



[2026] JMSC Civ.42

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU 2023 CV 00608**

**BETWEEN JASON NICHOLAS FACEY**

**CLAIMANT**

**A N D INNOVATIVE EXTERMINATORS LTD.**

**1<sup>ST</sup> DEFENDANT**

**A N D IRVIN THOMPSON**

**2<sup>ND</sup> DEFENDANT**

**IN OPEN COURT**

**Ms. Janelle Gordon instructed by Bignall Law for the Claimant**

**Defendants absent and unrepresented.**

**April 13, 2026**

***Assessment of Damages – Damages for Negligence – Quantum of Damages – Whiplash Type Injury to Neck – Lumbar Strain***

**DALE STAPLE J**

**BACKGROUND**

**[1]** The Claimant was injured on the 14<sup>th</sup> March 2017 whilst travelling as a passenger in a motor vehicle in Clifton, Portmore in the parish of St. Catherine.

**[2]** He testified, in his witness statement, to suffering from a whiplash type injury as well as having a back strain, chronic back and neck pains, severe psychological distress including anxiety, flashbacks and depression. The collision occurred whilst his vehicle was stationary along the road and the 1<sup>st</sup> Defendant's vehicle came and collided into the rear of his vehicle.

[3] The Claimant was seen and treated by a physician, Dr. Peter Glegg. He was not seen and treated by any other medical practitioner. Nor did he undergo any psychological or psychiatric assessment for his psychological distress.

### **The Evidence on Behalf of the Claimant**

[4] The Claimant said he visited Dr. Glegg on the 16<sup>th</sup> March 2017. Dr. Gregg gave him simple muscle relaxants and analgesics and he was for further review. No further report was received from the Claimant.

[5] He claims he continued doing therapy, but there is no evidence that he was even referred for therapy initially, how many sessions he did, with whom or anything to substantiate this claim. He claimed he did counselling for the psychological distress, but there is no evidence of him being referred for same or even visiting a psychologist or psychiatrist. Therefore, I do not accept that he was so referred or that he attended such care.

[6] The Claimant testified that he was a customer service supervisor and had to do long hours of sitting and bending and occasional lifting. He said he had been unable to work for extended periods due to the pain he was experiencing as well as treatment he was receiving. These claims are rejected. There is no evidence from Dr. Glegg's report that the Claimant would not have been able to work or perform his ordinary tasks as a consequence of the injuries sustained. There is also no evidence from the Claimant as to the nature of this additional "treatment" he was receiving which would have required him to stop from work at all.

[7] He further stated that he would not be able to do tasks to take care of himself such as bathing, dressing and household chores. Again, there is absolutely no evidence from Dr. Glegg's report or any other objective source to support such a finding. I find the Claimant to be exaggerating his injuries and the effect they have had on him.

## The Medical Evidence

- [8] I accepted a medical report dated the 19<sup>th</sup> April 2017 prepared by Dr. Peter Glegg into evidence as a treating physician's report. There he set out his findings and treatment of the claimant whilst he was under his care.
- [9] Dr. Glegg first saw the Claimant about 2 days after the incident. He noted he was complaining of pain in the neck and lower back. Following x-ray examinations, he diagnosed him as suffering from a whiplash injury and a lumbar strain.
- [10] He said he prescribed what I call his usual cocktail for this type of injury – cataflam and mydocalm tablets and sent him home. There is no evidence that the Claimant returned for review or at all.

## PRINCIPLES ON ASSESSMENT OF DAMAGES

- [11] The starting point on an assessment of damages is the position of Wooding CJ in ***Corneliac v St. Louis***<sup>1</sup>. We are to consider:
- a) The nature and extent of the injuries sustained;
  - b) The nature and gravity of the resulting physical disability (if any);
  - c) The pain and suffering which had been endured;
  - d) The Loss of amenities suffered;
  - e) The extent to which consequently the injured person's pecuniary prospects have been affected.
- [12] I am also mindful of the guidance from my sister Judge J. Pusey J in the case of ***Sherona Golding v Patrick Richards***<sup>2</sup>, where she said as follows:

*In Pogas Distributors et al v McKitty SCCA 13&16/ 94 the Court of Appeal emphasized that the focus of the court in the assessment of damages*

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<sup>1</sup> (1965) 7 WIR 491

<sup>2</sup> [2021] JMISC Civ 84 at para 21

*should be on the nature and severity of the claimant's injuries and the amount of time she would be affected by pain and the impact on her life as a result of the damage caused by the defendant's tortuous [sic] actions. Impact on litigants is assessed by the findings of the medical experts but regard is to be given to what the litigant says about the effect on her. Careful scrutiny of such evidence is necessary as efforts can be made to embellish and exaggerate impact to attract increased damages.*

