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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B116/97

BETWEEN	CORNELL BILLINGS (by his next friend Carmen Lopez)	1ST PLAINTIFF
A N D	CARMEN LOPEZ	2ND PLAINTIFF
A N D	LAGAVE PERSAD	DEFENDANT

Mr. Malcolm Rowe and Miss Susan Richardson for Plaintiff.

Miss Nerine Small for Defendant instructed by Messrs Dunn Cox, Orrett & Ashenheim

HEARD: October 7, 8, 9, 12, 1998 & 26 November, 1999

RECKORD J,

This is an action for negligence arising out of a motor vehicle accident involving the plaintiff, 6 years old at the time, who was crossing the road to go to school at Mizpah in the parish of Manchester on the 26th of September, 1996.

The plaintiff was examined on the VOIR DIRE when the trial began and gave sworn evidence thereafter. He testified he was now nine years of age and in grade 4. On the day of the incident he had left home at about 7:00 a.m. along with his mother Carmen Lopez in Lennie Pusey's van.

The van stopped on the left hand side of the road. His school was on the opposite side. "Before I crossed I looked up and down - the van was still there - nothing else on the road". He started walking across the road. "When I was finishing to cross the car knocked me down". He did not know what happened after that. His mother had taught him how to cross the road. He did

not know if there was anything special on the road where he crossed, the car that hit him came from the direction of Mandeville.

When cross-examined he said he did not know the time the van dropped him off. The road had no side-walk there. He stood up from where he was dropped off then looked up and down - he did not walk fast.

The final suggestion to the plaintiff was, "on that morning you came off Mass Lennie van back and ran across the road into the car"- He replied "Mi no know". In answer to me he said "I don't know if I walked or ran across the road."

Miss Mavis Elliott of Walderston testifed. She got a drive in vehicle going past the Mizpah School on the 26th of September 1996. She sat in the back of this open back van. The van stopped on the soft shoulder of the left hand side of going down. A little boy who was at the back of the van came off and stood up. He looked up and down the road to see if the road was clear for him to cross to go over to the school. It was clear. She said, "I saw the little boy looked down and up the road before he crossed - He started to cross on the pedestrian crossing to go over the school--- When he reached more than the middle of the pedestrian crossing there was a car coming very fast from down the hill. The car hit the little boy and he go up in the air about eight feet then he dropped on the road beside the back on the school side." He had fallen a distance from the crossing estimated 35 feet.

She saw a lady came from the car that hit the boy and enquired if child was alive. She had known the school for over 30 years. To go to the school you walk on an old road. The accident took place on the new road.

A bus stop and school sign there, also a direction sign - The school sign said "Children Crossing". The main road was straight, smooth, no pot holes. The boy was dressed in school uniform - she identified the defendant in Court to be the driver of the car that hit the boy. A little girl in Knox school uniform was sitting in defendant's car. The accident took place between 8:15 and 8:30 a.m. Other school children were in the back of the van but only the plaintiff came off at Mizpah. He was taken off to hospital . "I saw Cornell walking on the pedestrian crossing - I never saw him running." When cross examined this witness said she was seated on a board in the back of the van but was looking towards Walderston. The van had stopped bottom side the pedestrian crossing. When van stopped she never saw any vehicle behind or in front - None was coming from Mandeville -"I still able to see if any vehicle coming from Mandeville although my back towards Mandeville." Cornell never ran across the road - Never walked fast - nor too slow. When she first saw the car it had just left the corner - Cornell had already come off the van. It was the left side of the front that hit him. She denied that he ran into the right side of the car.

She was not sure which side of the car hit the boy - boy fell either in front or maybe on the left hand side. She denied he fell in middle of the road - he

fell on the soft shoulder. After the boy was hit the car was on the left hand side - She maintained he was hit on the pedestrian crossing. She denied that the school sign was put up after the accident. She denied that the plaintiff ran into the side of defendant's car. She never saw her trying to avoid the boy - she was travelling too fast. Travelling up this same direction, this road leads to Knox College about one mile away.

