



[2023] JMSC Civ 07

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. 2018HCV04983**

BETWEEN	DEBBIE SUTHERLAND	CLAIMANT
AND	SURGIX JAMAICA LIMITED	1ST DEFENDANT
AND	EVERTON BAKER	2ND DEFENDANT
AND	KAREN ALEXANDER-LINDSAY	3RD DEFENDANT
AND	DENNIS CARBY	4TH DEFENDANT

IN OPEN COURT

Mr. Javed Grant and Mr. Duane O. Thomas instructed by Mr. Duane O. Thomas for the Claimant

Ms. Jaavonne Taylor instructed by Nunes, Scholefield and Deleon & Co for the 1st Defendant

Heard: November 23rd, 2022 and January 19th, 2023

Assessment of Damages – Mechanical back pain – Lumbago – paraspinal muscle strain – pain and suffering – loss of amenities – significance of no impairment on award for general damages – relevant considerations for award of loss of earnings

HUTCHINSON SHELLY J.

INTRODUCTION

[1] The matter before the court is a claim brought by ***Debbie Sutherland v Surgix Jamaica Limited*** and three other defendants. The matter was ultimately pursued solely against Surgix Jamaica Limited, who may alternately be referred to throughout this judgement as the 1st defendant. On the 22nd of April 2016, the Claimant was a passenger in a Mazda Biante motor vehicle, registration 4773HA which was being driven by Everton Baker, the servant/ agent of the 1st defendant. This vehicle was involved in a collision with a Honda Odyssey motor vehicle registered PF 6728 owned by Karen Alexander-Lindsay the 3rd defendant, which was being driven by Dennis Carby, the 4th defendant. The collision occurred in the vicinity of Seymour Avenue and Retreat Avenue intersection when the 2nd defendant tried to overtake a line of vehicles.

[2] As a result of the collision, the Claimant sustained a number of injuries which were pleaded as follows:

- Paraspinal muscle strain of the thoracic region
- Paraspinal muscle strain of the cervical region
- Soft tissue injury to both feet
- Moderate low back pain
- Burning and pinching sensation to the back
- Tender feet
- Severe bony and muscular tenderness to the lower thoracic and lumbar spine
- Moderate tenderness to the lower rib cage
- Severe mechanical mid back pain
- Severe mechanical lower back pain
- Contusion to both feet

[3] The Claimant filed the suit on the 19th of December 2018 in which she seeks damages as follows:

1. General damages for pain and suffering and loss of amenities;
2. Loss of earnings which she pleaded as \$875,000 from May 2016 to May 2018; and;
3. Special damages in respect of the medical expenses incurred, transportation and household assistance.

[4] The 1st defendant was served with a claim form on the 21st of December 2018 and filed an acknowledgement of service on the 7th of January 2019. No defence was filed and on the 20th of February 2019, judgment in default of defence was entered against them.

CLAIMANT'S EVIDENCE

[5] The evidence presented by the Claimant was found in her witness statement as well as in medical reports, receipts and other documents which were admitted into evidence by agreement. In her witness statement, which was allowed to stand as her evidence-in-chief, Ms. Sutherland stated that she is a practical nurse/surgical technician. She noted that on the 22nd of April 2016, she was at work at 13 Eureka Crescent Kingston 10 where she was employed by the 1st defendant as a surgical technician. At about 12:30 pm that day, she was instructed by the Managing Director to visit the University Hospital of the West Indies to introduce a total hip replacement kit to surgeons there. She said that the second defendant was instructed to transport her there in the motor-vehicle referred to above. It is the evidence of Ms. Sutherland that upon reaching the intersection of Seymour Avenue and Retreat Avenue, Mr. Baker sought to overtake a line of traffic and collided into the motor vehicle owned by the third defendant which was being driven by the fourth defendant.

