[2019] JMSC Civ 88

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2010HCV00327

BETWEEN	**SHANICA PARKES**	**CLAIMANT**
AND	**MICHAEL MCLEAN**	**DEFENDANT**
	AND	
BETWEEN	**MICHAEL MCLEAN**	**ANCILLARY CLAIMANT**
AND	**IVAN CLARKE**	**ANCILLARY DEFENDANT**

CONSOLIDATED WITH

CLAIM NO. 2009HCVO2815

BETWEEN	**TRISHENE POWELL (A minor by her grandmother and next friend Beverly Pearson)**	**CLAIMANT**
AND	**MICHAEL MCLEAN**	**DEFENDANT**
	AND	
BETWEEN	**MICHAEL MCLEAN**	**ANCILLARY CLAIMANT**
AND	**IVAN CLARKE**	**ANCILLARY DEFENDANT**

IN OPEN COURT

Mr Sean O. Kinghorn instructed by Kinghorn and Kinghorn for the Claimants, Shanica Parkes and Trishene Powell.

Mrs Claudeen Stewart Linton instructed by Burton Campbell & Associates for the Defendant/Ancillary Claimant

Heard: November 29, 2018, January 7 and April 24, 2019

The Ancillary Defendant absent and unrepresented.

Negligence - Motor vehicle collision - Contributory negligence - Credibility of Witnesses - Liability of parties - Damages - Assessment - Personal injury

LINDO, J

Background

[1] The claims in this case are grounded in negligence. The allegations are that due to the negligent driving of the Defendant/Ancillary Claimant, the Claimants who were passengers in motor vehicle registered PD5726, have sustained injuries and suffered loss. As a result, they now claim damages, interest and costs.

[2] The Claimants in their Amended Claim Forms filed on May 6, 2011 and July 27, 2011, respectively, aver that on the 8th day of March 2009 the Defendant, Michael Mclean "so negligently drove and/or operated and/or managed motor vehicle registration number 1452 FE, that he caused and/or permitted the said motor vehicle to come violently into collision with the rear of motor vehicle registration number PD 5726 causing injuries..."

[3] They have not sought to blame Ivan Clarke, in whose motor vehicle they were travelling.

[4] In his defence filed on March 30, 2010, Michael McLean did not dispute that the accident occurred on the date and at the location stated, or that it involved his motor vehicle licensed PD 5726. He, however disputes the claim on the grounds that the collision was caused and or contributed to by the negligence of Ivan Clarke, who was at all material times the driver of motor vehicle licensed PD 5726.

[5] This accounts for the Ancillary Claim filed by him against Ivan Clarke on March 30, 2010. In this Ancillary Claim, Mr McLean claims “an indemnity and/or contribution against any damages he may be found liable to pay the Claimant as a result of the claim...”

[6] The court records show that Ivan Clarke was served personally with the ancillary claim and ancillary particulars of claim on April 3, 2010. He has taken no part in these proceedings.

[7] The claims find common ground in fact and in law, and as such they have been consolidated in an effort to save costs and time and were tried together.

[8] The parties have given opposing versions of the events that unfolded on the date and at the time of the accident and the court is now tasked with determining, which of these versions is more plausible and following from this is the question of who should bear liability for the accident, the extent of such liability and the quantum of damages, if any, which flows from same.

[9] No independent witnesses were called on behalf of the parties.

[10] At the commencement of the trial the following documents were agreed and admitted in evidence:

(1) Medical report of Dr Nishanth Hassan dated March 18, 2009 re Shanica Parkes

(2) Physiotherapy report of Shareel Dixon-Anderson dated May 20, 2009, re Shanica Parkes

(3) (a) Paid Invoice #8077 in the sum of $1,500.00

(b) Paid Invoice # 8092 in the sum of $25,000.00

(c)Receipt dated May 20, 2009 in the sum of $8,000.00

(d)Receipt dated April 18, 2009 in the sum of $5,400.00

(e)Receipt from Linstead Imaging dated September 3, 2009 in the sum of $1,900.00

(4) Medical report of Dr Hassan dated March 18, 2009 re Trishene Powell

(5) (a) Invoice #8078 in the sum of $1,500.00

(b) Invoice # 8093 in the sum of $25,000.00

(c) Invoice #580293 in the sum of $3,000.00

(6) Receipt for Assessor's Report dated May 22, 2009 in the sum of $5,800.00 in respect of the Ancillary Claim

(7) Report from Advance Insurance Adjusters Limited dated May 26, 2009.