Carmen Lopez, mother of the complainant, said he was born on the 30th of September, 1989. When he was going to that school for the first week she had walked with him down to school, gave him instructions as to how to cross the road. There was an All Age School sign there,also a pedestrian crossing at the school gate, bus stop on the right towards Walderston.

There were houses in the area also a Bible College. The school sign is on same side of the road that the school was on.

She was at home on the 26th September, 1996 and acting on information she went to the Spalding Hospital about 9:30 a.m. She saw Cornell lying in bed kicking, would not talk. She never saw any cuts, but he had a little bleeding on his elbow where the skin had rubbed off. He was put on drip. That same day he was taken to the Children's Hospital in Kingston - he never spoke all the way to Kingston where he received treatment. He remained in the hospital for two months. After three weeks he regained consciousness and started talking.

The accident was on a Thursday. She returned home that Friday and Saturday - every week thereafter she came to the hospital on a Thursday and returned home on Saturday.

At the hospital her son was naked in bed with tubes inserted in his nostril and his penis - A drip was attached to his hand and foot. Apart from fruit juices he could not eat. When he was discharged he could not walk - He could hop on one foot - he had to be pushed about on wheelchair in the hospital. His mother assisted to bathe him, put on his clothes and assist him to otherwise using the bath room. Before accident he could do all this for himself. She purchased pampers for him as he could not go to the bathroom by himself. The mother claims she spent about $2,000.00 on pampers and $3,000.00 on juices; paid $2,000.00 per week for boarding at a home in Portmore, St. Catherine; she paid $2,000.00 for taxi fare. From Kingston to Mandeville she paid $70.00 for bus fare and a further $300.00 as taxi fare from Mandeville to her home in Contrivance.

The mother took him back for theraphy about four times paying $4,000.00 for the return trip on each occasion. She had to see Dr. Ceheeks at Children's Hospital four times, different dates for theraphy. Before the accident nothing was wrong with him - He was a normal child. Since leaving hospital he had been improving but walks with a limp in his left foot.

The mother had a one year old child at home at the time. Each time she came to Kingston to visit the plaintiff she had to pay $500.00 to one Blossom Brown for taking care of her infant child at home. This lasted until Cornell left hospital. It was about

twenty occasions that she left her infant child in the care of this lady. Because of his limp the left shoe gets worn out early. It hurts when his left hand is turned by the therapist. The right hand was longer than the left - The right foot was longer than the left. They were not like this before accident. It cost $1,000.00 per pair for two pairs of extra shoes.

At this stage four medical certificates were admitted into evidence by Consent of the Attorneys. Certificate from Dr. Lloyd - Mandeville Hospital dated 3th January 1997 - Exhibit I.

Dr. Cheeks - dated 18th March, 1997 - Exhibit 2 -

Dr. Lloyd - dated 24th October 1997 - Exhibit 3.

Dr. Cheeks - dated 7th August, 1998 - Exhibit 4.

The plaintiff's mother said that Cornell before the accident loved to play football and cricket - he can't kick the football as hard as he did before and can't hold a cricket bat with his hand. She was charged $8,000.00 for a brain test at Children's Hospital. She had only $1,000.00 which she paid over, the balance was still outstanding.

Receipts totalling $4,200.00 admitted in evidence by consent - Exhibit 5. When he grew up he wished to be a minister of religion.

Under cross-examination, the mother said Cornell was right handed. He was supposed to get theraphy at the Mandeville Hospital - when she heard of the expense she took him to Kingston instead. She bought him a ball to exercise his left hand. She

was not sure if there was sign saying pedestrian crossing, school crossing or school slow, nor speed limit sign.

Mr. Donald Williams lives with Miss Lopez and her children at Contrivance about 1¼ mile from Mizpah. He is a mechanic and truck driver. He had been living there for the past seven years but knows the area for over twenty years. He had driven truck from Mandeville to Contrivance - Shooters Hill main road goes to Mizpah. At Mizpah there is a cemetery, shops, houses, Mizpah All Age School, also Pentacostal Church College. Coming from Mandeville there is corner just before reaching the school about 120 - 130 yards away - Another corner is above the school about 50 yards from the school. There is a sign post at the first mentioned corner. A Ministry of Education - Mizpah All Age Sign at the school entrance - there is a pedestrian crossing at the school gate and there is a bus stop on the right. During school time he passed this area. At that time there are lots of children on both sides of the road; working class people and children in uniform from other schools. Other schools are at Mount Olivet, Holmwood, Knox, Spalding and Christiana. The school is in a built up area and the speed limit is 30 miles per hour.