- [6]** According to Ms. Sutherland, the collision was severe and caused the vehicle in which she was seated to spin a number of times which resulted in a fellow employee falling on top of her. When the vehicle came to a stop, she realized that she was unable to stand as a result of severe pain in her lower back and feet. She also reported feeling a burning and pinching sensation in her back. Ms. Sutherland stated that the Managing Director subsequently attended the scene and based on his instructions, she was taken to the employer's staff doctor, Dr. Andrew Ameerally. She was given medication by him and referred for physical therapy. She recounted having difficulty sleeping that night as the pain in her back was unbearable and caused her to twist and turn, which resulted in her getting very little sleep. On the 23rd of April 2016, she was referred to do an x-ray after which she received follow-up treatment from Dr. Ameerally. She paid a total of three visits to see him after this x-ray. These dates were recorded as the 26th of April 2016, 4th of May 2016 and 7th of July 2016.
- [7]** Ms. Sutherland stated that her pain remained unresolved and she continued to experience pain in her back and knees even while on prescribed medication. She recalled visiting the Clinic of Sports Medicine and Physical Therapy on the 28th of April 2016 where she did one session of physiotherapy. She said that as a result of hours of ongoing pain, she received urgent medical treatment from Dr. Broderick on the 30th of April and 14th of May 2016, but no report was presented in that regard.
- [8]** As a result of her dissatisfaction with the outcome of the treatment with Dr. Ameerally, Ms. Sutherland attended the office of Dr. Phillip Waite who is also a Consultant Orthopaedic Surgeon and commenced receiving treatment from him. This was between May 2016 and May 2017. She explained that this treatment was for back and knee pains. She received medical reports from Dr. Waite and Dr. Ameerally and these were exhibited as part of her evidence.
- [9]** Ms. Sutherland told the court that her back pains have never been resolved and in the years since the accident, ordinary lifestyle activities have caused numerous

flare-ups of pain. She stated that one of the worst incidents was in September 2021 when she had severe back pains for a period of two weeks during which she was unable to get out of bed or sit up. She was also unable to go to the bathroom without assistance and had challenges passing her urine. She was also unable to find a comfortable sleeping position. She said that as a result of this flare-up, she sought treatment from Dr. Wade Saddler who gave her an injection as well as a prescription for medication. She also received a medical report from Dr. Wade Saddler which was exhibited as part of her case. She was referred to do an MRI and the results have been exhibited as part of her case.

[10] In outlining the changes that this incident has caused and its impact on her quality of life, Ms. Sutherland stated that prior to this accident, she had no experience of back pains but she is now unable to lift items or exercise as she did before. She outlined that whenever she sat for long periods she had to place a pillow behind her back to ease the pain. The court noted that when she gave her evidence she took a pillow with her to the witness box which she placed on the seat, ostensibly for support. She recounted that the back pain had negatively impacted her intimate relationships and made her reliant on pain medication whether prescribed or over-the-counter. She also stated that as a result of the injuries, there were times where she was unable to carry out her household chores or even drive herself and she had to pay for assistance with these activities.

[11] She produced a number of receipts which showed her travelling expenses for visits to the doctor via taxi. She also produced receipts in relation to household assistance obtained, as well as medical treatment she received. Ms. Sutherland stated that the accident has caused her to develop an unhealthy fear of driving and being driven. She also gave her layman's conclusion that she believes she has PTSD but conceded in cross-examination that there has been no professional confirmation of this condition. Ms. Sutherland said as a result of her injury, she was unable to work and shortly after the accident, her employment was terminated by the 1st defendant who she accused of giving a false reason for same. She

produced a pay slip showing monthly earnings of \$35,000 on which she has sought to rely.

MEDICAL REPORTS

- [12] The medical report prepared by Dr. Philip D Waite dated the 18th of May 2017 was admitted into evidence as exhibit 2. Under the heading 'examination', the doctor recorded that the patient when seen on the 4th of May 2016 was in obvious severe distress and had difficulty undressing and lying on the bed. The doctor also found severe bony and muscular tenderness to the lower thoracic and lumbar spine, moderate tenderness to the lower rib cage but nerve root irritation tests were negative. In his assessment of the musculoskeletal system, he noted that the patient had severe pain which was aggravated by movement, her sensation was intact however and reflexes within normal limits. In terms of her feet, he reported that there was tenderness.
- [13] In commenting on the x-ray which was done on the 23rd of April 2016, the doctor found that there were no fractures or dislocations observed in the region of the thoracic spine and the same was true in respect of the lumbar spine. No dislocation was seen in the region of the feet. He diagnosed Ms. Sutherland as having severe mechanical mid back pain, severe mechanical lower back pain and contusion to both feet. These injuries were found to be consistent with the mechanism of the accident which she described.
- [14] The management plan outlined showed that she was advised to continue on strong medication and she was seen a total of six times. Dr. Waite reported that on the sixth and final visit, which was the 5th of May 2017, Ms. Sutherland informed him that she was pain-free. His examination of the thoracic thoracolumbar spine revealed no tenderness and it was his final assessment that there was a satisfactory resolution of all injuries. In terms of impairment, there was no impairment identified and in respect of prognosis, the doctor noted that the back

pain can return and worsen and the timing and extent of them could not be predicted.

