

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION

Action No. 2017/CLE/GEN/00852

BETWEEN

JACOB JOHNSON

1st Plaintiff

AND

FLORIDAMAE WILSON

2nd Plaintiff

AND

OLEBIA WOOD

Defendant

Before: Deputy Registrar Carol D. Misiewicz

Appearances: Mr. Simeon Brown for the Plaintiffs
No appearance by or on behalf of the Defendant

Hearing Date: 30 October 2018

RULING

The Evidence for the First Plaintiff's Damages Claim

4. The evidence in support of the First Plaintiff's claim for damages is contained in the Affidavit of Evidence sworn by him (Jacob Johnson) and filed 23 October 2018. The First Plaintiff says he is a self-employed plumber of over 30 years' experience; that prior to the accident he earned \$700 per week; following the accident he could not work for nearly nine months, and that he has been unable to enjoy his hobbies of bowling and basketball since the accident.

5. The day following the accident Mr. Johnson attended Humana Medical Clinic ("Humana") on Soldier Road West, in New Providence. The Royal Bahamas Police Force Hospital form (produced as Exhibit "JJ.2") completed reflects a traffic Accident on 14 February 2016 at 7:34 AM. The 'Nature of Injury' is given as "whiplash – soft tissue injuries and swelling to back of neck, right shoulder, lower back, with spasms to the right leg." According to the letter from Dr. B.E Sears from Humana dated 15 February 2016 (the same day as his visit), the Plaintiff sustained a whip-lash injury. He was given an injection of 75 milligrams of Voltaren along with Voltaren Emugel.

6. The First Plaintiff continued to visit the Humana Medical Clinic to receive medical attention on a bi-monthly basis up until 30 October 2016. There was some variation with the injection medication for pain; sometimes it was Voltaren and other times it was Diclofenac 50 mg, and twice he received Tramadol 100 mg. The Plaintiff was supplied with Voltaren Emugel on each of his 18 visits over the nine month period.

The Evidence for the Second Plaintiff's Damages Claim

11. In her Affidavit of Evidence sworn on 23 October 2018 the Second Plaintiff, Floridamae Wilson, states that she was a passenger in the Chevy S-10 truck being driven by the First Plaintiff when it was struck from the rear by a vehicle driven by the Defendant. Ms. Wilson also attended Humana but her visit came one week after the accident on 25 February 2016, when she was treated with an injection of Voltaren and Voltaren Emugel. She had two follow up visits on 10 March and 14 April 2016.

12. It seems that Ms. Wilson's injuries were less severe than Mr. Johnson's as she required only a total of three visits and there is no claim of loss of earnings, nor did she have to take time off from her work as a Housekeeping Supervisor at the Atlantis Resort. The medical report about her from Humana dated 2 June 2016 states:

“Examination revealed neck pains due to stretching of the cervical muscle and ligament, due to sudden tension of the neck. The patient was treated and given medications along with a neck collar for support.”

13. Based on her stated date of birth Ms. Wilson would have been 55 years old at the time of the accident.

14. There is no mention of how long Ms. Wilson was required to wear the neck collar, nor does she state in her Witness Statement whether she actually used the collar, or if so, for how long. The Medical Certificate from The Eva Centre dated 13 February 2017 regarding Miss Wilson says that she received 3 acupuncture sessions. She was also given 10 days off from work but again there is no corresponding claim for loss of earnings.

17. In **Scott v Attorney General [2017] UKPC 15** the Privy Council said at paragraph 17 that general damages must be compensatory and they must be fair.

18. Using the **Grant v Smith (2002)** case as a guide, I find that the First Plaintiff's suffering and loss of amenity to be more extensive than was the First Respondent's in that case. Mr. Johnson was off work longer, about two months as opposed to Smith losing 36 ½ hours' of billable work as an attorney in private practice, and he experienced pain for about nine months versus Smith whose pain continued up to five months. Given these more serious effects, and the fact that that the cost of living in the Bahamas has increased from 2002 and the introduction of Value Added Tax, I would accept counsel's submission that the First Plaintiff's damages should be higher than what the Court of Appeal allowed in the **Grant v Smith** case. However I will not go to the full extent of \$20,000 advocated by Mr. Brown for his client. I think a fair award in all of the circumstances is an award of \$18,000.00 for the First Plaintiff's general damages.

19. For Mr. Johnson's special damages I accept that he must have been gainfully self-employed as a plumber, but no evidence was provided as to his actual income or earnings. Nevertheless he is only claiming loss of income for work that he had to sub-contract out because of being unable to do the job himself. He had to 'sub-out' work up to 2 months after the accident. I accept the evidence of loss of earnings for this sub-contract work in the sum of \$6,925.00.

23. There will be statutory interest on these sums from the date of the filing of the Writ until payment. Costs of the action, including the costs of the Assessment of Damages, to the Plaintiffs, to be taxed if not agreed.

Dated the 24th day of April, A.D., 2019

A handwritten signature in black ink, appearing to read "Carol D. Misiewicz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Carol D. Misiewicz
Deputy Registrar