The road at the time of the accident was very good. It was wide and straight, no pot holes, barber green surface - Big soft shoulder or lay -bye at the bus stop - Small soft shoulder with a rail on the left from Mandeville.

He knew the plaintiff before the accident. He can't walk now, his left hand not working; can't play as before; don't have recording memory as before; 'his left foot is like a dead limb.' He helped in bathing and dressing plaintiff and assisted him in using the bath-room. His mother and brothers also help: He used to play cricket, football and other boys games before.

Under cross-examination this witness said the Mizpah main road is wide enough for three vehicles to pass. Cornell now walks 'hip-shodded' - he draws the left foot. He can pull his shirt buttons with one hand but not the pants buttons.

This was the case for the plaintiff.

Defendant's Case.

The defendant Mrs. Lagave Persad lived at Williamsfield - She said about 8:15 a.m. she was driving a Mitsubishi motor car registered 7347AS along the Mizpah main road going towards Spaldings at about 30 miles per hour. I noticed a blue pickup parked on the right side of the road beside a bus stop. "On reaching the back on tail of the pickup I noticed a child dash from behind the back of the pickup into the path of my vehicle. I was driving on the left hand side of the road. I stepped on my brake and swerved to prevent the accident but he still ran in the right hand side of my car and came onto the bonnet on the right hand side and fell to the ground." When she came out of her car she noticed the child lying on the right hand tail of the car - Her left front wheel was on the soft shoulder and the back of the car on the left hand side of the road slanting to the Christiana

direction with the front of her vehicle about 20 feet from the point of impact.

The child was placed in a car which took him to the Mandeville hospital - A police car came up shortly after and the defendant went with police to the Kendal Police Station.

Coming from Mandeville she said there is a direction sign, then there is a cemetery, then a school crossing; road continues straight until it reaches a corner, a good distance up. There was a bus stop on the other side. The condition of the road was good at the time, it was smooth. At the point of impact the road could accommodate two lanes of traffic.

The pickup was positioned as it going to Mandeville, half of it on the road and other half on the soft shoulder. There is no school sign on the Mizpah main road. She denied that the child was on a crossing, denied she was driving fast; denied she hit him on the left side - denied he flew up in the air about 8 feet, denied he fell some 35 feet from the pedestrian crossing. Her car was damaged in the accident. There was a dent on the right side of the bonnet, a light was broken at the corner on the right side which she did not repair.

The crossing she said was not a pedestrian crossing as it had no poles on either side of the road. At the time of the accident no one was using the crossing.

When cross-examined she said she left home that morning at about 8:00 o'clock - she was living about one mile from Williamsfield and about five to six miles to where accident

happened. She admitted she had a child then going to Knox Junior School whom she was taking to school that morning - Home to Knox is 10 - 11 miles. The school starts at 8:30 a.m. - she denied that the accident occurred between 8:20 a.m. and 8:30 a.m. defendant admitted she operated a business place at Straun district, 1 mile out of Christiana, but did not intend to go to my business that morning. Knox to Straun is about 4 miles. "That morning I was late for school." She denied that she was speeding that morning to take her daughter to school on time. She agreed there was straight road between the two corners. Between corners she had reduced her speed before the collision going between 25-30 miles per hour at time of collision. She denied she was travelling very fast when she hit him. She did not know that the building behind the cemetery was a school. She learnt since the accident that it was the Mizpah All Age - it was about 100 yards from the road.

The defendant admitted that there was a school crossing - white painting on the ground - now faded. She did not see sign marked 'Ministry of Education - Mizpah All Age School' at the time - I have seen a sign since - probably sometime in 1997."

