



**[2024] JMSC Civ 188**

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**CIVIL DIVISION**

**CLAIM NO. SU2020CV01473**

<b>BETWEEN</b>	<b>MITCHELL ESBERRY</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>ROBERT GOLDBOURNE</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>JASON ALTIMOND LANDELL</b>	<b>2<sup>ND</sup> DEFENDANT</b>

**IN OPEN COURT**

Ms. Monique McLeod, Attorney-at-Law instructed by Zuleika A. Jess & Associates,  
Attorneys-at-Law for the Claimant

The Defendant is absent and unrepresented.

**Heard:** June 5, 2024 and December 13, 2024

**Damages – Assessment of damages - Personal Injury - Special Damages -  
Mitigation of Loss - General Damages.**

**MASON, J (Ag.)**

On or about the 26<sup>th</sup> of August 2014 whilst the Claimant was a passenger in a Toyota Townace travelling along Paisley Avenue in the vicinity of Juno Crescent entrance in the parish of Clarendon, the 1<sup>st</sup> Defendant who was driving a Toyota Corolla collided with the Toyota Townace thereby causing injuries to the Claimant.

### **Particulars of Injury (Taken from the Medical Reports and the Claimant's Evidence)**

- I. Soft Tissue Injuries to left shoulder and arm.
- II. Moderate tenderness over the mid and lower back.
- III. Moderate tenderness over the left shoulder joint. There was a reduction in the range of movements of flexion, extension and abduction of the left shoulder joint.
- IV. Mild tenderness over the left forearm and left elbow joint.
- V. Musculoskeletal injury to the left shoulder joint, back, left forearm and left arm
- VI. Pains within the lower back and left shoulder joint.
- VII. Difficulty standing for periods in excess of 30 minutes.
- VIII. Difficulty performing his occupation as a motor vehicle repairman (body man) due to frequent pains felt within his left shoulder joint.

### **GENERAL DAMAGES**

Counsel for the Claimant submitted that **\$2,500,000.00** would be reasonable for general damages for pain and suffering and loss of amenities. Counsel relied on the following cases:

- I. **Dalton, Barrett v Poncianna Brown and Leroy Bartley**, reported in Khan, Recent Personal Injury Awards, Volume 6 at page 104. There, the Claimant suffered tenderness around right eye and face, tenderness in the lumbar spine, tenderness in the left hand, mild cervical strain and pain in the lower back, left shoulder and left wrist. There was no assessed PPD. He was awarded the sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00) in November 2006 (CPI 38.2) which using the CPI for April 2024 (134.2) now translates to Two Million Six Hundred Thousand Dollars (\$2,600,000.00).
- II. **Candie Naggie v The Ritz Carlton Hotel Company of Jamaica** (Khan, Recent Personal Injury Awards, Volume 6 at page 198)- There, the Claimant suffered severe back pain across lower back radiating to the right thigh and protrusion of L4/L5 to the right side. There was an assessed whole person disability rating of 10%. An award of One Million Seven Hundred and Fifty Thousand Dollars

(\$1,750,000.00) was made in December 2005 (CP 36.2) which presently updates to approximately Six Million Four Hundred Thousand Dollars (\$6,400,000.00).

- III. **Kimesha Thomas v. Rose** [2014] JMSC Civ 85 (delivered January 24, 2014). There, the Claimant suffered severe swelling and tenderness to the lower back and multiple bruises on the lower back. She continued to experience occasional lower back pain and after four sessions of physiotherapy she was discharged without pain, she was awarded the sum of One Million Two Hundred Thousand Dollars (\$1,200,000.00) in January 2014 (CPI 81.1) which updates to One Million Nine Hundred and Eighty-Five Thousand Dollars (\$1,985,000.00).

Counsel submitted that the injuries sustained by the Claimant in *Naggie* (supra) appear to be more serious than those sustained by the Claimant in the instant case since there is no expert assessment of Mr. Esberry's permanent partial disability. Regarding the *Thomas* (supra) case, counsel submitted that the injuries sustained by the Mr. Thomas are far more severe than those sustained by the Claimant in the *Thomas* (supra) case evidenced by the duration of Mr. Esberry's pain and suffering and that Mr. Esberry's injuries are far more diverse and extensive in nature. Therefore, an increase in the award would be necessary. I am in agreement with Counsel and will therefore make that award.

### **SPECIAL DAMAGES**

Counsel submitted an amount of \$20,800.00 for special damages broken down as follows:

- I. Doctor's visit and Consultation with Dr. Sheldon Brown in the amount of \$1,800.00
- II. Medical Report prepared by Dr. Andrea Johnson (May Pen Hospital) in the amount of \$1,000.00.
- III. Medical Report prepared by Dr. Sheldon Brown in the amount of \$15,000.00
- IV. Police Accident Report in the amount of \$3,000.00.

It is trite law that special damages ought to be specifically pleaded and proven. I am satisfied that these conditions have been met and in this circumstance, I will make an award of **\$20,800.00** for special damages.

## ORDERS

I hereby make the following orders:

1. Judgment for the Claimant in the following terms:
  - a. Special Damages awarded in the amount of **\$20,800.00** with interest at 3% from August 26<sup>th</sup> 2014 to present;
  - b. General Damages for pain and suffering awarded in the amount of **\$2,500,000.00** with interest at 3% from June 9<sup>th</sup> 2020 to present;
  - c. Costs to the Claimant to be agreed or taxed;
  - d. The Claimant's Attorney-at-Law shall prepare, file and serve this order.