



[2019] JMSC Civ. 268

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013 HCV 00321

BETWEEN	JOHN HENRY	CLAIMANT
AND	SOUTH EAST REGIONAL HEALTH AUTHORITY	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

IN CHAMBERS

Mrs. J. Thomas instructed by E.D. Davis and Associates for Claimant

Miss. C. McNeil instructed by the Defendant of State Proceedings for Defendant

Heard: January 28, February 1, and November 26, 2019.

Claimant diagnosed as HIV positive – Claimant re-diagnosed as HIV negative – medical negligence – Claimant suffering from Post-Traumatic Stress Disorder – Expert Evidence - Damage

MORRISON, J

[1] These are the rather doleful circumstances in which the Claimant was immersed. The Claimant, on a date in October 2009, went to the Comprehensive Health Centre, Kingston, where he did a blood test. He was diagnosed as being HIV positive. The human immunodeficiency viruses are two species of Lentivirus that causes HIV infection and over time leads to a condition known as acquired immunodeficiency syndrome (AIDS). This latter condition in humans is one in which the

immune system allows life-threatening opportunistic infectious and cancers to thrive. This happens as, HIV being a virus attacks the immune system which is our body's natural defence against illness. The social and personal consequences of being HIV positive are, among other things, if known by others, are a stigma and discrimination.

- [2] Subsequent to his being determined to be HIV positive, the Claimant continued on a course of treatment at the Comprehensive Health Clinic until 2012 and thereafter, on his own volition, pursued another test at the University Hospital of the West Indies whereupon the test result showed him to be HIV negative.
- [3] In the meantime, between the diagnoses, the Claimant's precipitous social fall led to a breakdown of his family cohesion, ostracism, depression and Post Traumatic Stress Disorder.
- [4] In his Particulars of Claim, as amended and filed October 23, 2017, the Claimant seeks damages for negligence as a result his Post Traumatic Stress Disorder (PTSD) in the main, pursuant to an incorrect diagnosis by medical professionals. He particularized his injuries, in full, as follows:
- a) Stress, anxiety, Depression, and fear of death
 - b) Post Traumatic Stress Disorder
 - c) Feelings of disgrace and shame consequent on his being told that he was unfaithful (to his spouse)
 - d) Further trauma after being treated for 2 years for an illness that he did not have
 - e) Severely damaging and straining his relationship with friends and family
 - f) Being suspicious and overly sensitive
 - g) Loss of sleep
 - h) Shock
 - i) Anger and Revenge
 - j) Loss of consortium

- [5] The Claimant was examined by Dr. Yvonne Bailey-Davidson, Child Adolescent Psychiatrist. Her report is dated May 12, 2017. From her report Dr. Davidson assessed the Claimant as having developed depression and PTSD because of a wrong diagnosis of AIDS (Acquired Immune Deficiency Syndrome). Further, she opined that the Claimant's PTSD and depression have impaired his abilities to meet the demands of life.
- [6] Subsequently, the Claimant was assessed by Dr Aggrey Irons, Consultant Psychiatrist, on January 28, 2019. In Dr Irons' opinion, the Claimant was diagnosed as having PTSD secondary to his false/positive testing experience. Dr. Irons felt obliged to add that "this situation is resolving over time and is sometimes overshadowed by his present living conditions and complicated by a clear Compensation Neurosis".
- [7] It should be borne in mind that, in the interim between the Claimant's false/positive testing experience he suffered Cerebrovascular Accident or stroke. Dr. Davidson's evidence in cross-examination is that the Claimant's hypertension and stroke were not as a result of the wrong diagnosis.
- [8] The Claimant's evidence is that he sought counselling, for the first time, in April 2017 when he saw Dr Davidson five years after he was re-assessed as being without the human immune deficiency viruses (HIV) that is to say, the Claimant learnt that he was HIV negative.

