



[2021] JMSC Civ.170

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

**CIVIL DIVISION**

**CLAIM NO. 2015 HCV 01751**

<b>BETWEEN</b>	<b>JENNIFER WILLIAMS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>JAMAICA URBAN TRANSIT COMPANY LIMITED</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>JEREMY STEWART</b>	<b>2<sup>ND</sup> DEFENDANT</b>

Mr. John Givans instructed by Givans & Co. for the Claimant

Ms. Kimberlee Dobson for the 1<sup>st</sup> Defendant

Heard: July 27, 2021 and October 29, 2021

***Assessment of Damages – Motor Vehicle Accident - Degloving injury.***

**CARR, J**

### **Introduction**

[1] The Claimant filed a Claim in negligence as a result of a motor vehicle accident that occurred on the 15<sup>th</sup> day of October 2010. At the time she was a passenger in a Jamaica Urban Transit Motor Bus (JUTC) which was being driven by the 2<sup>nd</sup> Defendant. The bus overturned and rolled over several times down a precipice in the parish of St. Ann. A judgment in default was entered on the 30<sup>th</sup> of January 2019 and the matter was fixed for assessment of damages.

[2] The Claimant particularized her injuries as follows:

- a) Unconsciousness
- b) Head injury
- c) Chest and right upper limb injury
- d) Abrasions to the forehead
- e) Tenderness over the sternum
- f) Degloving injury to right arm
- g) Deformity to arm and forearm
- h) Weak pulse in right wrist hand

**[3]** She seeks the sum of \$8,000,000 (Eight Million Dollars) in General Damages and the sum of \$115,000 (One Hundred and Fifteen Thousand Dollars), as agreed by the parties, in Special Damages.

### **Submissions of Counsel**

#### **Claimant**

**[4]** The Claimant relied on the medical reports of Consultant Orthopaedic Surgeons Doctors Mark Minott and Steven St. Juste. Counsel Mr. John Givans argued that the Claimant suffered the following major injuries:

- a) Traumatic brain injury with unconsciousness
- b) An open fracture to the upper arm
- c) Vascular degloving injury with deformity
- d) Partial median nerve injury.

**[5]** It was submitted that some seven years later the Claimant was still experiencing pain and numbness in the affected limb. Mr. Givans submitted that the injuries are to be considered together and so he suggested that the awards generally for degloving injuries were in the region of \$2,500,000 (Two Million Five Hundred Thousand), typically awards for head injuries ranged between \$750,000 (Seven Hundred and Fifty Thousand) and \$800,000 (Eight Hundred Thousand). For lacerations and tenderness he submitted that an award of \$1,200,000 (One Million

Two Hundred Thousand) would be appropriate as such an award of \$8,000,000 was reasonable in all the circumstances.

## **Defendant**

[6] Counsel Ms. Kimberlee Dobson submitted that the court should give little weight to the medical report of Dr. St. Juste since the Claimant admitted that she only went to him once and that this was for the purpose of obtaining a medical report for this matter. In referring to the authorities relied on by the Claimant Ms. Dobson indicated that they were excessive and did not compare to the injuries outlined in this case. She also argued that the medical evidence did not support a finding that the Claimant suffered any lacerations. The concussion she argued was not a brain injury and there was no medical evidence to support that finding. The main injury suffered by the Claimant she argued was that of the fracture and scarring. The injuries could not have been so destabilizing if the Claimant was able to go back to work two months after the accident and was able to continue working until she retired. It was Counsel's submission that an award of \$4,000,000 to \$4,500,000 was more appropriate given the circumstances.

## **Assessment of General Damages**

### **Analysis and Discussion**

[7] The Court in the determination of damages must seek to compensate the Claimant for the injuries suffered once and for all. An assessment of damages must take into consideration past, present and future loss and must compensate the Claimant in such a way as if the tort had not been committed. The guiding principle is that a court must not seek to rely on precedents but must instead look to former authorities as a guide as to the current range of damages.

[8] I am guided by the principle stated in **Louis Brown v Estella Walker (1970) 11 JLR 561** and the factors that are to be taken into consideration in assessing general damages. These factors are:

- (i) the extent and nature of the injuries sustained;
- (ii) the nature and gravity of the resulting physical disability;
- (iii) the pain and suffering endured; and
- (iv) the duration and effect upon the person's health
- (v) the pain and suffering (including discomfort and inconvenience) which the claimant is likely to suffer after.

[9] I have also considered the case of **Richard Sinclair v Vivolyn Taylor**<sup>1</sup> Phillips JA, at paragraph 31, noted that; “although one must pay attention to the specific injuries suffered and treatment administered in each case, nonetheless, the percentage PPD is a good guide for making an award and for making comparisons in order to arrive at some uniformity in awards.” In this case there was evidence of a percentage whole person disability.

[10] The Claimant relied on two medical reports in support of her claim. The first was provided by the South East Regional Health Authority and was dated September 29, 2011. The Claimant was examined on the 16<sup>th</sup> of October 2010 and her history was outlined in the report as “head injury with loss of consciousness, chest and right upper limb injury”. The findings on examination and investigation were listed as follows:

- a) Abrasions to forehead
- b) Tenderness over the sternum
- c) Degloving injury to right arm
- d) Deformity to arm and forearm
- e) Weak pulse in right wrist hand

[11] She was diagnosed as having a concussion with a Grade 3C open fracture of the humerus. She was admitted for emergency arterial repair and debridement of the

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<sup>1</sup> [2012] JMCA Civ 30

arm, she received daily dressings and antibiotics until December 12, 2010 when she had split skin grafting. She was discharged with an external fixator in place which was removed on the 21<sup>st</sup> of January 2011 and a cast fitted. She was readmitted on the 19<sup>th</sup> of February 2011 however the fracture had healed. She was sent for physiotherapy for six months and was discharged from the Orthopaedic Out-patient clinic on the 17<sup>th</sup> of July 2011.

