



[2017] JMSC Civ. 97

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2012HCV05946

BETWEEN	ADRIAN SMITH	CLAIMANT
AND	DEVON EDWARDS	1ST DEFENDANT
AND	THE ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT
AND	THE NATIONAL SOLID WASTE MANAGEMENT AUTHORITY	3RD DEFENDANT

Miss Deandra Grant appearing for the Claimant.

Mr. Dale Austin appearing for the Defendant.

HEARD: 12th & 30th June, 2017

Damages – Personal Injuries – Fracture – Future Medical Expenses – Chest Trauma – Motor Vehicle Collision – Whiplash

CORAM: BROWN, Y. J. (Ag.)

Assessment of Damages

[1] On the 27th May, 2011, Adrian Smith and Devon Edwards claim that they were passengers in a motor vehicle assigned to the National Solid Waste Management Authority, registered 303945 which was travelling along Ewarton main Road in the parish of St. Catherine. According to them, the driver, Mr. Alvin Mitchell lost control of the said vehicle and collided with a motor truck registered CF1744. As a result, they both suffered injuries, loss and incurred expense.

[2] No dispute surrounds liability in this matter and this was signalled by the filing of a Defence Limited to Quantum of Damages on the 2nd January 2013. Hence, the court is now tasked with an Assessment of Damages.

Personal Injuries of Adrian Smith

[3] Adrian Smith was examined by Dr. Aundre Gordon at the Spanish Town Hospital in May 27, 2011. This doctor noted his findings as follows:

- Left thigh – swelling, deformity, abnormal mobility, bony crepitus
- Distal pulses – normal
- Respiratory and central nervous system were normal
- X-ray done revealed fractured mid-shaft left femur.

This doctor recommended follow-up treatment at the Orthopaedic Out-patient Department.

[4] Mr. Smith also obtained another medical report from Dr. Peter Swaby who examined him at Apex Medical Center on June 20, 2012. This doctor diagnosed a close fracture of the left femur with whiplash injury of the lower back. He also noted in his prognosis that, “this will cause some residual effects that may require intermittent physiotherapy and follow-up assessment and treatment over the next six (6) to twelve (12) months to affect reasonable recovery.”

[5] A third medical report was forthcoming for Adrian Smith and this spoke of surgery he underwent for the fractured left femur. Noting that the outcome of his injury following surgery was “objectively good”, the orthopaedic surgeon stated that the minor symptoms that Mr. Smith complained of may improve with the removal of the implant. He also added that the claimant would have been “temporarily partially impaired for six (6) weeks following surgery.”

General Damages re: Adrian Smith

[6] In relation to Adrian Smith, his counsel Miss Deandra Grant offered two cases for consideration; namely, **Jason Edwards v Phoebe Buchannan**, and **John Shirley v Jamaica Premix Ltd., & Hopeton Smith**. Both cases are reported in

Harrison & Harrison Assessment of Damages for Personal Injuries at pages 120 and 214 respectively.

- [7] The case of Jason Edwards centered around a 14 year old student who was injured in a motor vehicle accident in July 1987. Consequently, he suffered a displaced fracture of the left femur. His medical report stated that a radiograph showed severe displacement at the lower end of the shaft. Having undergone surgery and physiotherapy, he was totally disabled for a few months and was expected to have partial disability of 30% for a further two (2) months. In the final analysis though, he had no permanent partial disability, the medical report indicated. In November 1989, he was given an award of \$45,000.00 for general damages which now updates to \$2,000,083.
- [8] **John Shirley v Jamaica Premix Ltd., & Hopeton Smith** is a case in which the claimant suffered a fracture of the right femur at the lower end; blow to the right thigh; multiple abrasions and lacerations over the right arm and elbow. General damages was awarded in the sum of \$200,000.00 in October 1992. This sum now amounts to \$2,790,000.
- [9] The Defendant's counsel Mr. Dale Austin found common ground with his opposing colleague, in submitting that the case of John Shirley bore striking similarities with the case at bar, except in the former, the fracture was to the right femur while in the latter it was to the left.
- [10] While I will not resist the favoured position, I note that the claimant Adrian Smith sustained fewer injuries than that suffered by John Shirley. Therefore, the award to Mr. Smith must attract a discount; and so for general damages, I award the sum of \$2.3 Million.

Special Damages

- [11] According to the orthopaedic surgeon, Mr. Smith would require further surgical invention to improve the "minor symptoms" of which he complained, this would

cost \$285,000 and would involve the removal of implant. Hence for further medical expenses, the sum of \$285,000 will be awarded.

[12] Special damages is awarded to Mr. Adrian Smith as follows:

Hospital expenses -	\$77,000.00
Public and Private Transportation -	\$13,400.00
Loss of Income	\$204,000.00

Total amount for special damages is \$579,400.00.