- [15]** The medical report prepared by Dr. Andrew Ameerally was put into evidence as exhibit 3. In this report, which was dated the 2nd of January 2018, Dr. Ameerally noted that he saw the Claimant on four occasions. The 1st time being the 22nd of April 2016 followed by the 26th of April and 4 of May 2016 and the final occasion was the 7th of June 2017. He recorded that at the time of the preparation of this report, he had a history of the matter as reported by Ms. Sutherland as well as the x-ray and results which had been prepared by Dr. T Dundas, consultant radiologist. In respect of the visit on the 7th of June 2017, Dr. Ameerally found that the Claimant no longer experienced mid back or lower back pain and only experienced pain during her menstruation.
- [16]** On physical examination, he observed that she was a well looking patient and walked with normal gait. In his examination of the thoracolumbar spine, he noted that there was normal alignment, no central tenderness, no deformities, no gibbus, no scars, no paraspinal muscle tenderness. In respect of her muscles, the tone was normal and the power appeared to be within the appropriate range. There were also no negative findings in relation to her reflexes to include sensation and straight leg raises which was negative.
- [17]** He also confirmed that no fractures or dislocation were seen on the x-ray. In relation to his diagnosis/assessment, he noted that Ms. Sutherland had suffered paraspinal muscles strain of the thoracal region, paraspinal muscle strain of the cervical region and soft tissue injury to both feet. In terms of her prognosis, he noted that Ms. Sutherland no longer had pain in her mid/ lower back with regular activities but occasionally had lower back pain related to her menstruation. He stated that she is able to complete her chores without any restriction but flare-ups may occur in the future and this was not predictable. He also found that there was no impairment suffered.

- [18] In her examination of Ms. Sutherland on the 20th of September 2021, Dr. Wade-Saddler observed that she was ambulant without assistance but in mild painful distress. There were no gross abnormalities, tenderness nor defects detected and the rest of her systemic examination was unremarkable. She assessed the Claimant as having lumbago and administered an injection. The Claimant was also given a prescription for painkillers as well as a request for an MRI of her lumbar spine. There was a follow-up visit on the 19th of January 2022 where Ms Sutherland again presented with complaints of lower back pain, the doctor arrived at the same assessment and again recommended that an MRI be conducted.
- [19] On the 3rd of February 2022, Ms. Sutherland attended Dr. Wade-Saddler's practice and submitted the MRI results. The MRI spine lumbar report from Elite Diagnostic Imaging was placed into evidence as exhibit 4. The doctor observed that the results showed that Ms. Sutherland had suffered lower lumbar degenerative changes with associated facet joint arthropathy resulting in moderate exit foraminal narrowing at the L4/5 and L5/S1 levels. No evidence of stenosis was demonstrated. Dr. Wade-Saddler also noted that it was difficult to determine the long-term prognosis for Ms. Sutherland and a review by an orthopaedic specialist would be useful in clarifying the extent of her impairment and eventual outcome.

Loss of Earnings

- [20] In respect of her claim for loss of earnings, the termination letter dated the 30th of April 2016 and pay slip for the month of April 2016 were exhibited by Ms. Sutherland as exhibits 1a and b. In the letter, it was stated that '*with immediate effect*', Ms. Sutherland's services were no longer required at Surgix Jamaica Limited. This notice was given eight days after the motor vehicle accident. It was also stated that '*as a start-up the company's requirements are a bit more challenging for the qualifications which the claimant possessed*', she was thanked for her service and '*wished the best in her future endeavours*'. It was noteworthy that while the letter stated that the job requirements are a bit more challenging than the qualifications which the claimant possessed, the letter did not explicitly state

that she lacked the qualifications for employment or in what way the job requirement exceeded the qualifications she actually possessed. It was also not stated that there had been any misrepresentation of her qualifications at the time of her employment.

