



[2023] JMSC Civ. 181

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2020CV05146

BETWEEN	MIA MEREDITH	1ST CLAIMANT
AND	HOWARD PINNOCK	2ND CLAIMANT
AND	DENVA LEE CLARKE	1ST DEFENDANT
AND	CHRISTOPHER MINOTT	2ND DEFENDANT

IN OPEN COURT

Mr. Stephen McCreath instructed by Zavia Mayne & Co. for the 1st Claimant

Defendants absent and unrepresented

Heard: July 24th, 2023 and October 4th, 2023

**Assessment of Damages — Personal Injury — Motor vehicle collision —
Negligence — Tenderness to sacral area — Abrasion to right gluteal — Pain and
suffering and loss of amenities — Special Damages**

T. HUTCHINSON SHELLY, J

BACKGROUND

[1] This claim arose out of a motor vehicle collision that occurred on January 2nd, 2015 in the vicinity of Richmond Estate in the parish of Saint Ann. The vehicle involved

was a white Toyota Hiace bus with registration number **PD 4316**. The 1st Defendant, Denva Lee Clarke, was the registered owner of the white Toyota Hiace bus with registration number **PD 4316**. The 2nd Defendant, Christopher Minott, was the permitted driver, servant and/or agent of the 1st Defendant. It is the 1st Claimant's case that she was a passenger in the said bus which was travelling from Brown's Town to Ocho Rios. Upon reaching the vicinity of Richmond Estate, the driver of the Toyota Hiace collided with something, the impact caused the bus to overturn and collide into another motor vehicle.

- [2] On the 31st of December 2020, Ms. Mia Meredith filed this Claim seeking damages for personal injuries, loss, damage and expenses incurred on account of the 2nd Defendant's negligent operation of the motor vehicle.
- [3] The Claim Form and Particulars of Claim were served on the 1st Defendant, Denva Lee Clarke on the 6th of May 2021. The 1st Defendant failed to file an Acknowledgment of Service in response to the claim and consequently, Default Judgment was entered against him on the 7th of June 2021.
- [4] The Assessment of Damages was held on the 24th of July 2023. The 1st Defendant made no appearance and was unrepresented during this hearing. As such, the matter proceeded uncontested.

ISSUE

- [5] The sole issue to be determined is the quantum of damages which should be awarded to the Claimant for injuries suffered and other related losses as a result of the Defendants' negligence.

THE 1st CLAIMANT'S EVIDENCE

- [6] In her witness statement, which was permitted to stand as her evidence-in-chief, the 1st Claimant explained that while travelling from Brown's Town towards Ocho

Rios, she “*felt the bus hit into something and it eventually turned over on its side and slammed into a vehicle that was travelling directly in front of it.*” The impact of this collision caused her to fall out of her seat.

- [7] The 1st Claimant stated that she immediately felt pain all over her body, especially in the region of her buttocks. She also observed that the bus glass had shattered and its splinters had caused cuts all over her body and the blood from these injuries was running down her feet.
- [8] She was transported to the St. Ann’s Bay Hospital where she was examined and treated by Dr. Karie Beaumont. Ms. Meredith was also provided with a referral to undergo a lumbosacral x-ray. She was prescribed pain medication and advised to return for a review. The wound on her foot was also cleaned and dressed.
- [9] She was placed on five (5) days sick leave but continued to experience recurring pain to her back and buttocks for several months. Ms. Meredith informed the Court that in spite of the passage of time, she still experiences back pain when she performs simple tasks such as washing and standing for long periods.

SPECIAL DAMAGES

- [10] The sum of **\$1,000.00** was pleaded as medical expenses in respect of the cost of the medical report prepared by Dr. Beaumont. As proof of this expenditure, a receipt in this amount was placed into evidence by the 1st Claimant. This document had also been served on the 1st Defendant. Having reviewed this exhibit, I was satisfied that this expense had been incurred as a result of the medical treatment sought by the Claimant and the reimbursement of same is justified.
- [11] The 1st Claimant also seeks to recover the sum of **\$5,000.00** for transportation costs. While this expense appears in the witness statement and submissions filed on behalf of the 1st Claimant, it was never pleaded in the particulars of claim neither was there any application made to amend the particulars in respect of same. While the sum stated is not unreasonable, the 1st Claimant would be impeded in

recovering this sum as the rules require that damages sought be pleaded and notice of same be given to the Defendants¹. While the Court has a measure of discretion as to whether this expense could be awarded², the overriding objectives to do justice between parties would militate against this approach.

[12] Accordingly, the 1st Claimant is only awarded the sum of **\$1,000.00** for special damages.