(8) Loss of Use Claim Application in the sum of $56,000.00

The Claimants' Case

Shanica Parkes

[11] Ms Parkes' witness statement filed the 17th day of September 2018, stood as her evidence in chief after she was sworn and it was identified by her. Her evidence is that on the day in question she was travelling in a taxi from Linstead to Ewarton, with her daughter and Trishene Powell. She states that the road they were on allows for vehicles to travel in either direction and she was able to see the vehicles passing heading to Linstead. She adds that the driver stopped to pick up a passenger who "decided not to come" and then they "again" proceeded on their way to Ewarton when she felt a hard impact to the rear of the vehicle and after the collision both vehicles stopped. She states further that she was in pain, went to the Linstead Hospital and left and went to the Ewarton Medical Centre where she was treated, given medication, did x-ray and was referred to physiotherapy. She also states that she completed five (5) sessions of

physiotherapy at Angels Health Care and still experiences pain because of the accident.

[12] In cross examination, she said the road was about 30 feet wide and that she could not recall if it rained that day. She stated that there was one other passenger in the car and that person was let off on the left side of the road. She stated further that the driver, Mr. Clarke, who she knew as "P-man", had stopped to pick up another passenger, on the right hand side, which she described as the opposite side of the road. When asked what direction the car was facing when on the right hand side of the road, she said the car was "facing going to Ewarton".

[13] Ms Parkes stated that P-Man "just turn across the road" when he was going to pick up the passenger, and she agreed with Counsel when she suggested that Mr. Clarke turned across the road and stopped on the right hand side of the road. She said Mr. Clarke had to drive from the right, back to the other side, but disagreed that Mr. Clarke turned back, to go to the right hand side of the road.

[14] She indicated that the accident took place "one or two minutes after" the driver drove off and that after the accident, the vehicle was on the road side facing Ewarton and Mr. McLean's vehicle was behind, it facing the same direction. She stated that she felt the impact to the rear of the vehicle while moving and said the damage to "P-Man's" vehicle was to the back. When prodded to expound which section of the vehicle, Ms. Parkes stated that it was "at the back, all of the back" and she said the damage to Mr. Mclean's vehicle was at "the front, all of the front".

[15] Ms. Parkes maintained that the vehicle she was travelling in was heading to Ewarton and agreed that before the accident the two vehicles were travelling in opposite directions. She also maintained that the driver of the vehicle she was in did not make a "U" turn.

Trishene Powell

[16] Ms. Powell's witness statement filed on September 17, 2018, stood as her evidence in chief. She experienced difficulties in recalling what happened on the day in question and states that she was six or seven when the accident took place. She however recalls travelling to Ewarton, hearing a loud crashing sound, feeling an impact to the back of the car, and that the car had stopped. She adds that she went to the doctor and was given medication and stayed home from school.

[17] In cross examination, she said she "think it was the left side" of the road the vehicle was on and when asked "left side going where?" she said, "I don't remember… Like it came off one road and went on another". She stated that this happened before the impact.

[18] Ms Powell then said she did not remember going to the doctor and when asked if she has been to the doctor since she is "big", she responded in the negative.

Beverley Pearson

[19] Ms. Beverly Pearson, grandmother and next friend of Trishene, gave evidence that Trishene received medication for pain which she took until it was finished. She stated however that Trishene still cries for pain which she described as "more time her back and head", but stated that she has never taken Trishene to the doctor, but "doctors" her, herself.

The Defendant's Evidence

[20] Mr. Mclean was sworn and his Witness Statement dated May 29, 2018, stood as his evidence in chief. It is his evidence that at about 1 o'clock in the afternoon on the day in question he was driving his Toyota Hilux motor vehicle, travelling at about 50 kmph in the left lane along the Ewarton main road, towards Linstead when, on approaching a bend in the vicinity of Charlemont, a white Probox motor car heading in the opposite direction "suddenly...made a "U" turn...and drove into [his] left lane in the path of [his] moving motor vehicle".

[21] He adds that he braked to avoid a collision but his motor vehicle "collided with the right rear section of the Probox...both vehicles stopped...[His] vehicle remained in its correct lane...and was positioned straight with the front...pointing towards...Linstead....The Probox...was fully positioned in the lane in which [he] was driving and was close to the soft shoulder of the left side of the roadway...".

