2026] JMSC Civ.37

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU 2023 CV 03276

BETWEEN	THERESA DAWKINS (Administratrix Ad Litem for the Estateo Of Romario Smith, Deceased)	CLAIMANT
A N D	PATRICK DAVIDSON	1ST DEFENDANT
A N D	ANNALESA WILLIAMS-DAVIDSON	2ND DEFENDANT
A N D	ANDREW WILLIAMS	3RD DEFENDANT

IN OPEN COURT

Mr. Ashford W. Meikle Attorney-at-Law for the Claimant

**Mr. Leroy Equiano instructed by Duncan Ellis & Co for the 1st and 2nd Defendants
3rd Defendant absent and not represented**

HEARD: March 16, 2026

**Tort – Negligence – Personal Injury – Assessment of Damages – Injured party Died
Before Assessment of Damages – Principles Involved in Assessing Damages
Where Party Dies Before Assessment of Damages –**

**Civil Practice and Procedure – Assessment of Damages – Quantum of Damages –
Whether Assessment Should be Substantial Damages or Nominal Damages.**

DALE STAPLE J

BACKGROUND

[1] This is an assessment of damages against all three defendants. On 22nd April 2024, judgment in default of defence was entered against the 1st and 2nd

defendants and same was entered against the 3rd defendant on 12th June 2024. A Form 8A was filed on behalf of the 1st and 2nd Defendant on 9th May 2024.

[2] It is the claimant's case that on or about 7th May 2021, the 3rd defendant so negligently drove, managed or controlled a Mazda motor vehicle registered 6794 HS along Porus Main Road, causing same to collide with Romario Smith's motorbike, causing him to be thrown from his bike and sustain injury, suffer loss damages and incur expenses. At all material times, the said vehicle was owned by the 1st and 2nd defendants.

[3] During the course of the matter, the Claimant died due to matters unrelated to the original collision and injury. He died on April 26, 2024. The present named Claimant was appointed Administratrix ad Litem and substituted as the Claimant by Order of this Court.

[4] The Court is grateful to counsel for their submissions and arguments at the hearing of the assessment of damages. The Court is especially grateful to Judicial Counsel, Ms. Angel Collins, for her usual invaluable assistance in researching the legal issues in this matter and her thoughtful opinion on same.

SPECIAL DAMAGES

[5] Under the heading of Particulars of Special Damages, the following was claimed:

Medical Report- Mandeville Regional Hospital	4,000.00
Medical Report –Dr. Andrew Bogle	120,000.00
Consultation visit –Dr. Andrew Bogle	30,000.00
X-ray –Hargreaves Hospital	2,900.00
Physiotherapy	35,000.00
Police Accident Report	3,000.00
Consultation visit –Dr. Gwyn Jones	10,000.00

National Chest Hospital	1,000.00
Medical Report – Dr. Kenneth Appiah	30,000.00

[6] The Court is satisfied that there is evidence that these sums were paid by the receipts presented. This figure comes to \$220,900.00.

[7] But though they were paid, I could not award these sums as these were not the losses of the deceased on the evidence. The evidence was that his mother paid these sums for him and there was no evidence that he was under any obligation to repay her. See the decision of *Gage v King* [1961] 1 QB p 188 at 193 per Diplock J (as he then was).

[8] The Claimant's claim for transportation expenses were not properly proven in my view. The Court accepts that there is some flexibility in the proof of special damages where we are dealing with public transportation (see the case of *Kent v Williams and Thompson* [2024] JMSC Civ 08 at paras 12 and 13). However, in the *Kent* case, the Court was dealing with a hackney carriage and not a contract carriage. Here we are dealing with a contract carriage. It is more likely that one can get a receipt from a contract carriage and so receipts ought to have been provided as proof of payment of these sums. I do not, therefore, find this sum proven.

[9] The Court is satisfied that the sum for loss of earning was properly proven. The Court does accept Ms. Dawkins as a credible witness. I am satisfied that she did pay her son the sum of \$20,000.00 for assisting her at her yam vending business. As such the sum of \$1,040,000.00 was awarded.

GENERAL DAMAGES (Pain and Suffering and Loss of Amenities)

[10] The Court examined the medical report dated 31st January 2023 from the Mandeville Regional Hospital. The Claimant (deceased) was diagnosed with left open tibia and fibula fracture and right thigh degloving. He was treated with

antibiotics, irrigation and debridement, above-knee plaster with window, wound care, plastic surgery referral for wound coverage.

