

**JAMAICA**

**IN THE COURT OF APPEAL**

**SUPREME COURT CRIMINAL APPEAL NO 108/2009**

**BEFORE: THE HON MR JUSTICE MORRISON JA  
THE HON MRS JUSTICE McDONALD-BISHOP JA (AG)  
THE HON MRS JUSTICE SINCLAIR-HAYNES JA (AG)**

<b>BETWEEN</b>	<b>DERRICK MUNROE</b>	<b>APPELLANT</b>
<b>AND</b>	<b>GORDON ROBERTSON</b>	<b>RESPONDENT</b>

**Kevin Harriott and Evon Evans for the appellant**

**Charles Campbell for the respondent**

**5 and 26 June 2015**

**MORRISON JA**

[1] I have had the pleasure of reading the judgment prepared by my learned sister, Sinclair-Haynes JA (Ag) in draft. I agree with her reasoning and her conclusions and I have nothing to add.

**MCDONALD-BISHOP JA (AG)**

[2] I too have read in draft the judgement of my learned sister Sinclair-Haynes JA (Ag). I agree with her reasoning and conclusions and I have nothing to add.

## **SINCLAIR-HAYNES JA (AG)**

[3] The motor vehicle belonging to Mr Gordon Robertson (the respondent) collided with that of Mr Derrick Munroe (the appellant) on 11 October 2002. Consequent on the collision, Mr Monroe's car was damaged and he suffered personal injuries when a compressor which was on the back seat of his car slammed into his seat. The matter was heard by G Brown J (Ag) (as he then was) who found in favour of the appellant.

[4] The special damages were agreed. The appellant's attorney however, had urged the learned judge to make an award in the sum of \$1,000,000.00 for general damages. The appellant is therefore dissatisfied with the learned judge's award of \$300,000.00. This is consequently an appeal from that decision. The primary bone of contention was whether his current back pains are attributable to the accident. The learned judge rejected his evidence in that regard.

[5] It is helpful to examine the medical reports which guided the learned judge's decision. On 22 October 2003, a medical report was obtained from Dr Robert Edwards, who had examined the appellant on 10 October 2002, the day he sustained his injuries. The doctor reported as follows:

"(1) pain in sternal region of the chest

(2) lower back pain.

Significant Examination findings were confined to anterior chest and the lower back

(a) Tenderness in the region of the left costochondrial joints with increased tenderness during respiration and all chest movements

(b) Tenderness in the lumbar region in all ranges of motion

...

The [sic] has been no permanent irreparable deformity or disability

There was a fourteen day period of partial disability

He is fully recovered.”

[6] The appellant also obtained a medical certificate dated 24 April 2003 from Dr Derrick Ledford, whom he had seen on 20 October 2002, 10 days after the accident.

The doctor reported as follows:

“This is to certify that I treated Derrick Monroe [sic] on the 20<sup>th</sup> October, 2002. At that time he complained for [sic] pain in the head and neck, the shoulder and the anterior chest. He also complained of blurred vision. On examination he had tenderness in the anterior head, left shoulder and mid anterior chest, anteriorly.

He said his problems were due to a motor vehicle accident in which he was involved on the 10<sup>th</sup> October, 2002. He was seen at the Mandeville public Hospital on the day of the accident. He was also referred to the ophthalmologist for the blurred vision.”

[7] He was also seen by Dr Christopher Rose on 12 March 2008. Dr Rose wrote:

“I first saw the above captioned individual in consultation at my office on March 12, 2008 for the evaluation of injuries allegedly sustained on October 10, 2002 following a road traffic accident and writing a medico-legal report.

The following information was made available to me prior to my writing this medical report: medical report dated October 22, 2003 written by Dr Robert Edwards and a medical report dated April 24, 2003 written by Dr Derrick Ledford.

## **HISTORY OF IMPAIRMENT**

Mr Munroe reported that he was the restrained driver of a vehicle which was rear-ended by another vehicle on October 10, 2002. He reported that there were tools and a compressor on the back seat of his vehicle and the impact propelled the objects forwards hitting him on his lower back. He reported that he was assisted in alighting from the vehicle and shortly thereafter began experiencing pains in the left buttock, left knee and left calf. Medical attention was sought from Dr Robert Edwards on the [sic] October 10, 2002. Dr Edwards' report stated tenderness in the anterior chest and lower back. Analgesics were prescribed.