In answer to me the defendant said that she was not aware that a school was in the area - She had been taking her daughter to school every morning for about one year before the accident. "Seeing school children walking in the area I knew school was in the area but did not know where it was."

Mr. Joel McLaughlin, a special constable who lived in the area of Mizpah for all his life testifed in support of the defendant. He said about 8:15 a.m. on the 26th September, 1996 he was standing along the left hand side of the road awaiting transportation going to Mandeville. On the right hand side towards Christiana there was a pedestrian crossing; a house about 100 yards from the main road; another house in the bushes - there was a bus stop and another house under construction. On the left side coming from Mandeville there is a burial ground and a school which is about 150 feet from the Mizpah main road - smooth surface, straight road.

Children going to school sometimes used the pedestrian crossing. While there he saw a blue pickup coming from direction of Christiana stopped beside the bus stop, partly on the soft shoulder and partly on the road. There was a line of about three cars coming from Mandeville - when they passed him he was looking up the road and saw "a little boy dashed from behind the blue pickup that stopped earlier". A grey car was in front of the line it was travelling at a slow speed. He ran into the right side of the car - the car swerved and he fell on the bonnet and fell on to the road surface on the left side of the road facing Christiana. The accident happened about 20 feet from the crossing. An unmarked police car came up and took the child to Mandeville Hospital.

Leaving from Mandeville there is a sign giving directions to various district. There was no other sign at that time - There is a sign there now put up by the Youth Club - This sign says -'Ministry of Education - Mizpah All Age School' which is on the left side coming from Mandeville, also the School - The sign is on the old road not on the main road and is about 10 feet from the intersection of the old and the new roads. The new road has been in use for fifteen (15) years.

People from other districts come and await transportation in the area. He denied that the boy crossed the road in the pedestrian crossing, he denied that the grey car drove very fast and hit him on the pedestrain crossing. He denied that the boy was hit by the left front of the car. He never went up about 8 feet in the air nor did he fall about 35 feet from where he was hit. There was no other traffic sign in the area, nothing to indicate that a crossing was there, only fading white marks on the road.

When cross-examined this witness said he was now 31 years old and knew the Mizpah All Age School from he was small and it has always been at that same spot. You can stay on some parts of the main road and see the school and the children. He knew the Pentecostal College and Church there. He repeated that no such sign was there.

He agreed there was a white line in the middle of the road. The boy had passed over the white line when the car hit him. He was not walking across the pedestrian crossing when the car hit him. He denied he had almost completed the crossing when he was hit. The The car had started swerving to the left before it hit him. He knew the plaintiff before the accident but not the defendant.

This was the case for the defendant.

Miss Richardson addressed the Court on the question of damages.

Re Special Damages

Medical Expenses at Children's Hospital	-	$ 4,200.00
Brain	-	1,000.00
Pampers	-	2,000.00
Accommodation (5 weeks @ $2,000.00 per week) for mother	-	10,000.00
Transportation (for mother)	-	10,000.00
Transportation	-	1,850.00
Baby Sitter	-	2,500.00
Transportation for therapy	-	16,000.00
Transportation to Dr. Cheeks	-	16,000.00
Nursing care	-	10,000.00
Extra shoes	-	4,000.00
Total		$80,550.00

General Damages

Counsel referred to four medical certificates admitted as Exhibits 1, 2, 3 and 4.

Exhibit 1 from Dr. Lloyd showed the plaintiff suffered a fractured skull and seizures.

Exhibit 2 from Dr. Cheeks who found that there was unconsciousness and fracture of the left tempo- parietal region of the skull.

Exhibit 3 from Dr. Lloyd disclosed that plaintiff developed left hemiplegi that is, he walked with a limp also post traumatic epilepsy both of which were permanent.

Exhibit 4 from Dr. Cheeks which showed weakness of the left upper and lower limbs. There was also injury to the right pyramidal tract

which controls voluntary movement on the left side of the body. This amounted to a 20% loss of the whole person.