GENERAL DAMAGES

- [9] The Claimant's submission under this head is anchored in the first instance authorities of:-
- a) **Karen Reid v Harbour View Medical Centre, Ministry of Health and The Attorney General of Jamaica, 2014JMSC, Civ. 56**
 - b) **Joan Morgan and Cecil Lawrence v. University Hospital of The West Indies and The Attorney General of Jamaica, 2005HCV00341**

- [10] The Claimant has asked for a sum of \$15,000,000.00 as fair compensation for pain and suffering and lost of amenities.
- [11] The Claimant bases his claim on his severe mental anguish and ordeal in that he was diagnosed with HIV on at around October 2009. His evidence is that he returned to the Comprehensive Health Centre four (4) days later and was told that he was HIV positive and that it will lead to Acquired Immune Deficiency Syndrome (AIDS). One week later he went back to the said clinic and began his treatment for the disease. He was given several medications.
- [12] He had to undergo treatment by way of injections and rectal examinations. His sexual life floundered with the ending of his relationship with his spouse as he stopped having sex after the diagnosis. He was ridiculed and scorned by everyone who know him.
- [13] He relies on the expert evidence of Dr. Yvonne Bailey-Davidson who opined that he suffered from Depression and Post Traumatic Stress Disorder (PTSD) because of the wrong diagnosis. Further, that he had flashbacks, sleep problems and, easy irritability. Dr. Davidson opined that the Claimant may overcome his mental disabilities with time and treatment and would require further psychiatric treatment for PTSD for a period of ten (10) year at a cost of \$6000.00 for each course of treatment per week. Here she vascillated under cross-examination to the frequency and duration of the treatment that the Claimant would require in the future.
- [14] In Karen Reid, supra, the Claimant was mis-diagnosed as being HIV positive. She suffered in consequence from PTSD and Depression. The award for damages then was \$8,850,000.00 as at April of 2014. The updated award at the time of judgment is
- [15] In the instant case the Defendant rejects the Claimant's Damage assessment as not being analogous to the KAREN REID case. The difference lay in the fact peculiar to that case: First, that the claimant's HIV status therein was in the public

domain. Second, that her relationship with her child's father came to an abrupt end as he had denied paternity of their child. Third, she had to take anti-retroviral drugs for over two (2) years. Fourth, she had to undergo a Cesarean-Section she having had to leave her community after the birth of her baby. She had, according to Dr. Oo sunken into deep depression.

[16] In assessing the instant claim, I remind myself that Pain, Suffering and Loss of Amenity is another term / name for general damages. This head of damage is intended to compensate the claimant not only for pain and suffering caused by the injury but also for the impact of the injury on the Claimant's enjoyment of life.

[17] In a PTSD case it is usually required that the evidence underlying such a claim is corroborated by an expert witness. Such an expert is required to testify and to explain the issue and to give an opinion as to whether the issue does or does not exist in the case. Such an expert witness must explain to the tribunal what is required to diagnose PTSD and whether the claimant has PTSD.

[18] In the JOAN MORGAN case, Dr. Aggrey Irons' had examined that the claimant. He diagnosed her as having several anxiety with literal hand wringing during the interview; phobic avoidance responses to health care issues including pregnancy, hospital, blood test; depressive symptoms including tearfulness, appetite disturbances and insomnia; severe self-doubt and lack of trust in what is frequently referred to as 'the system'; consistent pre-occupation with flashbacks and vivid regarding fear of death and dying; and, consistent pre-occupation with the health of unborn children.

[19] Dr. Irons opined that his findings were very invasive and occupied her thinking to the exclusion of her approximately performing her daily routines.

Dr. Irons opined that his findings were very invasive and occupied her thinking to the exclusion of her appropriately performing her daily routines.

Dr. Irons further opined that the items as described above are consistent with a diagnosis of Severe Post Traumatic Stress Disorder, directly and consistently related to the misinformation regarding her HIV status. He described her prognosis as poor because, for an indefinite period, she will be unsure of her health status.

