



[2025] JMSC Civ. 99

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2023CV00120**

<b>BETWEEN</b>	<b>LAVERN MUNROE</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>CHRISTOPHER LAWRENCE</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

Ms. Khadine Nurse instructed by Dixon and Associates Legal Practice for the Claimant

Kimoy Donaldson holding for Victoria W. Brown instructed by Victoria W. Brown & Associates for the Defendant

**Heard: 3<sup>rd</sup> July and 31<sup>st</sup> July 2025**

**ASSESSMENT OF DAMAGES - Negligence - Personal Injury caused by animal**

**C. BARNABY J**

**BACKGROUND**

[1] This claim arises out of an incident on 21<sup>st</sup> October 2021 involving the Claimant, Lavern Munroe and a cow belonging to the Defendant, Christopher Lawrence. Ms. Munroe's claim is that while she was jogging a cow owned by the Defendant suddenly rushed towards her, bucking her and trampling her feet and hip causing her to sustain personal injury, loss and damage. She attributes the incident to the Defendant's negligence. In her claim filed and served on the 18<sup>th</sup> and 22<sup>nd</sup> January

2023 respectively, Ms. Munroe claims damages, interest, costs and such other relief as the court deems just. The Defendant having failed to acknowledge service of the claim form, Judgment in Default of Acknowledgement of Service was entered against him on 12<sup>th</sup> May 2023.

- [2] Following accommodations being made for the Defendant to seek and obtain legal representation, and for his fair participation in the matter on his indication that his efforts proved unsuccessful, after many months the assessment of damages hearing was scheduled for 3<sup>rd</sup> July 2025. There being no application before the court to set aside the default judgment and on the refusal of a contested oral application for an adjournment of the hearing to another date, the assessment proceeded as scheduled.
- [3] Judgment was reserved to today's date to enable the Defendant to file and serve written submissions and authorities to which the Claimant was permitted a reply in writing, and for submissions on the appropriateness of ordering costs at the level recoverable in the Parish Courts pursuant to section 131(1)(a) of the **Judicature (Parish Courts) Act**. Submissions were received and duly considered together with the evidence, and the submissions and authorities of the Claimant which were previously filed and served.

## DISCUSSION

### SPECIAL DAMAGES

- [4] The Claimant claims the sum of **Fifty-two Thousand Four Hundred and Seventy-one Dollars and Twenty-five cents (\$52,471.25)** as special damages, but only expenditure totalling **Thirty-two Thousand Six Hundred and Forty-Four Dollars and Eighty-four cents (\$32,644.84)** have been proven, as indicated below.

Medical Report from Virtue Health Services Limited	\$20,500.00
Medical Report from Princess Margaret Hospital	\$1,000.00
X-Ray at Nutall Memorial Hospital	\$4,000.00
Medication	\$7,144.84
<b>TOTAL</b>	<b>\$32,644.84</b>

- [5] The Claimant gives evidence as to transportation costs from home to the pharmacy, hospital, health centre and a private medical practitioner. It is also her evidence that she was unable to work as a seller of clothes for eighteen (18) weeks after the incident, and that she lost earnings as a result. There is no medical evidence before the court which supports the Claimant's assertion that she was unable to work for the period stated or at all.
- [6] Further and in any event, transportation costs and loss of earnings are items of special damages which are to be specifically pleaded and proved. While there is some flexibility as it relates to the proof of special damages in appropriate circumstances, the requirement to plead is strict. Neither transportation costs nor loss of earnings were pleaded by the Claimant. They are accordingly irrecoverable.

### **GENERAL DAMAGES**

#### *Medical evidence*

- [7] Medical reports were admitted in evidence by agreement. They show that the Claimant presented to the South East Regional Health Authority on 21<sup>st</sup> October 2021 with a complaint of pain after being attacked by a cow. On examination by Dr. Gustav, treating physician, a 3cm laceration was seen to the left calf (posterior), and petechiae to the right knee. The Claimant's abdomen was tender and there was nil rebound or guarding. Dr. Gustav diagnosed the Claimant with a laceration to the left knee and soft tissue injuries. Treatment was confined to the cleaning and suturing of the laceration. The Claimant was allowed home with a referral to

the nearest health centre for suture removal. The Claimant was required to return for review with results of an abdominal ultrasound.