For pain and suffering and loss of amenities counsel referred to the case of **McLean vs. Walters** reported in Harrison's Assessment of Damages p. 198 where an award was made for $190,000.00.
See also Vol. 4 of Khan's page 86 - Whylie vs. Campbell.
The sum of $1.5 million was awarded by Mr. Justice Karl Harrison in May 1997. This was converted at date of trial amount to $1.69 million counsel ask for an award of $2 million under this head.

Future Epileptic attacks

See SCCA No. 50/90 **Petrona Black vs. Jennifer Bhakai** $100,000.00 awarded. This when converted would be equated to $600,000.00 today.

Loss of Future Earnings

Counsel submitted that the plaintiff will have problems on the labour market. We can't say what occupation the plaintiff will take up.
The minimum wage was now $800.00 per week.
See **Douglas vs. K.S.A.C.** 18 J.L.R. 338, at 341. She suggested a multiplier of 16 and ask for award of $800 x 52 x 16 = $665,600.00.
Discounting for immediate payment by 50%. She claims $332,800.00.

Handicap on the labour market

See SCCA No. 15/91 **Jamaica Telephone Co. Ltd. v. Delmar Dixon.** In June 1994, the sum of $20,000.00 was awarded under this head when converted to August 1998 this is equivalent to $37,297.00

Cost of Future Extra shoes

Counsel claimed $2000.00 per year for shoes. She suggested a multiplier of 18-claim amounts to $36,000.00. Discount this by 25%

= $27,000.00 for immediate payment.

Costs of future care

See **Douglas v. K.S.A.C. (supra)** Counsel claims an award at rate under the Minimum Wage with multiplier of 18 = 800 x 52 x 18 = $748,800.00. For immediate payment this will be reduced by 25% = $561,600.00. Total claim under head of General Damages

Pain and suffering	=	$ 2,000,000.00
Future epileptic attacks	=	600,000.00
Loss of future earnings	=	332,800.00
Handicap on labour market	=	37,297.00
Costs of extra shoes	=	27,000.00
Future care	=	561,600.00
		$ 3,558,697.00

Re: Liability

Mr. Rowe addressed the question of liability. He pointed out that the defendant holds a duty of care to the plaintiff - that this duty had been breached and as a result,damages. She failed to keep a proper lookout, in a school area, her excessive speed. She failed to heed the presence of the plaintiff on the pedestrian crossing even if the plaintiff was not using the crossing the defendant still owed him a duty of care. This was a built up area. She knew there was a school crossing in the area, she knew that pedestrians were always there, that a bus stop was there. The defendant could see from the main road the building which she later learnt was the All-age School. It was a school morning and it was school time.

Mr. Rowe asked the Court to reject the defendant's claim that she never knew the all-age school - she admitted knowing of the Pentacostal College in the area. She admitted she never reduced her speed when

she saw the plaintiff and was supported by her own witness. He submitted that a careful and reasonable driver would have reduced speed. The presence of the parked vehicle was further reason for her to reduce speed. She should have assumed that people may have been coming off or going on the parked vehicle. She ought to have taken care that children may run across the road.

On the balance of probabilities Mr. Rowe submitted that the defendant was negligent. He asked the Court to reject the defendant's evidence that there was no school sign there at the time. He reminded the Court that she admitted there was a school crossing sign on the road but it was pale. He further submitted that when evidence of the defendant's witness conflicted with evidence of the plaintiff's witness, that the defence should be rejected and the plaintiff's accepted. The defendant's evidence of speed ought to be rejected. The seriousness of the accident bears this out. He was unconscious for three weeks - he had been thrown in the air and fell on the bonnet. The defendant was taking her daughter to Knox. At 8:15 a.m. she was at Mizpah having another 6 miles to go to Knox. Counsel submitted that the defendant was speeding in order to take daughter to reach school by 8.30 a.m. Going through the town of Spaulding, a built up area, it was likely she would be held up in traffic.

Mr. Rowe submitted that the evidence of the witness for the plaintiff should be believed. The first plaintiff although young knows the difference between wrong and right. His mother taught him how to cross the road. There were discrepancies between the defendant and her witness. Witness Mavis Elliott's evidence is credible. She witnessed the accident - corroborates the plaintiff's evidence as to how he was crossing the road. The fact that she did not slow down

proves negligence beyond reasonable doubt.