[22] In cross examination, he said the speed limit on the road is 30mph/ 50kmph and that prior to the accident he was travelling at about 50kmph. He stated that when he first saw Mr. Clarke's vehicle, it was about 120 feet from his vehicle, on the right heading towards Ewarton, travelling at about the speed of 15-20 kmph. He stated further that as he travelled towards the vehicle, he reduced his speed to about 25kmph, as he saw the 'next' vehicle pull off the road, towards his left, and make a "U" turn" about 30 feet from him. .

[23] He stated that when the vehicle pulled to the left, he immediately pulled to the right and it was when he had turned to the left, he realized he was going to make a "U" turn, and he was then 20 to 30 feet from him, as he was getting closer. In further response to Counsel, he said he applied his brakes and his vehicle started to "brake up", but did not come to a complete stop. He maintained that he kept his foot on the brake pedal to the point of impact. He stated that his vehicle did not stop when he was 20 -30 feet away, driving at 25kmph, as the road was wet. When asked if his vehicle skidded, he said, "the vehicle slide, that's when it bump into the vehicle...it slide about one vehicle length about 8 feet".

[24] He agreed that the Probox had completed the "U" turn, but maintained that it was headed in the direction of Linstead when the accident occurred and that his vehicle collided into the back, right corner. He also said it was a minor collision and disagreed that the damage to his vehicle was to the entire front, stating that it was the left front area. When shown the Assessor's Report, he agreed that his vehicle was written off as stated in the report, but maintained that the collision was a minor one and disagreed that he caused the accident.

Submissions on Liability

[25] I must first express my gratitude to Counsel for providing written submissions in which the disputed and undisputed facts as well as the applicable law in relation to this case have been set out. I have considered these submissions and I will not embark on a discussion of same as I find that they support the view that the court, having been presented with two diametrically opposed versions of events, must respond to a question of fact in assessing liability and this question can only be answered by assessing the credibility of the witnesses and more so, the plausibility of each account.

The Issues

[26] It is undisputed that there was a collision between the Defendant's/Ancillary Claimant's motor vehicle and the Ancillary Defendant's vehicle in which the Claimants were passengers.

[27] The issue to be determined is therefore the precise manner in which the collision occurred and who is liable. While it cannot be disputed that no fault can be attached to the Claimants who were passengers in one of the vehicles involved in the accident and there should therefore be no difficulty in finding that there should be judgment in their favour, the court will have to determine whether they have shown, on a balance of probabilities, that the Defendant is to be held liable for the collision. This issue will therefore be resolved by assessing the credibility of the parties and the plausibility of their accounts of the factual circumstances surrounding the accident.

The Law

[28] It is well settled that a party who brings a claim in negligence must provide evidence to satisfy the court, on a balance of probabilities, that the Defendant owed him a duty of care at the material time, that there was a breach of that duty and damage resulted from that breach.

[29] It is a well- established principle, as found in the case of **Esso Standard Oil SA Ltd. & Another v Ian Tulloch** (1991) 28 JLR 553 that all users of the road owe a duty of care to other road users.

[30] Drivers of motor vehicles also have a duty, both by statute and at common law, to exercise reasonable care while operating their vehicles on the road. The standard of care expected is that level of care which an ordinary skilful driver would have exercised under all circumstances. This duty involves avoiding excessive speed, keeping a proper look out and observing traffic rules and signals.

The Issue of Liability

[31] In arriving at my decision, I was inclined to place reliance on my assessment of the parties having examined their demeanour while giving evidence and during cross examination and considering the plausibility of each account given by them to determine which of the accounts is more likely.

[32] The court did not have the benefit of hearing from the Ancillary Defendant neither did the court have an assessor's report of the damage to his motor vehicle which would also have assisted in determining how the accident occurred. Additionally, there was no independent eyewitness.

Findings

[33] I find as a fact that the collision took place on the 8th day of March, 2009 along the Ewarton to Linstead main road, and that the vehicles involved were both headed in the same direction at the time of the collision.

[34] I also find as a fact that the Ancillary Defendant turned across the road and, although there are opposing versions as to how this turn was executed, I find that it was after the Ancillary Defendant had completed the turn and "one or two minutes after" he drove off, travelling in the same direction as the

Defendant/Ancillary Claimant, that the Defendant/Ancillary Claimant collided into the rear of his vehicle.

[35] I formed the impression that the Defendant was not being truthful especially in relation to cause of the accident, the point of impact and the type and extent of the damage to his motor vehicle.

