



[2023] JMSC Civ 116

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018HCV03460

BETWEEN	OMAR WRIGHT	CLAIMANT
AND	VIVIAN OMAR BURKE	1ST DEFENDANT
AND	DUWAYNE HEMMINGS	2ND DEFENDANT

IN OPEN COURT

Ms. Jamila Maitland instructed by Campbell McDermott for the Claimant

Defendant absent and unrepresented

Heard: 25th of May 2023 and 28th of June 2023

ASSESSMENT OF DAMAGES – Motor vehicle collision – negligence – Special damages – General damages

HUTCHINSON SHELLY, J

BACKGROUND

[1] The Claimant in his Claim filed on September 13, 2018 is seeking to recover damages for personal injury, loss and damage arising from a motor vehicle accident which occurred on April 28, 2014 along the intersection of Orange main road and Porto Bello Road, in the parish of St. James. The 1st Defendant was at all material times the owner of motor vehicle registration number PG 0382 in which

the Claimant was a passenger and the 2nd Defendant was the servant/ agent of the 1st Defendant. The Claimant asserts that as a result of the negligence of the 2nd Defendant in the driving, management or control of the motor vehicle registration number PG0382, the accident occurred.

- [2] No acknowledgment of service or defence was filed by the 1st and 2nd Defendants and an Interlocutory judgment in default of acknowledgment of service was entered against them on the 5th of November 2021 and noted in **Binder 777 Folio 312**. In furtherance of that judgment, the Claimant has approached this Court for damages to be assessed. On May 25, 2023, the Claimant gave evidence as to the quantum of damages that he believes the Court should award.
- [3] On the day of the hearing, the 1st and 2nd Defendants made no appearance and remained unrepresented, as such, the assessment has proceeded uncontested.
- [4] It is to be noted that a Notice of Proceedings was served on Advantage General Insurance Company Limited, with whom the 1st Defendant had a policy of insurance at the material time, on the 13th of September 2018. However, the Insurance Company has not intervened in the matter.
- [5] In the Particulars of Negligence of the 1st and 2nd Defendants, the Claimants allege:
 - a. Driving at or into the path of motor vehicle registration number 5940 GM.
 - b. Colliding into motor vehicle registration number 5940 GM.
 - c. Failing to see motor vehicle registration number 5940 GM within sufficient time.
 - d. Failing to keep his eyes on the road at all times.
 - e. Failing to apply his brake within sufficient time or at all.
 - f. Failing to stop, slow down, swerve, or otherwise conduct the operation of the said motor vehicle so as to avoid the collision.

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 Defendants' negligence.

EVIDENCE

- [7]** At the hearing on May 25, 2023, the Claimant was sworn and his witness statement dated the 8th of February 2023 was allowed to stand as his evidence-in-chief. It is his evidence that on April 28, 2014, he was a passenger in a motor vehicle being driven by Duwayne Hemmings, the 2nd Defendant. The 2nd Defendant was driving from Orange District on the Orange main road in the parish of St. James and they were heading towards Montego Bay. He further stated that the 2nd Defendant overtook a line of traffic around a corner when they reached a section of the main road and collided into motor vehicle registration number 5940 GM, which had been travelling from the opposite direction.
- [8]** As a result of the collision, the Claimant immediately felt pain all over his body. The pain was more concentrated in his left arm which he thought was broken. He also observed cuts on his arm. He stated that he was taken to the Cornwall Regional Hospital where an x-ray was performed on his left arm and his cuts were stitched and dressed. He was also admitted overnight for observation.
- [9]** The Claimant said that even after the stitches were removed, he was still feeling pain in his left arm. Consequently, he was referred to Dr. Don Gilbert, an Orthopaedic Consultant. He consulted with Dr. Don Gilbert on four (4) occasions. As part of his treatment, Dr. Don Gilbert referred him to physiotherapy. He asserted that he did nine (9) sessions with Stacey Ridguard at the Total Therapy Limited between May 2014 and June 2014. After the physiotherapy sessions ended, he was advised by the physiotherapist to continue doing exercises at home. He stated further that although his symptoms improved, he still feels pain in his left arm for which he takes over-the-counter pain medication.