Mr Munroe stated that due to persistence of pains he sought medical attention from Dr Derrick Ledford on October 20, 2002. Dr Ledford's medical report stated pains in the head and neck, shoulder and anterior chest as well as a blurring of vision. Mr Munroe was referred to an ophthalmologist in Mandeville. In addition, he was treated with analgesics. No plain radiographs and no physiotherapy were requested.

Mr Munroe reported that he returned to work approximately one year and five months following the road traffic accident. He discontinued working after eight months due to pains in the lower back and left buttock with radiation into the left calf. Mr Munroe further stated that he experiences severe pains after working for one day.

## **PRESENT COMPLAINTS – March 12, 2008**

Mr Munroe reported intermittent lower back pains with radiation of pains into the left buttock and left calf. The aggravating factors were as follows: sitting, lifting of heavy objects, standing for greater than five minutes and prolonged walking. He also reported a burning sensation in the left calf with standing.

Mr Munroe also reported pains in his knees especially when sitting for long periods. He has been unable to

resume farming due to pains in the lower back and left lower limb. He further stated that he has used many different types of medications and gels without any lasting reduction in the symptoms.

### **PAST MEDICAL HISTORY**

He denies any history of asthma, cardiac problems or any known allergies. He is diabetic and hypertensive.

### **PHYSICAL EXAMINATION**

On examination, he was a pleasant, elderly male in no obvious painful distress. Examination of the cervical spine revealed no abnormalities. Examination of the chest revealed no tenderness.

Examination of the lumbo-sacral spine revealed loss of the normal lumbar lordosis but there was no localized tenderness. The following were the ranges of motion of the lumbo-sacral spine: extension 15°, forward flexion 80°, right and left lateral flexion 30° respectively. Straight leg raising was to 90° bilaterally and the neurovascular status was intact in both lower limbs. There was a 6x5 cm, non-tender, mobile, soft-tissue mass situated just proximal to the greater trochanter.

### **CLINICAL STUDIES**

Plain radiographs of the lumbo-sacral spine taken on April 3, 2008 revealed narrowing at the L<sub>3</sub>-L<sub>4</sub> disc space with anterior osteophyte. There were osteophytes at the facet joints. In addition, there was a tiny anterior osteophyte at the L<sub>5</sub> vertebral body. There were also suspicious areas of radiolucencies in the vertebrae.

### **IMPRESSION**

1. Chronic mechanical lower back pains
2. Possible neoplasms (unrelated to the road traffic accident)

## **RECOMMENDED TREATMENT**

A programme of physical therapy and education in modification of his lifestyle would be beneficial. A nuclear bone scan is recommended to elucidate the presence of a neoplasm in the lumbar spine.

## **COMMENT**

Mr Munroe has not yet reached his maximum medical improvement and as such a permanent percentage disability cannot be quantified at this time.”

### **The learned judge’s analysis and findings**

[8] The learned judge examined all three medical reports. In commenting on counsel’s submissions in respect of Dr Rose’s report, he opined thus:

“[The claimant’s attorney] relied on a medical report from Dr. Christopher Rose who examined the Claimant for the first and only time in 2008 i.e. 6 years after the accident. He diagnosed Mr. Munroe as having chronic mechanical back pains but did not treat him.”

The learned judge observed that Dr Robert Edwards had “examined the appellant on the day of the accident” and outlined in his findings that the appellant was fully recovered a year after the accident.

[9] He found that Dr Rose’s evaluation and report were based on what the appellant had told him because the appellant was never treated by him. The learned judge noted that the appellant instituted proceedings in April 2004 and that Dr Rose was consulted four years after he instituted proceedings in 2008. He concluded that Dr Rose’s report was obtained for “the sole purpose of obtaining a report to tender into evidence”.