GENERAL DAMAGES

Medical Evidence

[13] The 1st Claimant was seen by Dr. Karie Beaumont on the 9th of June 2015 and in the report produced by her, she observed that the following injuries had been sustained:

- Tenderness to sacral area
- Abrasion to right gluteal
- Abrasion to right foot lateral border of 5th digit

[14] She was diagnosed as having a back injury following a motor vehicle accident and was declared to be clinically stable. The doctor noted that she was given analgesia and the wound to her foot was cleaned and dressed. The doctor also recorded that Ms. Meredith did not return to the hospital for a follow-up in relation to her x-ray. The Medical report makes no mention of any restricted range of movement, possible disability or impairment.

Submissions

¹ Rule 8.9 (1) The claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claimant relies.

² Rule 8.9A The claimant may not rely on any allegation or factual argument which is not set out in the particulars of claim, but which could have been set out there, unless the court gives permission.

[15] Counsel for the Claimant relied on three (3) authorities in support of the

1st Claimant's request for an award of **One Million Four Hundred Thousand Dollars (\$1,400,000.00)**.

i. **Bruce Walford v Garnett Fullerton and Rohan Gordon 2012 JMSC Civ. 190**

The Claimant suffered from lower back pain and abrasions to right gluteal. He experienced pain when bending and was unable to perform household chores or work for two (2) weeks. There was no reference to any physiotherapy sessions. In December 2012, the Claimant was awarded General Damages for pain and suffering in the amount of **Seven Hundred Thousand Dollars (\$700,000.00)**. This award updates to **\$1,242,333.78** using the CPI of 130.8 for July 2023.

ii. **Horace Williams v Knoeckley Buckley and Nestle JMP Jamaica Limited**

Claim No.2009HCV00247. The Claimant sustained muscle and ligament damage to the cervical spine causing muscle spasms. He was treated conservatively with a prognosis of good recovery in 3-4 months. In December 2009, the Claimant was awarded General Damages for pain and suffering in the amount of **Seven Hundred and Fifty Thousand Dollars (\$750,000.00)**. Using the current CPI of 130.8, this award updates to **\$1,703,125.00**.

iii. **Milton Goldson v Knoeckley Buckley and Nestle JMP Jamaica Limited**

Claim No 2009HCV01260. The Claimant suffered muscle and ligament damage to the cervical spine causing muscle spasms. In December 2009, the Claimant was awarded General Damages for pain and suffering in the amount of **Eight Hundred and Fifty Thousand Dollars (\$850,000.00)**. When the current CPI of 130.8 is utilized, this award updates to **\$1,918,402.77**.

[16] Counsel argues that the case of **Bruce Walford v Garnett Fullerton and Rohan Gordon 2012 JMSC Civ. 190** should be preferred as the injuries suffered by the Claimant is similar to those suffered by the Claimant in the case at bar. He noted

that *“the Claimant was given five (5) days sick leave and still experiences pain in her back to this day as well as pain in her right gluteal for several months subsequent to the accident.”*

DISCUSSION/ANALYSIS

- [17] In arriving at a decision on the appropriate award that should be made to Mrs. Meredith, I did not find all the authorities cited to be useful and/or relevant. The **Horace Williams** and **Milton Goldson** cases are distinguished from the instant claim as the injuries suffered by those Claimants were far more severe. Additionally, the period of and prognosis for their recovery spanned weeks in the case of **Williams** and months for **Goldson**. In contrast, it was the opinion of Dr. Beaumont that the Claimant was clinically stable. Ms. Meredith's failure to seek any further treatment or to have the x-ray done to identify any serious or ongoing issues is also quite telling. I am also mindful of the fact that although she has reported ongoing challenges, she has not sought any further treatment, neither has she given evidence of using over-the-counter medication to address these periodic pains.
- [18] I agree with Mr. McCreath's submissions that comparatively, Ms. Meredith's injuries bear more similarity to those of **Bruce Walford**. In the latter case however, **Bruce Walford** was unable to work for two (2) weeks whereas this Claimant was placed on five (5) days sick leave. In light of the foregoing discussion, it is my considered view that Mrs. Meredith's injuries would place her more on par with those recorded in the **Bruce Walford** decision with some adjustment for the fact that Mrs. Meredith's suffering were slightly less severe than **Bruce Walford's**.
- [19] In light of the foregoing, I am satisfied that an appropriate award for pain and suffering in all the circumstances is **One Million Two Hundred Thousand Dollars (\$1,200,000.00)**.

ORDER

[20] As such, damages awarded to the 1st Claimant are assessed as follows:

1. Special Damages are awarded in the sum of **One Thousand Dollars (\$1,000.00)** with interest at the rate of 3% from January 2nd, 2015 to October 4th, 2023.
2. General Damages are awarded for pain and suffering in the sum of **One Million Two Hundred Thousand Dollars (\$1,200,000.00)** with interest at the rate of 3% from May 6th, 2021 to October 4th, 2023.
3. Costs to the 1st Claimant to be agreed or taxed.
4. 1st Claimant's Attorney to prepare, file and serve the Judgment herein.