## **ANALYSIS**

- [13]** I accept that the Claimant suffered pain immediately after the accident and that this continued for some time after the accident. However, I am unable to say for how long the pain genuinely continued as there was no follow up report from Dr. Glegg. We do not have from Dr. Glegg any evidence to even suggest a period of injury.
- [14]** I do not accept his evidence that he was in any significant pain as stated in the Witness Statement. The extent of the pain and suffering of which he complained is not at all supported by the observations from Dr. Glegg. Nor are his claims for psychological distress supported by any evidence from any expert witness or any witness at all for that matter.
- [15]** There is absolutely no evidence of him having purchased any sort of pain medication to alleviate this alleged "chronic neck and back pain" as no receipts for pharmaceutical purchases were put into evidence. So this claim is also rejected.
- [16]** The injuries themselves, I did not find to be major. It was a whiplash injury yes. But I find that it was of uncertain duration and, taken with all the exaggerations made by the Claimant of his other injuries, and what I find to be unproven and unsubstantiated claims of loss of amenities and enjoyment of life, I find that the Claimant was not seriously injured as a consequence of the collision.

## MEASURE AND QUANTUM OF DAMAGES

### *General Damages*

[17] The measure of damages in claims for Negligence is that the Claimant should be put back in the position he would have been in, insofar as money is able so to do, had the tort not been committed.

[18] I had regard to the well established authority of *H. West & Son Ltd v Shepherd*<sup>3</sup> and the opinion of Lord Reid where he said,

“So I would think that compensation should be based much less on the nature of the injuries than on the extent of the injured man’s consequential difficulties in his daily life.”

[19] The Claimant submitted the authority of *Peter Marshall v Carlton Cole et al*<sup>4</sup>. That Claimant suffered a moderate whiplash, sprain, swollen and tender left wrist and left hand, moderate lower back pain and spasm. The claimant was given two weeks' sick leave, treated with analgesics and Cataflam injections. Treatment lasted 16 weeks and there was no residual pain or suffering. The sum of \$350,000.00 was awarded in October 2006. This updates to \$1,350,523.56 (CPI October 2006 38.2).

[20] This authority is going to be discounted as the injuries in *Peter Marshall* were more extensive, he was actually found to have received sick leave for 2 weeks, treatment also lasted for 16 weeks. These are all significant distinguishing features.

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<sup>3</sup> [1964] AC 326 per Lord Reid at p 341

<sup>4</sup> Khan’s Volume 6, p. 109

- [21] The Claimant also submitted the case of *Anna Gayle Anderson v Andrew O'Meally*<sup>5</sup>. However, this case was not submitted to the Court for review. I asked counsel for a copy of the case and the medical report and none was provided.
- [22] The Court considered the case of *Roger McCarthy v Peter Calloo*<sup>6</sup>. In that case, the Claimant suffered a contusion to the left side of his face, acute back strain, post traumatic vertigo with headache and acute whiplash injury with grade 2 whiplash associated disorder. The Court of Appeal reduced an initial award of general damages from \$800,000.00 to \$500,000.00 on the 16<sup>th</sup> February 2018. The initial award was handed down on March 31, 2017. After indexation, that sum amounts to \$776,025.24 today using the current CPI of 147.56.
- [23] The Court considers the *Calloo* decision quite appropriate as a starting point. Firstly, it is a decision of the Court of Appeal and that decision itself referenced several noteworthy authorities where those claimants received injuries of a similar kind to that of the Claimant in the case at bar. Indeed, the injuries suffered by Mr. Calloo can be said to be more serious than this present Claimant. Mr. Calloo had a facial injury, post traumatic vertigo and grade 2 whiplash associated disorder.
- [24] In my view, this Claimant's injuries and pain and suffering are on the much lower end of the scale in terms of awards for whiplash injuries. Accordingly, I find that an award of \$700,000.00 is appropriate.

### ***Special Damages***

- [25] The Claimant's particulars of special damages claimed a payment for x-rays of \$9,000.00 from Oasis X-Ray and Ultra-Sound Centre. The receipt tendered showed that it was paid by Bignall Law. There is no evidence that the Claimant is

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<sup>5</sup> Unreported, Supreme Court of Jamaica, Claim No. 2005HCV01255

<sup>6</sup> [2018] JMCA Civ 7

under any contractual obligation to reimburse Bignall Law for this expense and, as the evidence shows it was not paid by him. This evidence would have been required for the Court to consider and treat it as the Claimant's expense. Therefore, this award was refused. The decision of Diplock J (as he then was) in **Gage v King**<sup>7</sup> was applied.

[26] For the reasons indicated above, I did not find that the Claims for household help and for loss of earnings has been proven. The Claimant has not even indicated what his earnings were for the Court to make such an assessment.

## **DISPOSITION**

The Court awards Final Judgment as follows:

- 1 General Damages for pain and suffering and Loss of Amenities: \$700,000.00 with interest at 3% from the 4<sup>th</sup> April 2023 to the 13<sup>th</sup> April 2026.
- 2 No award for Special Damages.
- 3 Costs to the Claimant summarily assessed at \$70,000.00 using the Parish Court Tariff of Costs.

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**Dale Staple**  
**Puisne Judge**

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<sup>7</sup> [1961] 1 QB p 188 at 193