



[2023] JMSC Civ 115

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

**IN THE CIVIL DIVISION**

**CLAIM NO. 2015HCV01938**

**BETWEEN**

**DENZEL RICHARDS**

**CLAIMANT**

**AND**

**ROWAN HINDS**

**DEFENDANT**

IN OPEN COURT

**Mrs. Khadine Dixon instructed by Dixon & Associates Legal Practice for the Claimant**

**Defendant absent and unrepresented**

**Heard: May 17<sup>th</sup>, 2023 and June 28<sup>th</sup>, 2023**

**ASSESSMENT OF DAMAGES – Motor vehicle collision – negligence — damages – Pain and suffering and loss of amenities- special damages**

**T. HUTCHINSON SHELLY, J**

## **BACKGROUND**

[1] This matter concerns an assessment of damages against the Defendant arising out of a motor vehicle collision which occurred on the 4th day of June 2012. The facts in brief are that the Claimant, who was born on the 18th of April 1941, was pushing his handcart along Princess Street main road in the parish of Kingston when he observed a delivery truck, registered CJ0648 owned by the defendant, reversing towards him. The iron at the back of the truck hit him on his right foot

causing him to jump on his handcart to avoid further injury. Unfortunately, he slipped off the handcart and ended up under the truck. He was subsequently transported to the Kingston Public Hospital for treatment.

- [2] As a result of the collision, the Claimant, who had been working as a Higgler, suffered injuries and sought to recover by way of this Claim.
- [3] The Claim Form was filed on the 31st of March 2015. An amended Claim Form was filed on the 23rd of October 2015. The Defendant failed to respond to the Claim and Default Judgment was entered against him in default of acknowledgment of service on the 21st day of November 2019 and entered in Judgment Binder 775 Folio 149. The matter is now before the Court for assessment of damages. On May 17, 2023, the Claimant gave evidence as to the quantum of damages that he believes the Court should award.
- [4] On the day of the hearing, the Defendant made no appearance and remained unrepresented, as such, the assessment has proceeded uncontested.
- [5] It is to be noted that a Notice of Proceedings was served on Advantage General Insurance Company Limited, with whom the Defendant had a policy of insurance at the material time, on the 31st of March 2015. However, the Insurance Company has not intervened in the matter.

## **ISSUE**

- [6] The sole issue before the Court is the quantum of damages which should be awarded to the Claimant for injuries suffered and other related losses as a result of the Defendant's negligence.
- [7] In making an award, the Court is required to consider the nature and extent of the injury and/or loss suffered and thereafter determine the appropriate award taking into account the sums awarded in comparable cases.

## EVIDENCE

- [8] At the hearing on May 17, 2023, the Claimant was sworn and his evidence was taken through his Witness Statement which stood as his evidence in chief. Mr Richards described his ordeal beginning at paragraph 3 of his Witness Statement. The Claimant's evidence is that immediately following the collision, he began to feel pain in his right foot and knee. He was transported to the Kingston Public Hospital, where he was examined and treated for multiple joint pains with pain killers and muscle relaxants. He was also given a prescription for the pain which he averred only offered him temporary relief.
- [9] He stated that he returned to the Kingston Public Hospital on a number of occasions in order to obtain a medical report. This report was not forthcoming and he was later told that the request for same was lost and he would have to submit another request for a medical report.
- [10] On the 21st of June 2012, the Claimant visited Dr Chamarajanagar Mahesh at Western Medical Centre as he was still experiencing severe pain in his lower back, his right side and his right knee despite using the medication prescribed by the Doctor at the Kingston Public Hospital.
- [11] At his consultation with Dr. Mahesh, he was diagnosed with lower back strain and soft tissue injury to his knee. He paid **\$20,000.00** for a medical report prepared by Dr. Mahesh which outlined the results of his examination and treatment. This receipt was served on the Defendant by way of a notice of intention and it was placed into evidence during the hearing.
- [12] In outlining his transportation expenses, he stated that he spent **\$1000.00** per trip on transportation for his visits to Kingston Public Hospital from his home at 22 McWhinney Street. He also spent **\$2,000.00** per trip from his home at 22 McWhinney Street to Western Medical Centre. The Claimant explained the absence of documents in support of this expense as due to their destruction in a

fire which destroyed his home. He asserted that the total sum expended on transportation for medical purposes was **\$20,000.00**.

- [13] Mr Richards gave evidence of ongoing physical challenges in spite of the fact that the accident had occurred ten years ago. He indicated that he still experiences chronic pain in his back, right side and right knee. He stated that bending his knees while walking was virtually impossible. He has likened the pain he experiences when completing simple tasks to the pain felt when a person is constantly being hit with a board in their back and right knee. He also complained of a throbbing pain in these areas, occasioned by simple tasks such as lying down, standing or using the restroom. In respect of his mobility, he now relies on a stick for support, if he has to walk from his room to the gate.

### **SPECIAL DAMAGES**

- [14] The Claimant pleaded the sum of **\$20,000** for medical expenses in respect of his visit to Dr Mahesh, a receipt was provided to the Court in respect of this claim and admitted into evidence. Having reviewed this exhibit, I was satisfied that there was cogent evidence in support of same and that Mr Richards should be compensated for this expense.
- [15] Claimant also seeks to recover the sum of **\$20,000.00** for transportation costs. He said that this sum was expended on taxis to and from the Kingston Public Hospital and Western Medical Centre.
- [16] The general rule requires special damages to be specifically pleaded and proved. It is a fact however, that in instances such as these, there has been some relaxing of the requirements for documentary evidence and the Court may use its discretion and knowledge of the vagaries of the local transport industry to arrive at a just award: *Attorney General of Jamaica v Tanya Clarke (nee Tyrell)*, SCCA No. 109/2002; *Desmond Walters v Carlene Mitchell* [1992] 29 JLR 173.