- [21] In cross examination, Ms. Sutherland agreed that the report of Dr. Waite showed that in May 2017, she reported that she was pain-free. She was asked if she agreed that she was pain-free and she indicated that at that time she was pain-free as she had been placed on pain medication including morphine. She was shown the report of Dr. Ameerally where it was noted that she *'had done well with treatment, no longer had pain in her lower back with regular activities and that flare-ups may occur but that was unpredictable.'* She was asked if she agreed that she had completed treatment with Dr. Ameerally at the time he prepared that report and she agreed that she had. She also agreed that there were no other reports in this matter prepared by him. She was also asked about the expertise of Dr. Wade Saddler and indicated that she was not an orthopaedic surgeon.
- [22] Ms. Sutherland was questioned about her account of having experienced one of the worst instances of back pain in 2021. She acknowledged that she had not returned to see a specialist and explained that this was due to financial constraints as she could not afford to see a specialist. She was asked if she had presented reports from Doctors Ameerally and Waite when she went to Dr. Wade-Saddler and she indicated that she had not but gave her the information verbally. She explained that she told her about the accident and that because of the injury from time to time, she had flare-ups. She was shown the report prepared by Dr. Wade-Saddler and agreed that it did not show that she had visited either doctor.
- [23] The MRI report was shown to her and it was suggested to her that the injuries noted were in fact age related and she disagreed. It was also suggested to her that all her injuries had been resolved in 2017 and she denied this. She also refuted the suggestion that the pain in her lower back was attributed to her menstrual cycle. She was asked about her employment and she indicated that she does not work

on a regular basis, but takes private cases or home visits on occasion. She was asked whether a copy of her qualifications had been placed before the court and she acknowledged that it was not. She also accepted that she had not presented a job description to the Court in respect of the position at Surgix Jamaica. She disagreed however that it was incorrect to say that her termination had been predicated on a false basis.

[24] In re-examination, Ms Sutherland was questioned about the visits to Dr. Ameeraly, she indicated that she was sent to him by her employer and he was the one who paid for the visits. She was asked if there was any reason she did not provide copies of the previous reports to Dr. Wade-Saddler and she responded that when she went to her, the pain was so excruciating that all she could think about was getting rid of it and not the reports. In respect of the reason provided for her termination she explained that before the accident, her employer had no problems with her qualifications and this only arose after she was injured. She told the Court that she had worked with the company for a period of 3 1/2 months before termination.

DAMAGES

SPECIAL DAMAGES

[25] A number of documents were agreed between the Parties and entered into evidence as exhibits 1 through to 45. Taking into account the receipts presented, the total in this regard is \$239,600. This amount having been proved, I am prepared to make an award for same.

GENERAL DAMAGES

CLAIMANT'S SUBMISSIONS

[25] In written submissions on the point, Counsel for the Claimant acknowledged that the Court had the task of determining a fair estimate of damages to award. Mr. Grant asked the Court to take into account a number of factors which included:

- a. The nature and gravity of the injuries suffered
- b. The treatment undergone by the Claimant
- c. The past, present and future pain the claimant experienced and will experience
- d. The age of the Claimant
- e. The nature and gravity of any physical disability.

[26] Counsel made reference to a number of authorities which included **Nathan Watson v the Attorney General of Jamaica** [2015] JMSC Civ 5 where the dicta of Campbell in **Beverly Dryden V Winston Layne** SCCA 44/87 was highlighted, where he stated: "*personal injury awards should be reasonable and assist with moderation and so far as possible comparable injuries should be compensated by comparable awards.*"

[27] Counsel also made reference to an extract from *Damages for Personal Injuries and Deaths* wherein the learned author, John Munkman wrote: "*there is no doctrine of precedent in fixing the quantum of damages. It would be wrong to conclude that **Rushton v National Cold Board and other** cases cited in the previous section afford any warrant for such doctrine. In fact, they do nothing of the kind. The court does not look to precedence for a general guide to the current range of damages. It looks for assistance in a difficult problem not foreign inflexible pattern which would confine the Courts within fixed limits.*"