[10] The learned judge examined Dr Derrick Ledford's report of 24 April 2003 and concluded:

"There was no report from the Ophthalmologist to explain whether the blurred vision was as a result of the motor vehicle accident. Two receipts dated August 22, 2003 and September 15, 2003 from Dr J.A. Edwards were exhibited for eye exam and glasses. In the circumstances they were disregarded in assessing the damages."

He noted that Ms Rose-Green, who represented the appellant in the court below, had asked the court to disregard Dr Edward's diagnosis as it was not conclusive, he was not a specialist in orthopaedics, and was incapable of giving expert advice on that aspect of the appellant's illness.

[11] The learned judge quoted the following portion of the appellant's evidence:

"I continued to feel pain in my chest for about nine months. I felt back pains for over one year and I had to visit a doctor due to the constant back pains. I was unable to sit down for long time due to pain. My right knee was swollen for months. I could hardly turn my neck because of pain.

I woke up with back pains most mornings. It was difficult for me to get out of bed due to back pains. I used ointments to rub my back but this helped for a little while. My back felt sore, especially if I had to bend.

I cannot lift anything heavy because of the pain in my back. I cannot stand or walk for long periods due to pain in my back and pain in my left leg.

I had constant headaches, especially in the back of my head. The back of my head felt tender for several weeks and medication did not help. I could not stand or walk in the sun for any long period due to constant headaches.

I was unable to work for one year and five months, as I experienced constant pain and discomfort....”

The learned judge observed that:

“The Claimant painted a dismal picture of the pain and suffering that he had endured since the accident and still affect him and up to today. Thus, Dr. Rose had recommended a programme of physical therapy to assist him which he has not commenced. ”

[12] He regarded the appellant’s evidence as “disingenuous and preposterous”; because Dr Robert Edwards (whom, he noted, the appellant referred to as his doctor) asserted that he was “fully recovered” a year after the accident. He opined that it was “strange” that although the appellant had visited Dr Ledford 10 days after the accident, he did not complain to him about the pain in his back. His complaint was about pain in his neck, head, shoulder and the anterior chest.

[13] The learned judge commented on the fact that although the appellant’s evidence was that he was in excruciating pains he did not return to the doctor for treatment. In rejecting the appellant’s claim, he found that the appellant’s actions were not consistent with “a person who was seriously injured and was in constant pain”. He concluded that his medical reports were not supportive of his claim.

### **The appeal**

[14] The appellant, being entirely dissatisfied with the learned judge’s award and his treatment of the matter, has challenged his findings of fact and law by filing the following grounds of appeal:

- “(a) The award for damages for pain and suffering and loss of amenities was unreasonable and inconsistent with awards for similar types of injuries and the period of pain and suffering.
- (b) The learned judge gave no reasons for his award for pain and suffering and loss of amenities.”

For convenience I shall deal with the second Ground (Ground b) first.

### **Ground b**

#### **The learned judge gave no reasons for his award for pain and suffering and loss of amenities**

[15] The learned judge indeed provided no reasons for awarding the sum of \$300,000.00 for general damages nor was there any comparison made with past awards. He was obliged to assess the damage suffered by the appellant. The purpose of an assessment is to endeavour to compensate the appellant. This exercise is an attempt at restoring the appellant to the position he would have been in, had he not suffered the injuries.

[16] The important consideration in making an award is the need to arrive at a figure which will compensate the appellant for the challenges which confront him, and not only for the injury sustained and its resultant pain and suffering. Campbell JA in **Beverley Dryden v Winston Layne** SCCA No 44/87, delivered 12 June 1989, elucidated the reasons. In so doing he relied on the oft-cited passage of Lord Reid in **H West & Sons Ltd and Another v Shephard** [1964] AC 326 at pages 340 and 341.

He said:

"This is so, because a physical injury without consequences would attract only a nominal award. It is the consequence of the disability which really measures the loss for which the disabled is to be compensated.