- [8] The evidence also shows that the Claimant was also treated as a Dr. Y. Palmer, a general practitioner whose medical report dated 13<sup>th</sup> May, 2022 was admitted in evidence as a document containing hearsay evidence.
- [9] The court is advised on Dr. Palmer's report, that the Claimant presented to her on 25<sup>th</sup> November 25, 2021, one(1) month and four (4) days post incident for pain to her left leg and knee, and a complaint of limping for one (1) month. On examination of the Claimant she found tenderness to the later (outer) and medial (inner) borders of the knee, and healing wounds on the left calf. The Claimant was treated with analgesics (pain medication) and X-ray requested.
- [10] Three (3) months and three (3) days post incident on 24<sup>th</sup> January 2022, the Claimant returned to Dr. Palmer with a complaint of pain and multiple episodes of swelling of the left knee over a two (2) week period. An X-ray done on 30<sup>th</sup> December 2021 was reviewed and no fracture or dislocation was seen.
- [11] The Claimant was again treated with analgesics (pain medication). There is no indication given of the duration of the treatment and X-ray requested. Physical therapy for the left knee was also recommended but there is no evidence of it being done.
- [12] The report also indicates that the Claimant "*may have residual pain from soft tissue injury to the left knee*". While I am prepared to accept this indication as fact evidence of a treating physician, I do not regard it as opinion evidence of a disability. Dr. Palmer was not certified as an expert witness in these proceedings to enable her report to be regarded as expert evidence within the meaning of the Civil Procedure Rules.

- [13] Dr. Palmer also indicates that an MRI would be the ideal modality to detect ligament or tendon injury but that it was not requested due to the Claimant's financial constraints at the time.

*Evidence at trial of continued suffering*

- [14] The Claimant's evidence at trial is that she visited the Yallahs Health Centre for six (6) weeks to have her dressing changed and sutures removed. Care was free. While there is no documentary evidence provided in support, I accept the oral evidence in light of the Claimant's referral to a community health center by Dr. Gustav for cleaning, dressing and suture removal.
- [15] The Claimant also says in evidence that on return to Dr. Palmer on 24<sup>th</sup> January 2022 she had informed the said doctor that her left knee would become swollen after standing or walking for ten (10) to fifteen (15) minutes at a time. That does not appear in the report from the doctor which the Claimant has tendered into evidence, and there is no explanation for its absence.
- [16] Evidence is also given by the Claimant that she was not able to do an MRI or physical therapy in mitigation of her pain to the left knee. She goes further to say that she was not able to return to work until March 2022 and was accordingly unable to afford either. On her own evidence the Claimant returned to work some two (2) months after her last visit to Dr. Palmer but she presents no evidence of any effort having been made to do the MRI or engage in physical therapy on return to employment.
- [17] The Claimant says she is unable to walk or stand for more than fifteen (15) minutes as it causes her pain and discomfort. She also says that her knees buckle occasionally without warning, causing her to fall to the ground, and that she had a constant wringing pain in her knee up to the date of the signing of her witness statement on 30<sup>th</sup> August 2024. She also gives evidence that she had absolutely

no issue with her knees before the incident and that it was her routine to take morning jogs before the incident as a means of exercise; and that she is constantly depressed and would have nightmares of the cow attacking her which left her unable to sleep through the night. The nightmares only stopped in 2024. She feels as if she is a burden to those around her and she has lost her independence and is in constant pain. There is no pleading of psychiatric injury and in any event, like the rest of her evidence of continued suffering, it is unsubstantiated by medical evidence.

[18] The Claimant also testifies that in October 2023 her knee buckled while she was ascending a flight of stairs, which caused her to fall and break her ankle. In consequence of which she was wearing a cast on her right foot and undergoing treatment at the time she gave her witness statement. There is no medical evidence in these regards. There is also no evidence as to whether the incident the subject of this claim caused or contributed to the referenced fall, nor is there any evidence of the impact of the 2023 fall on any pain and suffering the Claimant says she continues to experience.

[19] In all these circumstances the assessment of general damages proceeds on such evidence which is substantiated by the Medical Reports from Dr. Gustav and Dr. Palmer, which have been admitted in evidence. .

[20] In submitting that the sum of **\$2, 500,000.00** is an appropriate award for general damages, the Claimant's Attorney-at-law relies on two authorities: **Erica McKane v Brian Damille and Ors.** [2017] JMSC Civ. 93 and **Anette Johnson v ER Farms & Company Limited** [2016] JMSC Civ. 93. They are among three authorities relied on by the Defendant in submitting that the sum of **\$500,000.00** is an appropriate award for general damages.

[21] Counsel for the Defendant relies on the additional authority, **Trevor Benjamin v Henry Ford and Ors.** (unreported), Supreme Court of Jamaica, Claim No. 2005 HCV 02876, judgment delivered 23<sup>rd</sup> March 2010. On a review of the decision,

other than a brief statement that the claimant's injuries "*are properly characterised as soft tissue injuries*", there are not particulars which would permit me to conclude that the injuries are the same or similar to those suffered by Ms. Munroe. In the circumstances, I do not find the case to be an appropriate comparator.