[28] In respect of guidance for the appropriate award, Counsel made reference to a number of cases, the first was **Garfield Scott v Donovan Cheddisingh and Philip Campbell** CL1995 S217 reported at page 276 *Khan's volume 5 Recent Personal Injury Awards*. In that case, the Medical Report stated the Claimant's injuries as excruciating pains, headaches, contusions on right shoulder and hip, puncture wound on left forearm; and swollen painful and tender knee. Additionally, the medical report mentioned that the Claimant had been left with a painful lower right hip when lifting heavy objects and he experienced difficulty playing soccer

and cricket. He was awarded \$300,000 for general damages in July 1997. The updated award amounts to \$2,210,714.20.

- [29] The case of **Hugh Douglas v Morris Warp, Vincent MacPherson, Sergeant Boreland and the Attorney General** CL1984D 130 reported at volume 4 Khans Recent Personal Injury Awards was also cited. In that matter, the court awarded \$195,000.00 as general damages of which \$140,000.00 was for personal injuries. The balance was for false imprisonment and malicious prosecution. The injuries to that claimant included bruises to both limbs, weals over the shoulder, swelling to the arm and forearm, and tenderness over the humerus. The figure when updated amounts to \$2,514,687.40.
- [30] The decision of **Evoni McLean v Pepsi Cola Bottling Co Ltd and An'or** [2014] JMSC Civ 55 was also highlighted as relevant. The date of this award was April 4th, 2014. In that case, the medical report revealed that the Claimant had suffered mild whiplash injury, mild soft tissue injury to right shoulder, mild mechanical lower back pain, resolved triggering of fingers of both hands. The award made in that case was \$2 million which updates to \$3,129,584.35. Counsel submitted that there is some similarity between the injuries of Ms McLean and the instant Claimant but the latter's injuries are more serious and this would justify a higher award.
- [31] The final case cited by the Claimant is **Ventrice Brown v Henry Marshall etal** [2019] JMSC Civ 68 in which the Claimant Andrew Smith was diagnosed with a resolving headache, mild lower back strain, contusion and 1 % WPI. Counsel argued that although Ms. Sutherland was not assessed as having an impairment, her injuries were more numerous and just as serious as those of Mr. Smith, a factor which would justify an award significantly higher than the \$2 million given in May 2017. This figure updates to \$2,788,671.02.
- [32] Counsel posited that taking into account the sums awarded for injuries and loss of amenities, which were not as extensive as those of the instant Claimant, an appropriate award would fall within the range of \$5 to \$5.5 million.

DEFENDANT'S SUBMISSIONS

LOSS OF EARNINGS

[33] In her submissions on behalf of the 1st defendant, Counsel observed that although the Claimant has sought to make a claim for loss of earnings, no submissions were made by her attorneys in this regard. She argued that even though the termination occurred within a few days of the accident, there was no proof that the loss of earnings was a direct consequence of the motor vehicle accident and without additional evidence on this, the Court could not find any correlation between the termination and the timing of the accident.

GENERAL DAMAGES

[34] Under this heading, Counsel acknowledged the injuries pleaded and the reliance on the reports from the orthopaedic specialists and family practitioner. She contended that although the Claimant sustained a plethora of injuries, these injuries had resolved approximately one year later as seen in the medical report of both orthopaedic surgeons. Counsel asked the Court to note that Dr. Philip Waite had stated that there was satisfactory recent resolution of all injuries though he did concede that the back pain can return and worsen. She highlighted that it was not until 2021, almost 5 years after her last doctor's visit in 2017, that the Claimant returned to see a medical doctor in relation to pains in her back. In respect of the MRI, Counsel submitted that the degenerative changes are a normal part of life and occur as a result of age related wear and tear on the spine and neck and there was no possible nexus between these degenerative changes and the motor vehicle accident on the 22nd of April 2016. Counsel asked that judicial notice be taken that the associated facet joint arthropathy is a form of arthritis affecting joints in the spine and should not be attributed to the motor vehicle accident.

