



IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

Cause No: G 2024-0082

BETWEEN:

PHILIP THOMAS

Plaintiff

-and-

VERONICA MCKITRICK

Defendant

Appearances: **Mr Clayton Phuran and Mr Richard Robinson of CP Legal for the Plaintiff**
 Mr Colm Flanagan and Ms Sara Brady of Nelsons for the Defendant

Before: **The Honourable Justice Jalil Asif KC**

Heard: **4 December 2024**

**Ex tempore judgment
delivered:** **4 December 2024**

**Finalised judgment
approved:** **6 December 2024**

Personal injury claim—liability admitted but causation denied—interim payment—whether to order interim payment in absence of evidence of causal link between accident and Plaintiff’s injuries

JUDGMENT

Introduction

1. This is an application by the Plaintiff by summons filed on 24 July 2024 for an interim payment pursuant to GCR O.29, r.11. The case arises from a road traffic accident that occurred on 10 June 2021, when the Plaintiff was driving along Shamrock Road, heading east towards Prospect. He was driving on a road that, at that particular location, was a one-way road.
2. The Defendant appears to have been unaware or did not realise that that section of the road was one-way. She entered that part of the road in the opposite direction, driving the wrong way along the road. Inevitably, there was a head-on collision between the Defendant's car and the Plaintiff's car. I have seen photographs of the immediate aftermath of the accident, which show quite significant damage to both vehicles. It seems to me to be unarguable that the Plaintiff suffered at least some injury as a result of the accident.
3. The proceedings were started somewhat belatedly on 29 February 2024, some 4 months short of the expiry of the limitation period. The Defence served on 19 March 2024 admits liability for the accident, but disputes causation of the Plaintiff's alleged injuries and consequential losses and makes various other points about the value of the claim.
4. The Plaintiff then proceeded to issue the current summons for an interim payment on 24 July 2024, which was originally due for hearing on 24 September 2024, but due to unavailability of counsel was adjourned and has come before me today.
5. There is no dispute between the parties as to the principles to be applied to an application under GCR O.29, r.11 for an interim payment. In light of the issue that is taken by the defendant, there is no benefit in me reiterating the approach of the court, which was helpfully set out recently by Walters J (Ag) in McDowell v Dolphin Discovery (Cayman) Ltd (unreported, 7 July 2022), which I have read.
6. The key issue in this case is causation of the Plaintiff's injuries.

7. The Defendant complains that the summons for an interim payment is premature because there is no expert evidence that is currently before the court sufficient to establish a causal link between the accident and the condition and the symptoms described by the Plaintiff's treating physicians in various medical notes which have been put before me.
8. It is right to say that there is no formal expert's report of any kind by an independent expert considering the Plaintiff's pre-accident medical history, the nature of the accident and his post-accident medical history in order to provide the court with an opinion as to causation of the Plaintiff's injuries and, in particular, what part of the Plaintiff's injuries is properly attributable to the accident in question.
9. This is an important consideration because the Plaintiff had a previous road traffic accident, which I am told was in 1993. Then some 17 years after that, he had neck surgery, resulting in the removal of a disk in at his C4-C5 vertebral level.
10. In addition, the medical notes that I have seen indicate that the Plaintiff clearly has a far from straightforward relevant medical history. In a letter dated 13 November 2024, prepared by Miss Kim Gardner of Cayman 3T following an MRI scan that day, Miss Gardner reports that her impression is that the Plaintiff has severe degenerative changes of vertebral bodies, advanced disc disease with severe obstructive findings and multi-level narrowing of neural foramina and central canal. There are post-surgical changes of anterior fusion / fixation at C4-C5 with posterior ankylosis. There is a 7 mm lesion at the level of C4-C5 and central of the cord, associated with mild cord narrowing. She says that could be myelopathy, demyelinating disease or inflammatory myelitis given the level of involvement, which is at the same level as the surgery. She notes that it could be reperfusion injury, residual or new compression, or delayed ischaemic injury. She recommends correlating clinically and considering serial follow-up imaging with MRI. Finally, she records that the Plaintiff has mild compression over his spinal cord at the level of C3-C4 and C6-C7 with mild cord oedema due to the degenerative process that she mentioned.
11. That snapshot indicates, as I said a moment ago, the Plaintiff has a somewhat complex relevant medical history, and in particular in his cervical vertebrae. The question of causation of his current symptomology is therefore a significant and important one, in order to separate out what parts of his current condition are properly attributable to the accident in question, and what parts are attributable to the degenerative process noted by Miss Gardner. In addition, the court will have to determine what

is the cause of that degenerative process? Is it natural wear and tear, given that the Plaintiff is now 55 years old, or was it caused by his accident in 1993 or was it caused by the index accident in 2021 giving rise to this claim.

12. All of this needs to be considered and addressed by appropriate medical experts before I can form any view at all as to whether or not the Plaintiff is likely to establish causation of the significant injuries and significant damages that he seeks to claim from the Defendant as being consequent on the accident.

13. Going back to GCR O.29, r.11(1) the requirement is that any interim payment that I order should be:

“... of such amount as [the Court] thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.”

14. In this case there is no allegation of contributory negligence, sensibly, and there is no set off, cross-claim or counterclaim on which the Defendant may be entitled to rely. But I do have to bear in mind (a) what are likely to be the damages which, in the opinion of the Court, the Plaintiff is like to recover; and (b) any interim payment I order should not be more than a reasonable portion of such damages.

15. On the material that I have seen so far, I cannot be satisfied that the Plaintiff is going to establish damages of more than a few thousand dollars. He may well be able to do that. He may not, if the Defendant's case on causation is correct. But I simply cannot form a view one way or the other on the material that is before me at the moment.

16. Given that the most that I can properly conclude at this stage that the Plaintiff is “likely to recover” is damages for the pain, suffering and loss of amenity for the immediate aftermath of the accident, that is likely to be only a few thousand dollars. In determining that figure, I have had regard to the English Judicial College Guidelines on personal injury damages, which has informed my view. Limiting my consideration to the immediate aftermath of the accident, I treat the Plaintiff as being in the minor category for neck injuries.

17. I cannot be satisfied that the Plaintiff is going to recover any of the special damages that he claims. He may do. The trial judge may conclude that the Plaintiff has suffered significant loss of earnings.

But until the Plaintiff has got over the causation hurdle, I cannot form any view on that. I therefore cannot order an interim payment in relation to any of the Plaintiff's claims for special damages.

18. In those circumstances, in my judgment, I cannot properly reach the conclusion that an interim payment should be more than perhaps \$1,500 or \$2,000 as a maximum sum, although that may not provide the Plaintiff with any of the assistance that he is seeking.
19. Mr Flanagan invites me to order that the Plaintiff should pay the Defendant's costs of the summons on the basis that on 10 September 2024 the Defendant offered an interim payment in a larger sum than I have just ordered to be made. That offer was not accepted. Mr Flanagan says, essentially, that all of the work on this application and attendance at court today was completely unnecessary.
20. Mr Phuran accepts that that offer was made and was not accepted but contends that the appropriate order I should make should be costs in the cause on the basis that he says there was at least some evidence to support the Plaintiff's position on causation.
21. In my judgment, the appropriate order is costs in the cause up to 24 September 2024, which allows the Plaintiff and Mr Phuran two weeks to consider their position in light of the Defendant's offer. The Plaintiff shall pay the Defendant's costs from 25 September 2024 onwards in any event, to be taxed on the standard basis if not agreed.

Dated 6 December 2024



**THE HONOURABLE JUSTICE JALIL ASIF KC
JUDGE OF THE GRAND COURT**