[10] The Claimant is seeking an award in the sum of One Hundred and One Thousand Eight Hundred and Ninety-Four Dollars and Seven Cents (\$101,894.07) as special damages and has asked the court to award the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00) as general damages.

SPECIAL DAMAGES

[11] Special damages are compensatory and are designed to return persons to the position that they were in prior to the injury based on measurable dollar amounts of actual loss. They are normally reduced to a “*sum certain*” at the trial: ***Barbara McNamee v Kasnet Online Communications RM Civil Appeal No.15 of 2008.***

[12] The Particulars of Claim outlines the sums claimed for Special Damages as follows:

1. Medical Expenses	\$47,894.07
2. Transportation Expenses.....	\$48,000.00
3. Police Report	\$ 6,000.00
Total	\$101,894.07

[13] In support of his claim for Medical Expense, the Claimant tendered in evidence seven receipts, four of which evidenced payments to Dr. Don Gilbert, the remaining three receipts represented payments made to physiotherapist, Ms. Stacey Ridguard. It was the Claimant's evidence that he visited Dr. Don Gilbert on four occasions; the first being a few days after the accident. The receipts from Dr. Don Gilbert are as follows;

- two dated the 11th of July 2014 for two (2) visits in May 2014,
- one dated the 4th of September 2014 for a visit in July 2014 and
- the final receipt dated the 28th of January 2015 for a follow-up visit in November 2014.

These receipts were exhibited as Exhibits **5a** to **d** and amount to **\$19,000.00**.

- [14] Mr Wright also engaged in nine (9) sessions with the physiotherapist for which he provided proof of payment. The receipts from the physiotherapist, Ms. Stacey Ridguard are dated the 18th June 2014, 22nd July 2014 and 15th August 2014. The first receipt makes reference to 2 sessions, the 2nd receipt three sessions and the final receipt four sessions. The total cost for the sessions amounting to **\$27,000.00**.
- [15] A receipt in proof of payment for the police report was admitted into evidence as Exhibit **6** in the sum of **\$3000.00**. Six receipts were also admitted as Exhibits **7a** to **f** to prove payment for transportation. The Claimant seeks to recover the sum of **\$48,000.00** for transportation expenses which he says were incurred for taxi services to and from his visits to Dr. Don Gilbert's office, the Adelphi Health Centre and the physiotherapist Stacey Ridguard on Top Road in Montego Bay.
- [16] While this sum is not unreasonable, there was a concern in respect of 4 of the 6 receipts exhibited. This concern arose from the fact that while these receipts appear to have been written for the sum of **\$2000**, the number **2** was changed to **6** inflating the amount to **\$6000** instead. In response to questions about this anomaly, Mr Wright indicated that this happens when Mr Melvin, the driver, who is left-handed, tries to write the number **6** but always writes a **2** instead. I have considered the plausibility of this explanation but noted that exhibit **7d** is written for **\$2000** and there appears to be no issue with the appearance of this figure. In those circumstances, I was not satisfied that the explanation had any merit.
- [17] In light of this finding, I am of the view that these receipts present a challenge as to the sum which should be awarded and the better course is to proceed only on the receipts which are uncontroversial. As such, the award for transportation is limited to the sum of **\$6000** being the total of the figures reflected in **7d** and **e**.
- [18] Accordingly, the sum awarded to the Claimant for special damages is **\$55,000**.

GENERAL DAMAGES

[19] Particulars of the Claimant's injuries were outlined in the Medical Report from the Cornwall Regional Hospital prepared by Dr. D. Kimon dated the 5th August 2014.

[20] The Summary Report indicated that Mr. Wright presented with pain by virtue of being a passenger in a motor vehicle accident on the 28th day of April 2014. Upon examination and investigation, he was found to have a laceration to his posterior left forearm and an abrasion to his right hand. He was diagnosed as having soft tissue injuries, abrasions and lacerations. He was treated with Voltaren, DT and his wounds were sutured. He was also placed under neuro-observation for 24 hours. Mr Wright was discharged from the Cornwall Regional Hospital on April 29th 2014 and prescribed Bactroban ointment, Voltaren and Ranitidine. The Medical report makes no mention of any restricted range of movement, possible disability or impairment.

