



[2014] JMSC Civ.81

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2012HCV06192

BETWEEN	CLAUDIUS HAMILTON	CLAIMANT
AND	KEVIN MARSHALL	1ST DEFENDANT
AND	GEOVAUGHNIE HOLNESS	2ND DEFENDANT

Ms. K. Facey instructed by Bignall Law for the Claimant

Defendants absent and unrepresented

Assessment of Damages – Personal Injury

Heard: April 25, 2014 and May 20, 2014

LINDO J. (Acting)

[1] This matter concerns an assessment of damages against the defendants arising out of the claim against the defendants for damages as a result of a motor vehicle accident which took place on the 18th day of July, 2010 along the Highgate to Guys Hill road in the vicinity of Springfield in the parish of St Catherine. The Claimant claims that he was a passenger in motor vehicle lettered and numbered PC 5880 when motor vehicle numbered and lettered 4448 EZ owned by the 1st defendant and driven by the 2nd defendant drifted from its designated lane and collided head on into the vehicle in which he was travelling causing him to suffer injury, loss and damage and incur expense.

[2] On July 30, 2013 the claimant obtained judgment in default of acknowledgement of service and defence against the second defendant and on September 2, 2013 he

obtained judgment in default of acknowledgement of service against the 1st defendant. Proof of service of the notice of assessment of damages was provided by the affidavits of Howard Wilks sworn to on the 17th day of April, 2014.

[3] On April 25, 2014 when the matter came on for assessment of damages the defendants were absent and unrepresented.

[4] At the hearing, the claimant was sworn and his witness statement dated February 20, 2014 was allowed to stand as his evidence in chief. In amplification of the witness statement, the claimant gave evidence of his visits to Dr. Lawson and Dr. Neita and the reports of the doctors as well as receipts showing payment for the reports and consultations were tendered in evidence.

[5] The medical report of Dr. George Lawson dated July 16, 2012 refers to the treatment the claimant received at the Port Maria Hospital on July 21, 2010. The claimant was diagnosed with the following:

Sub-concussive blunt head injury with large scalp laceration and soft tissue swelling;
acute cervical strain/ whiplash injury;
Chronic post traumatic headaches

Dr. Lawson was of the opinion that the claimant will have permanent, raised scars to his scalp and he may suffer unpredictable recurrences of headaches from time to time.

[6] The report of Dr. Karlene Neita, Consultant Radiologist indicates that an x-ray of the skull was done. The report states, inter alia, that there is no definite evidence of any compression or other fractures and nothing to suggest intracranial pressure.

[7] For special damages, the sum of \$115,700.00 has been pleaded. However, the claimant has only been able to strictly prove the sum of \$47,700.00. The exhibits tendered provide evidence of the visits to the doctor. There is evidence that he visited the Nuttall Memorial Hospital for x-ray and visited the doctor for consultation and paid

for same, as well as for medication and for the police report. I will decline from making an award in relation to the police report as I do not find it appropriate to be recoverable by way of special damages.

[8] The claimant has not provided any proof of payment for transportation. I accept that most transport operators do not give receipts and as I accept the claimant as a witness of truth, I am prepared to make an award of \$20,000.00 for transportation expenses. The total award for special damages is therefore \$66,700.00.

[9] Having considered the awards for general damages made in the cases referred to by Counsel for the claimant, I am of the view that the cases of **Henry Bryan v Noel Hoshue & Wilbert Marriat-Blake 1996CLB219**, Khan Vol. 5, pg.177 and **Bernice Smith v Alphanso Parchment & Ors, 2005HCV02632**, provide reasonable guides as to the award to be made to the claimant in this matter. In Henry Bryan's case, the claimant sustained a blunt injury to the head and suffered excruciating pains, dizzy spells, abrasions over the frontal region of the scalp, pain and suffering in the back and severe headaches. In September 1997, he was awarded \$350,000.00 which updates to \$1,642,697.27 using the CPI of January 2014 of 211.8.

[10] In the case of Bernice Smith, the claimant suffered whiplash injury and cerebral concussion and in March 2007 was awarded \$900,000.00 which updates to approximately \$1,859,707.31 using the CPI for January 2014 of 211.8.

[11] I did not find the case of **Evon Taylor v Eli McDaniel 1997CLT128** useful. In that case, the claimant became unconsciousness and sustained laceration to the scalp and tenderness in the lower back and he also suffered bruises to the right shoulder and forearm. The injuries suffered by the claimant in this case seem to be less serious than that suffered by Evon Taylor but appears to be more comparable to Bernice Smith, although, in addition to whiplash injury and cerebral concussion, she also suffered lower back strain.

[12] Counsel for the claimant has suggested an award of \$1,850,000.00 as fair compensation. I do not agree that the injuries sustained by the claimant warrant that award. I bear in mind the fact that he will have permanent, raised scars to his scalp which have not been stated to cause any discomfort and that although he suffers intermittent headaches, at his last visit to Dr. Lawson, he indicated that the headaches were not severe and did not affect his daily routine. An award of \$1,700,000.00 I believe is more reasonable.

[13] I therefore assess damages against the 1st and 2nd defendants as follows:

General damages for pain and suffering and loss of amenities in the sum of \$1,700,000.00 with interest at 3% from December 19, 2012 to today.

Special damages awarded in the sum of \$66,700.00 with interest at 3% from July 18, 2010, to today

Costs to the claimant to be agreed or taxed.