- [11]** The medical report dated 10th November 2022 (expert report) was obtained from Dr Kenneth Appiah, National Chest Hospital. The claimant was first seen on 16th June 2021. He had a split skin graft on July 9, 2021, with skin harvested from his thigh and returned to Mandeville Regional Hospital and subsequently seen in the clinic. When seen on September 1, 2021, it was noted that the wound and graft donor site had healed but he was experiencing stiffness in the right knee. He was referred to physiotherapy.
- [12]** When seen on November 9, 2022, there was a limp when he was walking; he was unable to flex at knee beyond approximately 30 degrees and 45 degrees. There was depression in soft tissue proximal to knee. Whole person impairment in relation to the scar was assessed at 1-2 %
- [13]** The medical report (expert report) of Dr. Andrew Bogle, dated 27th January 2023 outlines that the claimant sustained an open fracture to the left leg, wound irrigation and closure were performed in the operating theatre. An above-the-knee back slab was applied and there was daily dressing done to the wound.
- [14]** The wound on the right thigh was irrigated and closed in the operating theatre and the above-the-knee back slab was applied. One week later Mr. Smith reported that the wound became infected. The wound was irrigated and debridement done. Post-surgery he received treatment at the National Chest Hospital.
- [15]** Mr. Smith stayed in the Mandeville Regional hospital for four months. The back slab was removed and replaced with a full above-knee case, which was removed on November 30, 2021.
- [16]** As of 27th January 2023, there were present complaints of pain to leg, occasional muscle contractions to the right thigh and inability to walk properly. Post-accident it was noted that Mr. Smith had been unable to return to work as a result of injuries

sustained. He was also unable to play football. Mr. Smith was diagnosed with a malunion left tibia/fibula fractures with 6 degree Varus, 15 degree internal rotation deformity and 3 cm shortening. Right thigh deep wound and right knee flexion deformity and motion loss. Mr. Smith was also given a whole person impairment rating of 32% for this aspect of the claim. He received an additional impairment of 1-2% as a consequence of his cosmetic injury from the skin graft.

- [17] I found the authority of ***Ashley Samuels (By her next friend Rose Ellis) v Steve Daley & Anor [2012] JMSC Civ. 183*** to be the most appropriate in the circumstances. None of the authorities submitted by the Claimant's counsel were helpful as they all involved amputations of the limb. In this case, there was no amputation.
- [18] In the *Samuels* case, the eight year old claimant was struck down while crossing the main road in Gregory Park, St. Catherine. She sustained the following injuries: laceration and swelling over the forehead, bruising on the left cheek, periorbital haematoma of right eye, 12cm x 6cm degloving injury to the medial aspect of the left leg and left ankle, grade 3B open fracture of the left tibia and fibula, skin graft was done, external fixators were applied and eventually removed in her third surgery and replaced with plaster of paris, she spent over four months in the hospital, had facial scarring, scarring of the left leg, deformity of left leg (angular deformity and malunion) underwent corrective surgeries, developed infection from the pin site, valgus deformity noted with limb length discrepancy osteotomy and splinting ... to left tibia was done to correct this, after surgery there was still deformity in the left ankle of 10" and equinus deformity 30". Her left leg was shorter than her right leg. The sum of \$7,000,000.00 was awarded in December 2012 CPI 73.7 this figure updates to 12,746,268.70.
- [19] I would have reduced this award to \$10,000,000.00 due to the greater severity of the pain and suffering of young Ms. Samuels and the longer period for which she would have suffered her injury before assessment.

- [20] Given that the deceased died approximately 2 years before the assessment and would have suffered for 3 years before his untimely death, I was minded to award the sum of \$6,000,000.00 for pain and suffering and loss of amenities.
- [21] The Court had regard to the well established authority of **Inez Brown (near relation of Paul Andrew Reid, deceased) v David Robinson and Sentry Service Co. Ltd.** [2004] UKPC 56. In that case, their Lordships opined that the period for pain and suffering and loss of amenities should be confined to the length of time for which the person had suffered before dying. They cited, with approval, the authority of **McCann v Shephard** [1973] 1 WLR p. 540 for this proposal.
- [22] In the *McCann* case, in 1968 the plaintiff, then aged 26, was injured in a road collision through the admitted negligence of one of the drivers. His main injuries were to the lower part of his body and his legs; his natural functions and sexual life were seriously impaired and he suffered pain for which addictive pain-killing drugs were prescribed. He did not work after the accident.
- [23] On the trial of his action the judge on June 6, 1972, awarded him damages. On July 18 the defendant entered notice of appeal on the ground that the award was excessive. On October 22 the plaintiff was found dead at his home.
- [24] Inquiries were instituted and the defendant applied for leave to adduce further evidence on the hearing of the appeal. The plaintiff's widow and her co-administratrix obtained an order making them plaintiffs and entered a cross-notice for an increase in the award for loss of future earnings and, contingent on the court admitting evidence of the death, an increase in the award for loss of expectation of life and general damages.
- [25] The court heard the fresh evidence de bene esse; it included evidence that before and after the trial the dead man had obtained supplies of the pain-killing drugs from doctors by deception, had been convicted for those offences on October 18, put on probation on terms as to having treatment, and four days later had died of an overdose of the drugs. Before the appeal hearing was concluded the application

for the admission of fresh evidence was limited to the fact of the death on October 22 and the court was asked to reduce the judge's award to take account of that fact.

[26] Among other things, the Court of Appeal ruled that concerning general damages, that taking into account all the evidence, including the fresh evidence of the drug addiction induced by pain consequential on the injuries suffered and causing the death, the plaintiff was entitled to a substantial award of general damages namely, £15,000, for four and a quarter year of consciously endured pain, suffering and loss of amenities.