[36] While I do not believe the Defendant when he states that he was travelling towards Linstead at the time of the collision, I believe it is more likely than not that the Ancillary Defendant had in fact turned across the road to pick up a passenger on the other side, the passenger did not enter his vehicle and he went back on the left side. I also find that it is highly probable that he was still facing Ewarton at this time.

[37] The Ancillary Defendant was under a duty to ensure that before turning across the road it was safe to do so. I find however, that he must have completely and safely carried out the manoeuvre for the impact to be in the rear of his vehicle and the entire front of the Defendant's vehicle.

[38] I find on the Defendant's evidence that he was aware of the presence of the Ancillary Defendant on the roadway at the time. I do not believe his story that he saw him from a distance of 120 feet and realized he was going to make what he describes as a "U" turn, or that he was at a distance of 20 -30 feet when he saw him making a "U" turn. I believe this is a fabrication

[39] I bear in mind also, the Defendant's evidence under cross examination where he admitted that the Probox was "fully positioned in the lane that I was driving and was close to the soft shoulder of the left side of the road way"

[40] I accept the established principle that a driver who is changing direction bears the greater duty of care before undertaking his manoeuvre. I find it applicable to the case at bar in so far as it is my finding that the Ancillary Defendant had in fact changed directions. The fact that the impact was to the extreme back of the

ancillary defendant's motor car and the extreme front of the Defendant's vehicle demonstrates to me that the Ancillary Defendant must have completed the turn across the road and had sufficient time to have been moving off, in the same direction, when the collision occurred. It is therefore the speed at which the Defendant was travelling combined with the fact that he was not keeping a proper lookout and that his motor vehicle skidded, which I find caused the collision.

[41] It therefore follows that I reject the Defendant's evidence in relation to the speed at which he claimed to have been travelling. I find it improbable that a car travelling at the speed of 25kmph could make a skid of a distance of 8 feet. Had he been travelling at the speed he claimed, it is unlikely he would have collided into the back of the taxi. I therefore agree with Counsel for the Claimant that "the skid and the fact of his vehicle being written off makes nonsense of [the] assertion".

[42] I find the physical evidence in this case to be important in coming to a determination as to exactly how the collision occurred because of the opposed versions of events leading up to the collision given by the parties and bearing in mind also that the Ancillary Defendant, the driver of the vehicle in which the Claimants were passengers, has taken no part in these proceedings.

[43] The Assessor's Report (Exhibit 7) in relation to the Defendant's vehicle, discloses that the damage was to the entire front section and not only to the left side as he has stated in his evidence. I therefore accept the Claimants' evidence on this point. Further, I have noted that the Assessor's Report shows that there was a previously repaired left fender, but based on the extent of damage described in the report, and even without having the benefit of seeing the extent of the damage to the Ancillary Defendant's vehicle, it is clear to me that this was not a minor collision.

[44] I reject as unreliable the Defendant's evidence that he was travelling towards Linstead. I also reject his evidence in relation to the speed at which he claimed to have been travelling, as stated earlier, as well as the point of impact on his motor vehicle in view of the physical evidence that his motor vehicle was damaged to the entire front and was completely written off. I therefore find that he was travelling at an excessive speed and was not keeping a proper lookout.

[45] While I accept that the estimates of distance given may be inaccurate, it is Mr. Mclean's evidence that he first saw the Ancillary Defendant vehicle when he was a distance of 120 feet away, and that he was at about 20-30 feet away when he saw him making the "U" turn. His evidence does not in any way suggest that on the day in question there was an issue with visibility. As such, I am inclined to find that Mr. Mclean failed to exercise the necessary skill required in the circumstances, failed to keep a proper look out, and failed to act in a manner to avoid the collision. As such, I find that he is liable for the accident.

[46] There shall therefore be judgment for the claimants against the Defendant.

Contributory Negligence

[47] A defence of contributory negligence, where made out, operates to reduce the Claimant's claim to the extent to which the court finds him to be at fault.

[48] In the instant case, the Defendant, in disputing the Claimants' case, raised the issue of contributory negligence by indicating that the collision was caused and or contributed to by the negligence, not of any of the claimants, but of Ivan Clarke, the owner and driver of the motor vehicle in which they were travelling.

[49] In respect of the ancillary claim although the records show that service of the ancillary claim and ancillary particulars of claim was effected on April 3, 2010, Mr Clarke has not taken part in these proceedings and there is no indication that he has filed a defence in respect of the ancillary claim against him.