[35] On the issue of the appropriate general damages, a number of authorities were cited, the first was ***Richard Henry v Marjoblac Ltd 2017 JMSC*** Civ of 42. In that matter, the claimant sustained injuries as a result of an accident on the job. He

was diagnosed with blunt trauma to the back with resultant muscle spasm. He had difficulty bending forward and tension of the muscles to the lower back. He also experienced pain. He was referred for physical therapy and prescribed a muscle relaxant and pain medication. He was also given five days sick leave. He was seen by an orthopaedic surgeon who assessed him as having 2% whole person impairment. He was subsequently re-assessed as having 7% whole person impairment pyramid following an MRI. He was also diagnosed as having a lumbar disc prolapse. The award of \$1,036,244.54 which was given to him in March 2017 updates to \$1,451,195.85. Counsel submitted that unlike the current case, that claimant was assigned an impairment rating and that would have to be considered in granting an award.

- [36] The second case cited was *Richard Rowe v Joseph Lloyd Thomas* [2017] JMSC Civ 90. In that matter, the Claimant sustained injuries as a result of a motor vehicle accident. He was diagnosed as having chronic mechanical lower back pain, chronic cervical strain/whiplash injury with muscle spasm, chronic left knee sprain and abrasion, sub-conclusive blunt head injury with abrasion to forehead and post-trauma headache and musculoskeletal chest pain. There was no whole person impairment assigned and he was given an award of \$925,000 for his pain and suffering and loss of amenities in June of 2017. This updates to \$1,281,385.28. Counsel submitted that taking into account the differences in injuries and relevant considerations, the appropriate award should be \$1,200,000.

DISCUSSION

LOSS OF EARNINGS

- [37] It was the evidence of the Claimant that she suffered a loss of \$875,000 for a 2-year period May 2016 to May 2018. In considering this application, I took note of the fact that there was no contract presented by her which stated that she had been employed by the 1st Defendant for that contractual period and would have had a legitimate expectation of being compensated for this loss.

[38] I was satisfied however that the timing of the termination could not be explained as mere coincidence as the Claimant had been employed for over 3 months. During that time, there had been no determination that her qualifications did not meet the job requirements and this occurred 8 days after she had been seriously injured by the actions of an agent of the 1st Defendant in the course of her duties. I had questions as to the veracity of the reason provided for termination as on the day of the collision, Ms. Sutherland had been tasked by the Managing Director to brief a team of surgeons at the UHWI on a hip replacement kit; an assignment which in my opinion, showed great confidence in her ability to execute this task and to do so creditably.

[39] On a review of the medical evidence, it is clear that for the period April 22nd, 2016 to May 2017, Ms. Sutherland battled with pain and physical challenges associated with the injuries she sustained as a result of the motor vehicle accident. I am persuaded that these issues would have impacted her ability to work and/or obtain alternate employment to assist her financially given the loss of her employment. I have considered her evidence of having a taxi on the road but with no evidence presented as to when this started or her earnings therefrom, I was unable to assess whether those earnings would have covered the period to which I have made reference.

[40] In light of the foregoing discussion, it is my considered view that there is ample justification for an award for loss of earnings. I believe however that this award should encompass the period May 2016 to May 2017 given her incapacitation during same. By my calculation, using the base rate of \$35,000 for her monthly earnings, this amounts to \$420,000.

GENERAL DAMAGES

[41] In coming to a decision on the appropriate award to be made for pain and suffering and loss of amenities, I found useful guidance in the cases cited by Counsel. I also found assistance on the point in the decision of *Schaasa Grant v Salva Dolwood*

and the Jamaica Urban Transit Company 2005 CV 03081 which was cited in the **Richard Henry** case (supra). In that matter, the Claimant who was twenty-nine years old, suffered serious back pain and was assessed as suffering from right side lumbar radiculopathy, secondary to a prolapse intervertebral disc, mechanical lower back pain and mild back pain. She was in pain management and thereafter diagnosed with chronic cervicothoracic pain with subjective radiculopathy. She had a whole person impairment rating of ten percent (10%). It was recommended that she find a new occupation. She was awarded Three Million Dollars (\$3,000,000) with interest at 3% for pain and suffering on June 16, of 2008. This figure updates to \$7,695,390.78.