There is authoritative support for this opinion in **H West & Son Ltd v Shephard** (1964) A.C. 326 where Lord Reid at Page 340 – 341 had this to say:

'...The man whose injuries are permanent has to look forward to a life of frustration and handicap and he must be compensated, so far as money can do it, for that and for the mental strain and anxiety which results... There are two views about the true basis for this kind of compensation. One is that the man is simply being compensated for the loss of his leg or the impairment of his digestion. The other is that his real loss is not so much his physical injury as the loss of those opportunities to lead a full and normal life which are now denied to him by his physical condition – for the multitude of deprivations and even petty annoyances which he must tolerate. Unless I am prevented by authority I would think that the ordinary man is, at least after the first few months, far less concerned about the dislocation of his normal life. So I would think that compensation should be based much less on the nature of the injuries than on the extent of the injured man's consequential difficulties in his daily life'."

[17] There are established principles and a process to be employed in arriving at awards in personal injury matters. In determining quantum, judges are not entitled to simply "pluck a figure from the air". Consistent awards are necessary to inspire confidence in the justice system and litigants as well as the public are entitled to know the reasons for the decisions of the court. Regard must therefore be had to comparable cases in which complainants have suffered similar injuries.

[18] Indeed there is no lack of guidance on the matter thus a judge ought therefore to strive to ensure that litigants with similar injuries are treated similarly. Campbell JA in

**Beverley Dryden v Winston Layne** said:

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

[19] In the case of **Singh (an infant) v Toong Fong Omnibus Co Ltd** [1964] 3 All ER 925, Lord Morris of Borth-y-Gest said at page 927:

“...As far as possible it is desirable that two litigants whose claims correspond should both receive similar treatment, just as it is desirable that they should both receive fair treatment. Those whom they sue are no less entitled.”

[20] It is also desirable that the comparison be made with more recent cases. Lord Carswell in the case of **Seepersad v Persad and Another** (2004) 64 WIR 378 page 388, at paragraph 15 said:

“The Board entertain some reservations about the usefulness of resort to awards of damages in cases decided a number of years ago, with the accompanying need to extrapolate the amounts awarded into modern values. It is an inexact science and one which should be exercised with some caution, the more so when it is important to ensure that in comparing awards of damages for physical injuries one is comparing like with like. The methodology of using comparisons is sound, but when they are of some antiquity such comparisons can do no more than demonstrate a trend in very rough and general terms.”

Although it might have been impossible to find a case in which the claimant's injuries were exactly the same as this appellant's, the learned judge ought to have selected the case most comparable and ought to have considered its distinguishing features in making the award.

### **The Process**

[21] In light of the reality of inflation, the Consumer Price Index (CPI) which is provided by the Statistical Institute of Jamaica is employed in the process of arriving at a just award. Having therefore selected comparable case/cases, the learned judge ought to have applied the CPI in order to arrive at a figure that takes into consideration inflationary conditions.

### **Ground a**

**The award for damages for pain and suffering and loss of amenities was unreasonable and inconsistent with awards for similar types of injuries and the period of pain and suffering.**

[22] Counsel for the appellant, Mr Harriott, complains that the award of the sum of \$300,000.00 for general damages is too low. He challenges the learned judge's findings of fact and of law as follows:

- (a) Findings of fact: with respect to quantum none given by the learned trial judge.
- (b) Findings of Law: Quantum
  - (1) The learned trial judge did not taken [sic] into consideration the medical report of Dr. Christopher Rose dated April 23, 2008.

- (2) The learned trial judge did not permit counsel for the Appellant/Claimant to respond to the case law relied on by the counsel for the Respondent/Defendant.
- (3) The learned trial judge stated that his reason for so doing was that he intended to place no reliance on the case law relied on by counsel for the Respondent/Defendant, notwithstanding that the award made was the exact sum suggested by counsel for the Respondent/Defendant.
- (4) The learned trial judge gave no reason for his award for pain and suffering and loss of amenities.
- (5) The award of Three Hundred Thousand Dollars (\$300,000.00) is too low and is not in keeping with the awards given in comparable cases.

[23] Mr Harriott submitted that Dr Rose is the specialist in the area having been trained as an orthopaedic surgeon, while Dr Edwards and Dr Ledford are not so trained. He contended that, in the circumstances, the learned judge should have placed more reliance on Dr Rose's evidence than on that of Dr Edwards and Dr Ledford. The learned judge did however consider Dr Rose's report but after careful scrutiny of the three reports, placed little reliance on his evidence.