[17] This fact was acknowledged by Sykes J's (as he then was) in ***Owen Thomas v Constable Foster and Anor CL*** – T 095 of 1999 judgment delivered January 6, 2006, wherein he stated that it is:

*“...well known in Jamaica that many of our transport operators do not provide receipts to passengers and the costs seems reasonable.”*

[18] I find this authority to be quite instructive and agree that receipts are not usually provided to passengers by operators in our transport industry. In this situation, the Claimant had been able to obtain some receipts, unfortunately they were destroyed in a fire at his home. On my review of this expense, while there were no documentary records in support of same, I find that these trips were necessary as they were taken by the Claimant in seeking medical care for injuries sustained in this accident.

[19] Accordingly, the Claimant is awarded the sum of **\$40,000.00** for special damages.

## **GENERAL DAMAGES**

### **Medical Evidence**

[20] Particulars of the Claimant's injuries were outlined in the Medical Report from the Western Medical Centre prepared by Dr. Mahesh.

[21] The Summary indicated that Mr. Richards presented with pain to the lower back, spinal tenderness, pain to the right knee, pain to the right side and pain felt when bending and lifting objects following a motor vehicle accident on the 4th June 2012. Upon examination and investigation, he was found to be tender over the spinous process of the mid and lower vertebra of his back and sacrum, over both erector spine muscles, his lower back and lumbosacral spine did not have any abnormal swelling. There was full movement of his lumbar spine and pain was elicited at the extremes of movement of both lower back and lumbosacral spine. He was diagnosed as having a lower back strain to road traffic accident and soft tissue injury to the knee.

[22] The Medical report exhibited was an interim one and no mention was made of any restricted range of movement, possible permanent partial disability or whole person impairment. Reference was made however to the Claimant experiencing pain on attempting to do simple tasks such as walking, bending, lying down or standing. The Claimant gave evidence of difficulties experienced as outlined above. On the day of his assessment, he made his way into Court largely assisted by a walking stick and it was evident that his mobility was limited without same.

## SUBMISSIONS

[23] Mrs. Dixon relied on two cases in support of the claim:

- a. ***Wayne Hutchinson v Cyril Robinson***, Claim No. 2010HCV00293 (unreported) – The Claimant complained of injury to his right shoulder, right foot, lower back and bruising to the foot. The diagnosis was a muscular – ligament strain to the lumbar spine and right shoulder, bruising and trauma to the foot. He was treated with anti-inflammatory and pain medication and advised to rest. His case was reviewed two weeks later when his condition had improved and complete recovery was expected in 8-10 weeks. The assessment of damages occurred on the 19th day of June 2012 and the Claimant was awarded **\$1,500,000.00** for pain and suffering and loss of amenities. The CPI at the time was 70.4. The current CPI for March 2023 is 128 and the sum updates to **\$2,727,272.73**.
- b. ***Trevor Benjamin v Henry Ford and others*** Claim No. 2005 HCV 02876 (unreported) – The Claimant experienced pain to his chest and back and his injuries were characterized as soft tissue injuries. His assessment of damages occurred on the 22nd and 23rd days of March 2010. He was awarded **\$700,000.00**. The CPI was then 60 and the sum updates to **\$1,493,333.33** using 128.

[24] Counsel relied on these authorities and the similarities to the injuries of Mr Richards. She also submitted that unlike the Claimants in those matters, the

evidence shows that the Claimant is still adversely affected ten years later and the appropriate award should reflect this. She argued that a reasonable sum for pain and suffering and loss of amenities in the circumstances is \$2,500,000.00.

## **ANALYSIS**

- [25] It is settled law that the sum of money that should be awarded as General Damages for personal injury suffered by a Claimant ought to be a sum which as “***nearly as possible***” puts the Claimant in the same position she would have been in if she had not sustained the wrong” (per Lord Blackburn in ***Livingstone v Rawyards Coal Co.*** (1880) 5.A.C. 25 at 39.
- [26] Having examined the authorities cited, I find that the injuries suffered by the Claimants in both cases bore some similarity to the case at hand. I noted however that the nature and severity of the injuries sustained by the Claimant in the **Wayne Hutchinson** case were greater than what was reported and assessed in respect of this Claimant as the injuries of **Wayne Hutchinson** impacted several areas of his body and included moderate lower back pain. The injuries sustained by the Claimant in the case at bar were largely restricted to his knee and lower back. While his injuries were not as severe to those of **Mr Hutchinson**, they were marginally more severe than those of **Trevor Benjamin**. In arriving at this conclusion, I have noted the fact that Mr Richards is now an octogenarian and the degeneration complained of in his mobility could be age related. I have also been mindful that there is no updated medical report which provides the nexus between all these complaints and the motor vehicle accident (MVA).
- [27] In light of the foregoing observations, I am satisfied that an appropriate award for pain and suffering and loss of amenities as a result of the MVA is two million dollars **\$2,000,000.00**.

## ORDER

[28] Damages are assessed as follows:

1. Special Damages are awarded in the sum of Forty Thousand Dollars **(\$40,000)** with interest at the rate of 3% from June 4th, 2012 to June 28th, 2023.
2. General Damages are awarded for pain and suffering in the sum of Two Million Dollars **(\$2,000,000.00)** with interest at the rate of 3% from April 20th, 2015 to June 28th, 2023.
3. Costs to the Claimant to be agreed or taxed.
4. Claimant's Attorney to prepare, file and serve the Judgment herein.