[22] In the ***Erica McKane case***, the claimant suffered multiple abrasions, soft tissue injury to the right shoulder and laceration to the scalp. Her treatment included voltaren, zantac, cleaning and dressing, and suturing. She was sent home with a referral to a health centre for the suture removal. The sum of \$1,400,000.00 was awarded as general damages on 13<sup>th</sup> June 2017 which updates to \$2,143,939.39 using the most recent CPI of 141.5.

[23] Save that Ms. McKane suffered a laceration to her person which was cleaned, dressed and sutured; and was also sent home with referral to a health centre for suture removal, I do not find the case to be a useful comparator. The site of Ms. McKane's laceration is different (the scalp) and there is no indication as to its size. Additionally, Ms. McKane suffered abrasions to her medial right ankle as well as soft tissue injury to her right shoulder. Her injuries were more extensive than the instant Claimant's. If the case is to be used, a significant downward adjustment of the award would accordingly be warranted.

[24] Of the authorities cited, I find the ***Anette Johnson case*** to be most useful. Ms. Johnson, like the Claimant here suffered a 3cm laceration to a foot, with pain, swelling and tenderness. The injuries are similar. General damages was awarded on 6<sup>th</sup> June 2016 in the sum of \$700,000.00 which updates to \$1,119,209.04.

[25] There are a number of distinguishing features between the ***Anette Johnson case*** and the instant however, which demonstrate that the impact of this Claimant's injury was far less severe, to require a downward adjustment of the award for pain and suffering.

[26] Nine (9) months post incident Ms. Johnson complained to a medical practitioner of foot pains. At that time it was observed that she had a 3 cm healed scar to right

heel with mild tenderness and no foreign body, bony lesion and soft tissue reaction. She was recommended to take analgesics whenever she experienced pain and to wear a heel cushion. While the Claimant here says that she continues to experience pain and suffering as a result of the incident, this is unsubstantiated by medical evidence.

[27] On the evidence before the court, this Claimant was last seen by a medical practitioner three (3) months and three (3) days post incident when she complained of pain and multiple episodes of swelling of the left knee over a two (2) week period. While the report indicates that analgesics (pain medication) were prescribed at that time, there is no indication of the duration of that treatment. There was also a subsequent fall for which no medical evidence has been presented. On the Claimant's evidence, pain and suffering as a result of the injury sustained in the incident the subject of the claim has not been proved beyond three (3) months and three (3) days post incident. This is in contrast to the ten (10) months recovery period in the **Annette Johnson case**.

[28] Additionally, while the Claimant here says she was unable to work until March 2022 as a result of the injury the subject of this claim. She has presented no medical evidence to substantiate the claim that she was unable to work for the period she says, or at all. This is to be contrasted with Ms. Johnson who was in fact required to take fifty-seven (57) days of sick leave due to her injury.

[29] In all these circumstances it is my judgment that the sum of **Seven Hundred Thousand Dollars (\$700,000.00)** is an appropriate award for general damages in this case.

## **COSTS**

[30] This action grounded in tort is one which might have been instituted in the Parish Court. The Claimant having recovered a sum which is less than Eight Hundred

and Fifty Thousand Dollars (\$850,000.00), pursuant to section 131(1)(a) of the *Judicature (Parish Courts) Act*, unless a judge of this court certifies that there were sufficient reasons for bringing the action here, she is entitled to recover no more costs than she would have been entitled to if she had brought the action in the Parish Court. No reason, sufficient or otherwise has been shown to warrant such a certification from this court. It is insufficient to merely state that the claim far exceeds the jurisdiction of the Parish Courts. Costs is accordingly limited to that recoverable in those courts in accordance with the **Judicature (Parish Courts) (Tariff of Fees) (Amendment Rules), 2013**.

## ORDER

[31] For reasons set out above, the following orders are made on assessment.

1. Special Damages is awarded to the Claimant in the sum of **Thirty-two Thousand Six Hundred and Forty-four Dollars and Eighty-four cents (\$32,644.84)**.
2. Interest on special damages is awarded at 3% per annum from 21<sup>st</sup> October 2021 to 31<sup>st</sup> July 2025.
3. General Damages is awarded to the Claimant in the sum of **Seven Hundred Thousand Dollars (\$700,000.00)**.
4. Interest on general damages is awarded at 3% per annum from 22<sup>nd</sup> February 2023 to 31<sup>st</sup> July 2025.
5. Costs in the claim is awarded to the Claimant, to be taxed if not sooner agreed and is limited to costs recoverable in the Parish Courts in any event.
6. The term "NEG 1" is to be inserted in the top centre of the first page of any documents to be filed, prior to their filing at the Registry.
7. The Claimant's Attorneys-at-law are to prepare, file and serve this order.

Carole S. Barnaby  
Puisne Judge