[24] In any event, although Dr Rose explicitly ruled out the presence of possible neoplasm as a consequence of the accident, he did not either specifically or otherwise, attribute the chronic mechanical lower back pains to the accident. The learned judge's rejection of the appellant's claim that his current back pains were as a consequence of the accident was based on careful analysis of the evidence before him. His finding that

it was unusual that the appellant failed to complain to Dr Ledford whom he saw 10 days after the accident about his back cannot be regarded as unreasonable. Neither can his observation that the appellant did not seek treatment for his back pains from the doctors whom he saw, in spite of his evidence that he experienced excruciating pain, be viewed as unjustified.

[25] It cannot properly be asserted that the learned judge's rejection of the severity and continuing effects of the appellant's injuries was unsupported by evidence. The learned judge noted that the appellant referred to Dr Edwards as his doctor. Dr Edwards, however, which was duly noted by the learned judge, stated that a year after after the appellant's injury, there was "no permanent irreparable deformity or disability. There was a fourteen day period of partial disability. He is fully recovered" .

[26] Those findings would have been arrived at after examination of and an interview with the appellant in 2003 when he visited Dr Edwards. There is, in fact, no evidence that he indicated otherwise to Dr Edwards. The appellant himself relied on that report. Dr Edward's report that he was fully recovered and that there was only a period of 14 days partial disability is at variance with his claim that after six years his back pains and resultant pains in his buttock and left calf are related to the accident.

[27] The learned judge's conclusion that the sole reason the appellant was seen by Dr Rose, six years after the accident and nearly four years after he instituted proceedings was to obtain a report to tender into evidence was reasonable and supported by the evidence. The appellant bore the burden of proving on a balance of probabilities that

his blurred vision and chronic mechanical lower back pains were attributable to the accident.

[28] Dr Rose having seen the appellant six years after and given the divergence of findings in the reports, it was open to the learned judge to find as he did. The scant regard the learned judge paid to Dr Rose's report cannot therefore be faulted. In my view there is no merit in this ground.

**Was the award of \$300,000.00 unreasonable and not in keeping with other awards?**

[29] Although the learned judge completely ignored the process and principles which he ought to have applied in arriving at the award, the issue is whether the overall award is outside of the bracket of awards made for comparable injuries. Unless the award is inordinately high or inordinately low, the court will not interfere. As Campbell JA said in

**Beverley Dryden v Winston Layne:**

"...even if the learned judge did assess on a wrong principle, it is the global figure which is important, and unless this figure is shown to be excessive the court ought not to disturb it."

[30] In the Court of Appeal case of **Donald Williams v Ennette Cope** SCCA No 60/1991, delivered 5 October 1992, Wolfe JA (Ag), as he then was, enunciated:

"The principle on which an appellate court will interfere with the award of the trial Judge is a well settled one, capable of standing repetition. To justify reversing the trial judge on the question of the amount of damages, it will generally be necessary that the Court of Appeal should be convinced either that the trial judge acted upon some wrong principle of law, or that the amount awarded was so extremely

high or so very small as to make it, in the judgment of the Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled: See **Davis v. Powell Duffryn Associated Galleries Ltd.** [1942] A.G 601; **Flint v. Lovell** [1935] 1 K.B. 354. Diplock, L.J in considering the import of the phrase "Erroneous estimate of the damage" in **Every v. Miles** [1964] C.A. 261 (unreported) opined that the phrase meant no more:

'...than an acknowledgement that the bracket within which error cannot be demonstrated is a wide one even where the court is supplied with detailed findings as to the consequences of the defendant's breach of duty for which the sum has been awarded as compensation.'