[42] The decision of **Candy Naggie v The Ritz Carlton Hotel Company of Jamaica** listed at page 198 of *Khan's Volume 6* was also mentioned in the **Richard Henry** decision. The claimant therein was diagnosed with mechanical lower back pains. It was also indicated that she would be plagued by intermittent lower back pains aggravated by prolonged sitting, standing, bending and lifting. She was assessed as having a 5% whole person disability relating to the lumbosacral spine and 5% whole person impairment in restriction in extension of the lumbosacral. It was also noted that the claimant had a permanent partial disability of 10% of the whole person. An award of \$1,750,000.00 was handed down by Sinclair- Haynes J (as she then was) on December 13, 2005 with interest. This updates to \$6,187,845.30.

[43] The final authority of interest which was **Yanique Hunter v Conrad George Clarke and Kirk Beckford** [2014] JMSC Civ 83, which was cited in the **Richard Rowe** decision. The claimant sustained soft tissue injuries to her back and was diagnosed with chronic sprain or strain to the lower back with non-specific lower back pains and soft tissue injury/spasm to the middle back. She was assessed as having a 2% whole person impairment. The Claimant was required to undergo a course of physiotherapy. She endured pain and suffering for approximately two years post- accident. She was awarded \$1,200,000.00 in May 2014. This updates to \$1,859,564.

- [44]** On a review of these cases, it is clear that while the injuries suffered by Ms. Sutherland bore some similarity to those sustained by the Claimants in the authorities cited above, her injuries though serious, did not leave her with any impairment/disability and her major challenge appears to be living with flare-ups which both Drs. Ameerally and Waite had indicated would occur. In arriving at this finding, I considered the submission made on behalf of the defendant that Ms. Sutherland's pain had resolved by 2017. The difficulty with this submission however is that the experts in the field have indicated that she would likely have flare-ups and this could not be predicted. I was satisfied on the evidence of the Claimant and the report of Dr. Wade-Saddler that such an episode was suffered by the Claimant in 2021 which prompted her visit to the GP.
- [45]** Counsel for the Defendant submitted that it was unusual that in circumstances where Ms. Sutherland spoke of experiencing excruciating pain, she opted to see a GP instead of a Specialist and failed to take along the relevant reports. In my consideration of this argument, I found the explanation offered to be credible and thoroughly understandable as Ms Sutherland attended the physician that she was able to afford. I am also of the view that, while in the midst of excruciating pain it would be an exceptional individual who would have had the presence of mind to determine that previous reports should be located and taken to the doctor. I believe that the ordinary man's primary focus would have been to seek relief for the pain and I did not believe that her failure to return to the specialists or take in the reports undermined her veracity on this point.
- [46]** In respect of the MRI results, the Court has been asked to take judicial notice that the degeneration noted was age related and had no nexus to the accident and injuries sustained. I was not able to determine how this could be done as while changes to the area may be related to aging, there is evidence before the Court that the Claimant suffered trauma to this region and had been under the treatment of no less than 3 doctors in respect of same. In light of this situation, the Court would have to be guided by the medical evidence on the point. I accept that Ms. Sutherland suffered injuries and trauma which could not be divorced from the

degenerative changes noted on the MRI and that there is sufficient nexus between the changes observed and the motor vehicle accident.

[47] On a comparison of the Claimant's injuries and loss of amenities with the cases reviewed, I found that while there was some similarity to the cases cited on her behalf, the nature of the injuries suffered by her were more comparable to the **Richard Henry** and **Richard Rowe** cases. The point of difference being that she sustained a few more injuries than they did. While she was not assessed as having any impairment, I found that the usual awards for like injuries tended to be between \$1.8 million on the lower range and \$7.6 million on the upper end. In respect of the **Richard Henry** and **Yanique Hunter** cases, I found that these awards seemed to have been on the conservative end taking into account the serious nature of their injuries and the impairment sustained. In light of the foregoing discussion, I am persuaded that an appropriate award in this matter would be \$2,000,000.

CONCLUSION

[48] Accordingly, the following awards are made to the Claimant:

1. Special Damages in the sum of \$239,600 at 3% interest from the 22nd of April 2016 to January 19th, 2023.
2. Loss of Earnings in the sum of \$420,000.
3. General Damages in the sum of \$2,000,000 at 3% interest from the 21st of December 2018 to January 19th, 2023.
4. Costs to the Claimant to be taxed if not agreed.

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T. Hutchinson Shelly
Puisne Judge