[27] In this case, I find that the period of pain and suffering was 3 years out of the five years between the incident giving rise to the claim and the date for assessment of damages. The deceased died on the 26th April 2024. His mother gave evidence of his pain and suffering and how his life was altered as a consequence of the collision. She said as follows:

14. Romario never recovered fully from his injuries. His legs did not appear to be normal. The left leg was shorter than the right leg and the right leg could not stretch out completely. Both legs were normal before the accident and were not deformed. Romario now walked and hopped. He could not stand up straight for long. He frequently complained of pain in his legs. Romario was not able to return to work with me because he could no longer walk properly. He was not able to run down vehicles in the yam park to secure sales. At the time of the accident, Romario would earn about \$20,000.00 per week working with me at the yam park. He did not work for one year, and lost wages of about \$1,040,000.00, from the accident in May 2021 until May 2022, when he fully started walking on both legs. This affected my sales as I depended heavily on Romario at the yam park. I still paid him the \$20,000.00 per week. Socially, it was difficult for Romario after the accident of 7 May 2021. He was no longer able to play football. Before his accident he used to play football for recreation every Sunday. He also expressed frustration to me about the embarrassment caused by his disabled appearance.

[28] In my view, the deceased had experienced significant pain and suffering and loss of the normal enjoyment of his life for a substantial period after his death. The authorities that I have seen all deal with cases where the death can be seen to flow as a consequence of the original injury. However, I see no reason why the

principle could not be applied to a case where death resulted from something unconnected to the original injury. The broader principle seems to be that death reduces the award for pain and suffering and loss of amenities.

[29] Since I should only award him for the years of his suffering, I would therefore discount the sum I found above.

[30] There was a proposal that the award should be based on the CPI as at the date of death. I have seen no clear authority that establishes this principle. Nor have I seen the Court of Appeal fulfil the requirement of the Board in determining the assessment of damages of the deceased in the *Brown* case as they had been ordered to do since 2004. However, I considered the Court of Appeal authority of **AG v Brown** [2013] JMCA Civ 3 which also considered the *Brown* case.

[31] I am not persuaded that assessing damages using the CPI as at the date of the death of the deceased is appropriate. In so doing, I would be basing an assessment of damages on a case where the person was alive and had been awarded damages based on the fact that they would be living with their injuries for the remainder of their lives. A deceased person would not have been so disadvantaged. Their suffering, as a consequence of the injury, is stopped upon death. Logically, the basis of the assessment could not be the same. So whilst it could reflect a good starting point, there must be a further discounting.

[32] The deceased was born on the 10th May 1998. He was therefore 25 years old when he died and approximately, 22 years old at the date of the injury.

[33] The first 3 years of his life post injury are, in my view, the most acute. Firstly, there is the very difficult recovery phase where he was hospitalized for 5 months and had to have skin graft as well as orthopaedic procedures to correct his injuries. It is also important to note that he was in the prime of his youth and he would be in the most productive years of his life. The injury was a very serious one and clearly had a serious effect on his work and social life even in such a short period of time.

It would take him some time to get accustomed to this new life and way of being after the recovery period. This can take some time.

- [34] This case is to be distinguished from cases such as *AG v Bryan* [2013] JMCA Civ 3. In that case, the deceased had died a few hours after being fatally shot and injured by the police. The learned trial judge gave an award for, among other things, general damages for pain and suffering and loss of amenities. In assessing General Damages for that brief period, the learned trial judge awarded what she described as nominal damages of \$130,000.00. The AG appealed the decision and challenged, among other things, the award of general damages in the circumstances where death followed shortly after the injury. This award was upheld on appeal. The Court of Appeal cited the *Brown* case (supra) as authority for the principle that damages should be awarded for the period of suffering before death.
- [35] The principle seems to me then to be that if the period of suffering is exceedingly short (i.e. with a few hours of injury), then a nominal award is appropriate. However, following the *McCann* principle, if the period of suffering is for a substantial period of time before death, then a substantial award would be appropriate. I would add a third to say that, depending on the nature of the injuries and potential loss of amenities, in the case where a substantial award is to be made, the award should be curtailed to reflect that the suffering ended at a particular date as opposed to potentially continuing for the remainder of the Claimant's life.
- [36] In all the circumstances of this case, I am of the view that the deceased's estate should receive a greater portion of the award for this initial period post injury.
- [37] I therefore reduced the sum as I would have assessed it at \$10,000,000.00 by approximately 1/3rd to \$6,000,000.00 in all the circumstances of this case.

DISPOSITION

- 1 Damages awarded to the Estate of the Deceased assessed as follows:
 - a. General Damages for Pain and Suffering and Loss of Amenities in the sum of \$6,000,000.00 with interest at 3% from the 16th December 2023 to the 16th March 2026.
 - b. Special Damages in the sum of \$1,040,000.00 with interest at 3% from the 7th May 2021 to the 16th March 2026.
- 2 Costs to the Claimant to be taxed if not agreed.

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Dale Staple
Puisne Judge