The learned author of the "Quantum of Damages, Personal Injury Claims" Vol. I 3<sup>rd</sup> edition at p. 136 commenting on the dictum of Diplock, L.J., observed:

'...a judge makes a wholly erroneous estimate, when his award falls above or below the bracket within which awards of the appropriate standard are contained. The width of this bracket will vary according to the nature of the case. The more 'imponderable the elements involved in making the assessment, the wider the bracket will be. It is therefore impossible to say that a given percentage of error will invoke the interference of the Court of Appeal. A given percentage of error might invoke the court's interference in one case, where the bracket of permissible award is fairly narrow, but might be quite insufficient to invoke the court's interference with another award of the same sum where there are many imponderables and where the bracket is much wider.... If practitioners can establish comparable margins of error in comparable cases, it is reasonable to suppose that the Court of Appeal will think it right to interfere in a similar manner'."

[31] Before the learned judge, Ms Rose Green relied on the following cases of **Moses Green v CFC Construction (Engineers) Limited** HCV 000613/2007 delivered 7 July 2008; **Keith Mitchell v Feista Car Rentals Limited and Carl Dacres** HCV 00505/2004 delivered 5 April 2006; **Dalton Barrett v Poncianna Brown and Leroy Bartley** HCV 1358/2003, delivered 3 November 2006; and **Earlette Palmer v Osbourne Brown and Clayton Hinds** HCV 5337/2005 delivered 18 October 2007.

[32] In those cases the claimants suffered whip lash or back injuries which required possible need for physiotherapy. In the instant case the learned judge having rightly rejected the appellant's claim that the injury to his back, as reported by Dr Rose, was as a result of the accident, a comparison with those cases would have been inefficacious. Furthermore, the injuries sustained by the complainants in **Moses Green v CFC Constructions (Engineers) Limited** and **Keith Mitchell v Fiesta Car Rentals** were not comparable because those awards were "based on residual disability sustained" by those claimants. It is useful to state their injuries. In the case of **Moses Green v CFC**, Dr Baker wrote of Mr Green's injuries thus:

"He stated that he injured is [sic] groin area on impact, then fell hitting the back of his head and neck, lower back and right side of body.

When he was examined he was in moderate pain but clinically stable otherwise. He sustained the following injuries:

- Lower abdominal – mildly tender but no evidence of intraabdominal/visceral injury.
- Scrotal – tender but no other signs of inflammation.

- Lower back – pain in lower back with tenderness/spasm of paraspinal muscles. There was full range of movement though painful.
- Neck – “whiplash” injury with mild tenderness to neck muscles with full motion.
- Abrasions to right elbow and leg – painful, superficial abrasions with no evidence of bony injury.

These injuries are not likely to be permanent and probably represent less than ten (10) percent total body surface area. Notwithstanding, both back and neck pain may be bothersome for a long time. Mr. Green appears healthy and has no evidence of any complicating comorbid disease. He is therefore, expected to recover quickly and fully from these injuries with treatment. However, in light of his age and the magnitude of this accident, I would recommend regular follow up to monitor recovery and provide specialist referral if it becomes necessary.

The process of correction and likely costs to be incurred include:

- Medications – analgesia and muscle relaxants. (Scutamil C and Voltaren were prescribed)
- Dressings – to be done until abrasions are healed
- Review visits to clinic – to monitor clinical progress.  
Bone trauma can accelerate the degenerative process in osteoarthritis that occur as a normal part of ageing leading to chronic pain.
- Possible need for physiotherapy
- Possible need for X-rays and specialist consult (if injuries do not improve satisfactorily).”

[33] In respect of **Barrett v Brown and Another** as reported in Khan's work on Personal Injury Award volume 6 page 104, Dr Peter Glegg at Saint Ann's Bay Hospital noted that on the day of the collision he had:-

"1. ...

- Tenderness around right eye and face.
- Tenderness in the lumbar spine.
- Tenderness in left hand.

He was treated and discharged.

2. Because of continuing pains, he saw Dr Bullock who examined him on December 9, 2002 when he observed:-
  - Pain in lower back, left shoulder and left wrist.
  - Contusion to lip, lower back and left shoulder.He was given anti-inflammatory medication and painkillers.
3. In August 2003 because of continuing pain that prevented him from driving he consulted Dr. R.C. Rose, Consultant Orthopaedic Surgeon, who after examination diagnosed,
  - Mechanical lower back pains
  - Mid cervical strainHe prescribed physical therapy and lifestyle modifications.
4. Physical therapy proved very effective and the Claimant was pain free by the time Dr. Rose examined him again in October 2003. He opined that Claimant's Permanent Partial Disability was zero% but cautioned that the Claimant would quite likely experience lumbar pain upon resumption of prolonged driving."