Personal Injuries of Devon Edwards

[13] Devon Edwards was examined by Dr. Aundre Gordon at Spanish Town Hospital on May 27,201. The medical report indicates the doctor's diagnosis as:

- Blunt chest trauma and right pneumothorax
- Fractured right distal fibula

His treatment included thoracostomy tube insertion, analgesia and below knee cast immobilization. He was referred to the Orthopaedic Outpatient Department and it was reported that the fracture had healed and the chest injury had been resolved with lung fully expanded.

General Damages re: Devon Edwards

[14] In relation to this claimant, Counsel Miss Grant submitted for consideration, three cases. They are **Maureen Golding v Conroy Miller& Duane Parsons; Harris Morgan v Shane Henry; and Jermaine McPherson v Desmond Bryan.**

The **Maureen Golding v Conroy Miller v Duane Parsons's** case is reported at Volume 6 of Khan's and the Claimant suffered an undisplaced fracture of the left fibula (ankle) and pain in the left leg. She was temporarily incapacitated for 6 months and no permanent disability was expected, according to her medical report. In June 2006, she was awarded general damages in the sum of \$580,000 which updates to \$1,403,600.00

- [15] As regards **Harris Morgan v Shane Henry, 2008HCV05002**, the claimant who was involved in a motor vehicle accident was diagnosed with blunt trauma to the chest and no permanent disability was expected. An award of \$850,000 for general damages was made in October 2009. This now amounts to \$1,377,000.
- [16] For **Jermaine McPherson v Desmond Bryan, 2011HCV04949**, an award of \$1,500,000 was made in March 2015 for general damages. This figure updates to \$1,605,000. The medical report in this case disclosed that the claimant's right leg was swollen and tender and there was abrasion. He was diagnosed as having a right comminuted tibia fracture.
- [17] Having offered her assessment of the cases on which she relied, Miss Grant pointed out that the claimants in those cases were not assessed with impairment, but in Devon Edwards' situation, he was assessed with a 16% lower extremity impairment or six percent (6%) whole person impairment. As such, she suggested that an award of \$3M for general damages was reasonable.
- [18] Both attorneys Miss Grant and Mr. Austin found the **Maureen Golding** case most suitable for consideration in assessing the award for Devon Edwards. They posited that like Golding, the claimant in the present case did suffer ankle injury. However, Mr. Austin noted that was the extent of the similarities between the two cases.
- [19] In buttressing his position, he also placed reliance on **Keniel Coombs (by mother and next friend Beverly Coombs) v Stedford Rodney**, found in Volume 6 of Khan's Report. The Claimant Coombs sustained a bimalleolar fracture of the right ankle, his medical report stated. Consultant Orthopaedic Surgeon Dr. R.C. Rose assessed "present partial percentage disability as it relates to the right ankle as 20% of the foot equivalent to 15% of the lower extremity or 6% of the whole person." For general damages, this Claimant's award was \$1,036,200 which amounts to \$3,387,058 using the CPI for April 2017.

[20] When Coombs is compared with Edwards, the similarities are evident, so too the differences. For instance, both claimants sustained a fracture to the right ankle and both were assessed as having whole person impairment of 6%.

[21] Nonetheless, in relation to Devon Edwards, the consultant orthopaedic surgeon noted:

“There is not corroborative information in his medical records to indicate that there was knee pathology that was investigated or treated. I am ascribing residual impairment based on the injuries allegedly sustained in the road accident would be purely Mr. Edwards’ say so,”

[22] Whereas Devon Edwards was diagnosed as having no bony pathology in his knees, and no residual deformity in the lateral malleolus which was diagnosed as being fractured initially, the report for Coombs was not so comforting. It indicated, inter alia, that there would be “superimposed degenerative changes in the ankle joint for years to come.”

[23] It is evident from the medical reports of both Edwards and Coombs that the ankle injury suffered by the latter seemed more intense and persistent than the injuries sustained by Mr. Edwards.

[24] Coombs’ case commands my attention as a better guide than Goldings’ in awarding general damages to Mr. Edwards; however, a discount is inevitable. I therefore award the sum of \$2, 800,000 as general damages.

Special Damages

[25] Special Damages is awarded as follows:

Hospital expenses - \$59,000

Travelling Costs - \$ 5,800

Loss of earnings – 26 fortnights @\$17,000 per fortnight = \$442,000
therefore Special Damages in total is \$506,800.

[26] In light of the foregoing, judgment is awarded as follows:

- (1) For Claimant Adrian Smith general damages in the sum \$2,300,000 with interest of 3% from the date of service of the Claim Form to the date of judgment. Also future medical expense is awarded in the sum of \$285,000.
- Special damages in the sum of \$579,400 at the rate of 3% from the date of the accident to the date of judgment.
- (2) For Devon Edwards – general damages in the sum of \$2,800,000 with interest of 3% from the date of service of the Claim Form to the date of judgment.
- Special damages in the sum of \$506,800 at the rate of 3% from the date of the accident to the date of the judgment.
 - Cost to each Claimant to be agreed or taxed.