[50] Pursuant to Rule 18.11(2) of the **Civil Procedure Rules**, he is deemed to admit the ancillary claim and is bound by the judgment in these proceedings, so far as it is relevant to the matters arising in the ancillary claim. The admission of the ancillary claim having occurred by operation of law, the Defendant's/Ancillary Claimant's is entitled to judgment which is in the nature of a Default Judgment. The court notes, however, that the Defendant/Ancillary Claimant has not filed the requisite documents for him to secure the judgment.

[51] I will now proceed to assess the damages to which the Claimants are entitled.

Assessment of Damages

Shanica Parkes

[52] In relation to general damages, Counsel for the Claimant submitted that Ms. Parkes was claiming the sum of $2,000,000.00.

[53] Dr. Hassan diagnosed Ms. Parkes with severe whiplash injury to the c-spine. He noted that on the day of assessment she was tender over the spinous process of the mid and lower vertebra and that she complained of experiencing severe neck pain. His report also revealed that the radiograph shows loss of normal cervical lordosis indicative of persistent spasm in the adjacent paravertebral muscles.

[54] Counsel for Ms Parkes relied on the following authorities:

i. **Velma Green- Lindo v Christopher Scott and Ors,** [2018] JMSC Civ. 85, unreported, delivered May 17, 2018 in which the Claimant was diagnosed with mechanical back pain, tenderness in the neck muscles , spasms in the muscle of the neck and muscle spasm in the lower back, abrasions in the left leg and 2% permanent partial disability. The claimant was awarded damages in the sum of $1,600,000 in May 2018 (CPI 239.6) which updates to $1,647,287.45 (Current CPI 254.3)

ii. **Claston Campbell v Omar Lawrence,** Suit No CL2002/C135, unreported, delivered February 28, 2003. In this case, in which the court rejected the doctor's finding of 10% permanent partial disability and treated the injury as a moderate whiplash injury without more. The

> Claimant was awarded $650,000.00 (CPI 64.40) in general damages which updates to $2,566,692.55.

[55] Counsel for the Defendant argued that the diagnosis is “highly exaggerated” and made reference to the fact that Ms. Parkes attended physiotherapy an entire month after the accident and there is no report on her progress, or a report for her discharge from treatment. She also pointed out that the doctor made certain recommendations for Ms. Parkes to get anti- inflammatory drugs and a soft collar and argued that there is nothing to show that these were actually obtained.

[56] She relied on the case of **Peter Marshall v Carlton Cole and Alvin Thorpe,** Khan, Vol 6. Page 109, as being appropriate for determining an award. In that case the claimant was diagnosed with moderate whiplash, swollen and tender left wrist and left hand, moderate lower back pain and spasm and was awarded $350,000.00 in general damages on October 17, 2006. This updates to $891,565.66.

[57] Counsel submitted that an award of $650,000.00 is reasonable to compensate Ms Parkes for her injuries since the injuries in the **Peter Marshall** case were more severe

[58] Having considered the medical evidence and the cases cited, I believe the suggested range of 1,600,000.00-$2,000.000.00 is too high. I find that the cases relied on by Counsel for the Claimant highlight injuries which are far more severe than the injuries sustained by the Claimant in this case. Further, I bear in mind that the Medical Report of Dr. Hassan states, among other things, that whiplash of the c-spine usually resolves within six to eight weeks of the injury with an appropriate course of physiotherapy, an anti-inflammatory drug and oral skeletal muscle relaxant. He however added that it may take three to six months before the patient regains optimal function.

[59] It is significant also, that despite her claim of pain which is said to continue approximately ten years later, and that her sexual life has been curtailed, she

cannot stand for long and cannot carry out her household chores, Ms. Parkes has only visited the doctor once since the date of the accident and she has not provided an updated medical report or a physiotherapy report as evidence of her continued suffering. I therefore find that her claim for general damages is exaggerated.

[60] In light of the foregoing, I find that the **Peter Marshall** decision is more comparable to the case at bar, except that this claimant suffered severe whiplash but did not suffer a sprain or swelling to her wrist and as such I find that an award of $1,000,000.00 is appropriate.

[61] It is a well- established, as laid down in the case of **British Transport v Gourley,** [1955] 3 All ER 802, that special damages must be specifically pleaded and proved.