**[12]** Counsel has asked the court to disregard the second medical report of Dr. Steven St. Juste. The court notes that this report was dated June 28, 2017 some six years after the accident. Although it is not unusual for persons to have residual or lingering pain as a result of a previous injury the court must be concerned with the relevance of the medical report presented given the fact that it is not contemporaneous with the date of the accident. In this case I agree with Counsel Ms. Dobson that the section of the report titled history of impairment is based on information not within the knowledge of the examining Doctor, as he makes reference to the report made by the Claimant. As such that aspect of the medical report cannot be relied on.

**[13]** His examination of the Claimant was conducted on March 20, 2017. The Claimant complained of recurrent right forearm swelling and heaviness, pain with altered sensation (numbness) and numbness of the index and middle fingers of the right hand. On examination he found that she had a traumatic scar to the distal right arm, 7cm proximal to the elbow joint involving the medial aspect of the cubital fossa, anteriorly extending almost circumferentially around to the lateral condyle dorsally, as well as tethering of skin anteriorly. There was a healed skin graft to lateral elbow posteriorly, and he also noted surgical scars from the application of an external fixator. Her range of motion was described as 18 degrees to 120 degrees flexion in the right elbow and 0 degrees to 135 degrees flexion in the left elbow. There was altered sensation of the index and middle fingers, power was 5/5 and she experienced painful paraesthesia with gripping at full power.

[14] He found that the Claimant was able to perform her daily activities, however she continued to experience pain and numbness in the affected limb along with a limited range of motion. The Claimant was assessed as having a 7% upper extremity disability and 4% whole person disability.

[15] The Claimant relied on several authorities:

- **Dennis Brown v. Jamaica Pre-Mix Limited**<sup>2</sup>
- **Leroy White v. Winston Waldron**<sup>3</sup>
- **Anthony Simpson v. Lloyd McMahon**<sup>4</sup>
- **Henry Bryan v. Noel Hoshue et al.**<sup>5</sup>
- **Devon Gray v. The Attorney General of Jamaica et al**<sup>6</sup>
- **Michael Jolly v. Jones Paper Co. Limited et al**<sup>7</sup>
- **Janice Lockett (an infant) v. Gladstone Williams et al**<sup>8</sup>
- **Kennesha Harris (an infant) v. Hall et al**<sup>9</sup>

[16] In written submissions, Counsel Mr. Givans made reference to the fact that awards for each injury should not simply be arithmetically added since the court was to look at the total effect of the injuries. Despite having said so the proposed figure of \$8,000,000 appears to be an arithmetic calculation based on the various injuries described by the Claimant. The authorities of **Turkheimer Moore v. Elite Enterprises Ltd. & Ors.**<sup>10</sup> and that of **Lorna Hayles v. The Attorney General**<sup>11</sup>

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<sup>2</sup> Khan's 5 Page 99

<sup>3</sup> Khan's 5 Page 103

<sup>4</sup> Khan's 4 Page 206

<sup>5</sup> Khan's 5 Page 177

<sup>6</sup> Khan's 6 Page 215

<sup>7</sup> Khan's 5 Page 102

<sup>8</sup> Khan's 5 Page 274

<sup>9</sup> Khan's 4 Page 77

<sup>10</sup> CL 1995/M168 delivered 29<sup>th</sup> f February 2000

<sup>11</sup> (2020) JMSC Civ 39

were submitted on behalf of the Defendant. I did not find these authorities useful when considering the injuries of the Claimant as none of them referred to degloving.

- [17] In assessing the general damages to be awarded, consideration will be given to the main injuries presented by the Claimant, as well as the fact that she did not attend upon a doctor until some six years later, which would suggest to this court that there were no long term effects of her injuries that would have caused her to seek further medical care.
- [18] The main injuries therefore would be the degloving injury and the deformity to the right arm. There is no medical evidence to support a traumatic brain injury as stated by the Claimant as the concussion did not result in any lingering medical issues, neither is there any evidence of lacerations or disruption in her sexual relations with her husband as set out in her claim.
- [19] The two authorities of **Janice Lockett v. Gladstone Williams et al** and **Kennesha Harris v. Hall et al** are more in line with the injuries suffered by the Claimant in this case.
- [20] In the Lockett case the Claimant suffered degloving injuries to the right shoulder and right leg as well as a fracture of the tibia and tibial plateau. The result was deformity of the leg, scarring and she walked with a limp. The award made on July 13, 2000 was \$1,200,000 when updated using the current CPI the award would be \$2,444,040.
- [21] In the case of Harris the injuries were extensively to the leg, from just below the knee to the ankle. The infant was left with gruesome scarring and plastic surgery was recommended. The award of \$497,000 on the 22<sup>nd</sup> of October 1992 updates to \$3,248,612.24.

**[22]** Given the fact that the Claimant has limited range of motion in her right arm, a 4% whole person disability, and severe scarring that is permanent an award of \$5,000,000 is considered reasonable in the circumstances.

**Order:**

1. General Damages is awarded in the sum of \$5,000,000 for pain and suffering and loss of amenities with interest at the rate of 3% from March 26, 2015 to October 29, 2021.
2. Special Damages is awarded in the sum of \$115,000 with interest at the rate of 3% from the 15<sup>th</sup> of October 2010 to October 29, 2021.
3. Costs to the Claimant to be agreed or taxed.