[21] Counsel for the Claimant relied on the following cases as guides to quantifying a reasonable award for general damages in relation to Mr. Wright:

1. ***Erica McKane v Brian Damille & Anors [2017] JMSC Civ 93***, the claimant sustained multiple abrasions, soft tissue injury to the right shoulder and laceration to the scalp. She was treated with Voltaren 75mg and Zantac 150 mg. Her injuries were cleaned, dressed and sutured and she was sent home with a referral to a health centre for removal of the suture. Her injuries were not serious and did not require her to be seen by a Specialist or to do physiotherapy. She was awarded the sum of **\$1,400, 000.00** for general damages in June 2017 at a CPI of 92.4. Using a CPI of 123.8 for August 2022, this award when updated amounts to a sum of **\$1,875,757.58**.
2. ***Anthony Simpson v Lloyd McMohan C.L. 1987 S 460*** reported at **Volume 4 Khan at page 206**, the Claimant suffered head injuries with loss of consciousness, abrasions to the lateral aspect of right thigh and knee, laceration to parietal region of the scalp and lacerations to the right side of

the face. Mr Simpson was awarded the sum of **\$180,000** in June 1994 and at the current indexation, it is **\$2,220,641.99**.

- [22] Counsel submitted that while the injuries sustained by the Claimants in both authorities were more serious than of Mr Wright, the Court should take note of the fact that he has been admitted to the hospital overnight and had to be seen by an orthopaedic surgeon and physiotherapist. She argued that in those circumstances an appropriate award for general damages is **\$1,500,000.00**.

DISCUSSION/ANALYSIS

- [23] In arriving at a decision on the appropriate award that should be made to Mr Wright, careful consideration was given to the dicta of Campbell J.A. in the decision of ***Beverly Dryden v Winston Layne SCCA 44/87 (unreported) delivered June 12, 1989*** where he stated:

“..personal injury awards should be reasonable and assessed with moderation and that so far as possible comparable injuries should be compensated by comparable awards.”

- [24] On a review of the authorities cited, I found that Mr Wright's injuries were closer in comparison to ***Erica McKane***. I noted however that unlike the instant Claimant, ***Erica McKane*** was not required to see a specialist or undergo physiotherapy sessions. Although no medical reports were presented from either practitioner, it is evident from the receipts provided that his visits to the orthopaedic consultant continued until November 2014 and his physiotherapy sessions until June 2014. It is for these reasons that I was persuaded that the effect of his injuries was greater and his period of incapacitation longer than that of ***Ms McKane***.
- [25] A careful comparison of the injuries sustained by the Claimant in *the Anthony Simpson* case with the case at bar revealed that the injuries of the former were far more serious than what was reported and observed in respect of this Claimant as ***Mr Simpson*** suffered from a head injury and loss of consciousness in addition to abrasions and lacerations. Additionally, ***Mr Simpson*** was admitted to the

hospital for several days and had to return to the hospital for outpatient care for some time after.

[26] In light of the foregoing discussion, I am satisfied that an appropriate award for pain and suffering would place this Claimant in the mid-range between the awards made in ***Erica McKane*** and ***Anthony Simpson***, accordingly, the sum of **One Million Eight Hundred and Fifty Thousand Dollars (\$1,850,000.00)** is awarded.

ORDER

[27] In light of the foregoing findings, the relevant orders are as follows:

- a) General Damages awarded for pain and suffering in the sum of One Million Eight Hundred and Fifty Thousand Dollars **(\$1,850,000.00)** with interest at a rate of 3% from 14th of March 2019 to 28th June 2023.
- b) Special Damages awarded in the sum of Fifty-Five Thousand Dollars **(\$55,000.00)** with interest at 3% from 28th April 2014 to 28th June 2023.
- c) Costs to the Claimant to be agreed or taxed.
- d) Claimant's Attorney to prepare, file and serve the Formal Orders herein.