[62] Ms Parkes, in her Amended Particulars of Claim particularised the following special damages:

Medical Expenses (and cont.)	$25,000.00
Medical report (Dr Nisanth Hassan)	$1,500.00
Doctor's Visits	$5,400.00
Physiotherapy visit	$8,000.00
Physiotherapy report	$10,000.00
Transportation	$10,000.00

[63] In Counsel's submissions filed on January 7, 2019, Ms Parkes' expenses were listed as totalling $54,500, and the court was urged "to accept the legitimacy of these expenses and award the sums as quoted"

[64] This Claimant has provided documentary evidence of a medical report and a physiotherapist's report as well as for medical expenses and physiotherapy sessions. She has not provided any evidence in relation to her claim for

transportation expenses as pleaded, as such special damages will be awarded in the sum which has been specifically pleaded and proved, which is $41,800.00.

Trishene Powell

[65] Counsel for the Claimant submitted that the Claimant was claiming damages in the amount of $1,300,000.00 with interest at the rate of 3% from the 22nd of January to the date of judgment. He relied on the following authorities:

i. **Matthew Wallace v Mark Anthony Kettle,** [2016] JMSC Civ 28**,** unreported, delivered March 2, 2016, in which the court stated that "the current trend of award for whiplash injuries in recent decisions... suggests a range of between $900,00.00...to $1,000,000.00 for a mild to moderate whiplash injury which is resolved within a period of about 3 to 4 months" An award of $1,000,000.00 (CPI 229.3) was made to the claimant which updates to $1,109,027.47

ii. **Braham v Donaldson, 2012 HCV 02211,** a contested matter heard on September 18, 2015, in which the claimant was awarded $900,000.00 (CPI 234.2) for pain and suffering in a case of mild whiplash injury. This award updates to $995,086.96.

[66] Counsel submitted that an appropriate range of an award for injuries of the nature and severity suffered by the Claimant, Trishene Powell, should be between $900,000.00 and $1,300,000.00.

[67] Counsel for the defendant, citing again the **Peter Marshall** case, as well as the case of **Gilbert Mcleod v Keith Lemard,** Suit No. C.L 1993 M 196, reported at Khan, Volume 4, page 205, in relation to soft tissue injury, submitted that an appropriate award to compensate Trishene would be $800,000.00 as she did no physiotherapy and visited the doctor once.

[68] Counsel further submitted that the Claimant has failed to mitigate her loss and contended that no regard should be placed on the present pain she suffers as she has not provided medical support for same. I must point out however, that the burden is on the defendant to prove failure by the claimant to mitigate damage. The defendant did not in his defence plead that this claimant failed to

mitigate her loss and neither was any notice given to the claimant to meet that case. (See **Geest plc v Lansiquot** [2002] UKPC 48)

[69] I find that the **Gilbert Mcleod** case shared no similarity with the case at bar and that the cases cited by the Counsel for the Claimant are more comparable. Having examined the medical report and the cases provided for comparison, I am prepared to make an award in the sum of $800,000.00. I bear in mind the evidence of Beverly Pearson, that despite her complaints in relation to pains, she failed to take her back to the doctor. I find that this casts doubt on the credibility of the evidence in relation to her injuries and any subsequent effect.

[70] In relation to her claim for special damages, Ms. Powell has pleaded the following:

(i)	Medical expenses – (and cont.)	
	Medical report (Dr Nishanth Hassan)	$25,000.00
	Doctor's visits	$4,500.00
(ii)	Transportation (and cont.)	$10,000.00

[71] On the evidence however, I find that she has only proved expenses in the sum of $29,500.00. She has not provided one iota of evidence to show that she incurred for any expense for transportation and I bear in mind that the evidence shows that she did not visit a doctor after the initial visit, and that her grandmother "doctors" her.

Disposition

[72] Judgment for the Claimants against the Defendant with damages assessed and awarded as follows:

Re Shanica Parkes

Special damages awarded in the sum of $41,800.00 with interest at 3% per annum from March 8, 2009 to the date hereof.

General damages for pain and suffering awarded in the sum of $1,000,000.00 with interest at 3% per annum from January 22, 2010 (the date of service of the Claim form) to the date hereof.

Costs to the claimant to be taxed if not agreed.

Trishene Powell

Special damages awarded in the sum of $29,500.00 with interest at 3% per annum from March 8, 2009 to the date hereof.

General damages for pain and suffering awarded in the sum of $800,000.00 with interest at 3% per annum from date of service of the claim form to the date hereof

Costs to the Claimant to be agreed or taxed.