- [20] The court in assessing the damages, Board of England, The Guidelines for Assessment of Damages in Personal Injury Cases determined that the claimant fell into the category of Moderately Severe PTSD and awarded the sum of \$3,500,000.00 in December, 2007 for pain and suffering and loss of amenities which updates to \$7,632,277.40 using the established formula of the Consumer Price Index (CPI) being the Present Index divided by the Index at the date of the award, multiplied by the award itself to get to the present value of the award. The CPI as at February being 254.7.
- [21] It is true, as argued by the Defendant's counsel, that the claimants in the REID case and the Morgan case suffered more severe injuries than the Claimant in the instant case?
- [22] Dr. Iron's use of the expression, "Moderately Severe PTSD" in the Morgan Case is informative.
- [23] There seems to be five main types of PTSD: Normal Stress Response, Acute Stress Disorder, uncomplicated PTSD, comorbid PTSD and complex PTSD. They are further categorised as mild, moderate, or severe or extreme.
- [24] I cannot discern from the reports Dr. Davidson's and Dr. Irons as to where the Claimant falls in the scheme of things. It is for the Claimant to prove his case.
- [25] Having so noted, I am prepared to say that the Defendant's characterization of the Claimant's Mental Suffering in comparison to that of the Claimant in the Karen Reid's case is one of degree than it is one of type. That is to say, it is not one of category. Accordingly, I prefer the case of Karen Reid to that of JEAN MORGAN as being analogous to the present case. Accordingly,

- [26] The award to Reid in April 2014, which updates to \$10,552,879.10 as at February, 2019 is the preferred with a slight downward adjustment.
- [27] The Claimant is required to have future treatment for his PTS. The Claim that this will cost \$3,120,000.00 is for a projected period of ten years at a frequency of one doctor's visit per week. Dr. Irons' opinion is that the Claimant's situation is resolving over time and that it is not only overshadowed by his present living condition but that it is complicated by a clear compensation neurosis.
- [28] Lest it be forgotten, compensation neurosis is an exaggeration of symptoms that occur as a result of the unique stressor of seeking legally awarded compensation. It is brought about primarily by internal motivators coupled with a lesser degree of anticipation of secondary gain.
- [29] As to the condition of the Claimant relative to compensation neurosis it is Dr. Davidson's opinion that he is not afflicted by that neurosis. What is the evidence? Careful analysis of the evidence provided clear answers that stand the test of scrutiny.
- [30] Dr. Yvonne Bailey-Davidson, as noted elsewhere is a Paediatrics and Child Adolescent Psychiatrist. She saw the Claimant on at least five occasions. Dr. Aggrey Irons, on the other hand, is a Consultant Psychiatrist. He saw the Claimant only once. Dr. Daily-Davidson did somewhat endorsed Dr. Irons report from the evidence of Dr. Bailey-Davidson it does not appear to me that she was conclusive in determining that the Claimant would necessarily be receiving future psychiatric care for ten years past judgment. It was in cross-examination that she failed to maintain that the Claimant would require medical case for the next ten years. Her answer is that the period for such care varies from patient to patient that as time passes the frequency of the treatment becomes less so that it could go to once per month or once every three or six months. On the other hand Dr. Irons opined that PTSD will resolve more quickly with speedy resolution of the legal issues and that

the Claimant will not require more than two years of supportive psychotherapy as well as appropriate geriatric care.

- [31]** I would, in all the circumstances, incline to the view as expressed by Dr Irons given the vastness of his longer experience and his poignant observation of the compensation neurosis that he observed in the Claimant until that point. It was not so mentioned in the report of Dr. Bailey-Davidson.
- [32]** In summary I award the sum of \$8,500,000.00 for general damages with interest thereon at 6% from January 21, 2013 to October 2019.
- [33]** The Claimant is awarded the sum equal to their psychiatric years treatment at a cost of \$6,000.00 per session once every other week for the first three months and once every three months for the next twenty one months being in aggregate thirteen sessions which yields a total of \$78,000.00.
- [34]** Special damages is awarded in the sum of \$32,000.00 with interest of 3% per annum from October 2009 to October 2019.
- [35]** The Claimant is awarded costs for two days trial at \$40,000.00 per day, that is, \$80,000.00.