

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MR JUSTICE BROOKS P
THE HON MISS JUSTICE SIMMONS JA
THE HON MR JUSTICE LAING JA (AG)**

PARISH COURT CIVIL APPEAL NO COA2019PCCV00016

BETWEEN	PAULETTE RICHARDS	APPELLANT
AND	ORVILLE APPLEBY	RESPONDENT

Miss Althea Wilkins instructed by Dunbar & Co for the appellant

Miss Debby-Ann Samuels instructed by Debby-Ann Samuels & Co for the respondent

27 September 2022

BROOKS P

[1] On 4 October 2009, Mr Orville Appleby was injured in a crash involving a motor vehicle belonging to Ms Paulette Richards. He was a passenger in that vehicle. He sued Ms Richards for damages arising from his injuries. There was no real dispute as to liability and so the main consideration for the learned Parish Court Judge who heard Mr Appleby's claim was the issue of damages.

[2] Mr Appleby said that he suffered injury to his neck, back and his left knee. He testified that the injuries continued to affect him even up to the time of the trial in October

2015, when he was giving evidence. He said it restricted the length of time for which he could comfortably stand and that he even suffered erectile dysfunction up to about February 2014. His disability in that regard, he said, caused him to lose his girlfriend. He said, however, that the issue had been resolved and he had since got married.

[3] Mr Appleby relied on a medical report of Dr S Parvataneni who saw him on 21 October 2009, that is, 17 days after the crash. He, however, provided no other medical evidence. The doctor reported that:

“On 21st, he gave history of back injury, pain in left [k]nee and neck.

On examination, he was clinically normal. Left knee & back [showed] no signs of any bony injury and were functionally normal. He was given Analgesics (pain relieving) medication & sent home.

As per history & examination, [h]e had multiple soft tissue injuries due to motor vehicle accident.”

[4] The learned Parish Court Judge after hearing and seeing Mr Appleby found him to be a “very credible witness”. Based on the evidence before him and guided by the case of **Trevor Benjamin v Henry Ford and others** (unreported), Supreme Court, Jamaica, Claim No HCV02876 of 2005, judgment delivered 23 March 2010 (**Benjamin v Ford**), he awarded Mr Appleby the sum of \$773,544.00 for general damages, “to include a solatium of \$50,000.00 for loss of consortium”. He also awarded interest on that sum of 3% per annum from March 2015.

[5] In this appeal, Miss Wilkins, for Ms Richards, has complained that there was no medical evidence to support the learned Parish Court Judge’s award of general damages and that he only had Mr Appleby’s evidence/say so, which was insufficient in the circumstances. Learned counsel relied on **Reginald Stephens v James Byfield and Another** reported in Mrs Ursula Khan’s compilation, Personal Injury Awards made in the Supreme Court of Judicature of Jamaica (‘Khans’) volume 4, page 212. The award in that case, when updated to March 2016, (using the previous version of the Consumer Price

Index ('CPI')) amounted to \$221,909.16. She also relied on **Gilbert McLeod v Keith Lemard** reported in Khan's volume 4, page 205. When similarly updated, that award would be \$586,242.30. Learned counsel submitted that those cases demonstrated that the learned Parish Court Judge erred. She urged the court to set aside the judgment and award \$250,000.00 instead, as general damages.

[6] We cannot agree with learned counsel. This court will only disturb an award of damages if the court below has erred in principle. In **Cadet's Car Rentals and another v Pinder** [2019] UKPC 4, Lord Lloyd-Jones, in delivering the judgment of the Privy Council, set out the principle as established by the authorities:

"7. An appellate court will not, in general, interfere with an award of damages unless the award is shown to be the result of an error of law or so inordinately disproportionate as to be plainly wrong. In *Flint v Lovell* [1935] 1 KB 354 Greer LJ referred (at p 360) to the power of an appellate court to reverse a decision on quantum of damages in the following terms:

'[T]his Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the 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 this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.'

Similarly, in *Nance v British Columbia Electric Railway Co Ltd* [1951] AC 601 the Board observed (at pp 613-614):

'... before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the

amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint v Lovell* [1935] 1 KB 354, approved by the House of Lords in *Davies v Powell Duffryn Associated Collieries Ltd* [1942] AC 601).”
(Italics as in original)

[7] The learned Parish Court Judge, in his reasons for judgment, did not erroneously state any applicable principle of law. He was entitled to rely on the case of **Benjamin v Ford** due to the similarities of the injuries. The injuries in that case were reported at pages 1-2 of the judgment of Anderson J as follows:

“He said that he sustained injuries which on the report of the doctor... are properly characterized as soft tissue injuries. There has been some residual pain which persists but certainly no fracture.”

[8] The learned Parish Court Judge was entitled to rely on the case as the injuries were sufficiently similar. The appeal, therefore, cannot succeed.

[9] Mr Appleby has filed a counter-notice of appeal asserting that the learned Parish Court Judge did not sufficiently consider his oral testimony.

[10] There is some merit to the complaint. The learned Parish Court Judge discounted the updated awards of \$1,026,309.07 in **Benjamin v Ford**, (using the CPI for February 2016). He said that the discount was “to account for any distinguishing factors” but did not state what those negative distinguishing factors were. It seems to us that the injuries were sufficiently similar to allow the updated award to stand and be only restricted by the limit to the jurisdiction of that court, which is \$1,000,000.00. In that regard, the learned Parish Court Judge erred.

[11] In the circumstances, the appeal ought to be dismissed as it relates to general damages. However, the counter-notice must be allowed. All other orders of the learned Parish Court Judge must be affirmed. Costs of the appeal and counter-notice, in the total sum of \$50,000.00 should be awarded to the respondents.

SIMMONS JA

[12] I have read, in draft, the judgment of Brooks P, and I agree.

LAING JA (AG)

[13] I too have read the draft judgment of Brooks P and agree.

BROOKS P

ORDER

1. The appeal from the judgment of the learned Parish Court Judge is dismissed.
2. The counter-notice of appeal is allowed.
3. The award of general damages of \$773,544.00 is set aside and an award of \$1,000,000.00 is substituted therefor.
4. The other orders of the court are affirmed.
5. Costs of the appeal and the counter-notice of appeal to the respondent in a total sum of \$50,000.00.