[34] Mr Barrett's injuries were significantly more serious and debilitating. His injuries included mechanical back pain and mild cervical strain. He continued to experience pain

nine months after the accident. The appellant has not proven that the mechanical back pains reported by Dr Rose are as a result of the accident. The case of **Dalton Barrett** is therefore not comparable.

[35] In the case of **Irene Byfield v Ralph Anderson and Others** CL 1996 B 093, in August 1991, Ms Byfield was injured whilst she was a passenger in a motor vehicle which collided with another motor vehicle. She sustained injury to her chest, back and neck and trauma to her back which resulted in lumbar strain. She also suffered severe back pains and headache and abrasions to her lower leg and stomach. In October 1995 her doctor opined that "her condition had not improved" and "her injury was having severe effects on her ability to care for herself".

[36] Ms Byfield's injuries were palpably more serious than Mr Munroe's. The doctor found that she had suffered lumbar strain and severe back pains consequent on the accident together with abrasions. His evidence was that her condition had not improved. In the instant case, on the other hand, Dr Edwards reported that a year after the accident, the appellant was fully recovered. This authority is therefore unhelpful.

[37] In **Earlette Palmer v Osbourne Brown and Clayton Hinds**, the claimant, a passenger in a motor vehicle, sustained injury to her breast, leg and whip lash injury to her neck. A month after, an ultra sound, a mammogram and an xray revealed "two (2) sets of masses/collection" which were indicative of a haematoma in her breast. Those injuries are significantly more serious than the appellant's. The appellant's complaint

that the learned judge expressed that he would place no reliance on the appellant's authorities, has resulted in no injustice as the instant case lacked the factual foundation for the application of those authorities.

[38] Before this court, Mr Harriot included the case of **Garfield Brown v Sydney Wilson**, Suit No CL/1995 B 225 delivered 25 July 1997. Mr Brown was hit by a van. He sustained multiple abrasions to his right cavicle, right thigh and right leg; abdominal contusions, fractured right cavicle and severe back strains. A year later, he complained of back pain. That case is also not comparable. Mr Brown suffered severe back injuries and a broken bone.

[39] Mr Campbell, counsel for the respondent, relied on the cases of **Boysie Ormsby v James Bonfield and Conrad Young** Suit No CL 1992/ 017, delivered 23 September 1996 and **Tamah South v George Ergos** Suit No CL 1987/333, delivered 14 March 1997. Those cases do not include injury to the chest which the appellant sustained. Indeed there is a dearth of reported cases in respect of chest injuries and those reported are significantly more serious.

[40] **Tamah South** was injured in a motor vehicle accident. She suffered swollen left knee with tenderness over medial tibial condyle and subperiosteal haematoma. She was temporarily disabled for about three months. In her case, an award in the sum of \$60,000.00 was made for her pain and suffering. That award now converts to the sum of \$199,671.90.

[41] **Boysie Ormby's** injuries are also not chest injuries. He was injured when his dray cart collided with a truck. He consequently suffered multiple superficial wounds to the left supra orbital area and muscular tenderness in the upper limbs. The doctor's report stated that he was unable to work for 10 days as a result of his injuries. Mr Ormsby's evidence however, was that he suffered pain and was incapacitated for 20 weeks. He was awarded the sum of \$82,000.00 as general damages. That award now computes to the sum of \$282,827.30.

[42] Although the appellant's injuries are not identical to the injuries sustained by the claimants in the cases relied on by Mr Campbell, the cases nevertheless provide some guidance. The award of \$300,000.00 to the appellant for general damages is within the bracket of awards made for similar injuries.

[43] In the circumstances I would dismiss the appeal with costs to the respondent to be taxed, if not agreed.

**MORRISON JA**

**ORDER**

Appeal dismissed. Costs to the respondent to be taxed, if not agreed.