(Both attorneys, clients and Judge visited the car park to look at defendant's car)

Continuing, Mr. Rowe submitted that evidence of damage to the car was more consistent with evidence of the plaintiff than that of the defence.

On behalf of the defence, Miss Small made her submissions in writing.

The doctrine of **Res Ipsa Loquitur** does not apply - see **Charlesworth & Percy on Negligence** 8th edition page 422-423:
She announced that the defendant was not pursuing the defence of contributory negligence. Based on evidence of Miss Mavis Elliott that her back was turned, her evidence as to speed of car ought not to be accepted. Defendant reduced speed and was exercising her statutory duty of care. The evidence of Joel McLaughlin as to where he was standing was never challenged. On evidence of Miss Elliott the damage should be on the left side, there is no damage on the left side. If defendant was speeding the damage to car would be greater and injury to child more serious. She submitted that the plaintiff had failed to prove that the defendant was negligent. See Charlesworth & Percy **(Supra)** at p. 198.

Re: Damages

Miss Small submitted that Special Damages must be proved. No receipts were tendered although the mother said she had the receipts.

Claim No. 6 is unreasonable and claim for handicap on the labour market does not arise.

This was the case for the defence.

Findings

There is no dispute that accident happen on or near a school crossing on along straight, dry asphalted road in the vicinity of the Mizpah All Age School - road wide enough to accommodate two or three lanes of vehicles.

No dispute that the child came from behind a parked open back pick-up which was on the left soft shoulder facing Mandeville having came from the direction of Christiana.

There was no evidence of tyre marks on the road as a result of any sudden braking up of the defendant's car. Neither was there any evidence that she blew her horn to warn children who may be running or walking from behind the pickup.

On defendant's evidence travelling at 25-30 miles per hour she failed to stop her car or otherwise avoid the 1st plaintiff on dry asphalted road although she is driving on the left hand side and the child came running from behind open back pickup on her right where road is wide enough to admit two lanes of vehicles (her evidence) or three lanes (Donald Williams evidence).

There is no factual reduction of speed. When she came on the straight she travelling about 30 miles per hour. At time of accident she going between 25 - 30 miles per hour.

Was she keeping a proper lookout?

She saw adults and children on both sides of the road. She admitted there was a school crossing painted white on the road, (albeit faint). Whether or not she had known of the Ministry of

Education School sign indicating the Mizpah All Age School, she knew a children's school was in the area only never knew where exactly it was situated.

On the evidence of Special Constable McLaughlin for the defence, the greater part of the pickup was on the soft shoulder - He saw defendant driving up on the left hand side at slow speed and that the child dashed from behind the pickup.

On her own evidence she drove up on left hand side at 25-30 miles per hour and when her car was passing the back or tail of the pickup the child dashed from behind the pickup. If this was so she would have passed the pickup and gone about her business before the child could have reached across the road and ran into her right side, especially when she swerved further left to avoid him as she admits and without having to contend with any pedestrian on her left or any other vehicles coming from the opposite direction.

From the very nature of the injuries suffered by this child, it suggest that he was hit by the front of the vehicle as the plaintiff contends rather than that he ran into the side and fell on the ground as the defence contends.

Special Constable McLaughlin says child was hit 20 feet away from the crossing while Miss Elliott says he was hit on the crossing. It is noted that she was seated in back of the open back pickup and accident took place just behind this stating up pickup. Same direction she was looking.

The Law

A distination must be drawn between children and adults, for an act which could constitute contributory negligence on the part of an adult may fail to do so in the case of a child or young persons, the reason being that a child cannot be expected to be as careful for his own safety as an adult. Where a child is of such an age as to be naturally ignorant of danger or to be unable to rend for himself at all, he cannot be said to be guilty of contributory negligence with regard to a matter beyond his appreciation, but quite young children are held responsible for not exercising that care which may reasonably be expected of them - See paragraph 98 Volume 28 of the 3rd edition of Halbury's Laws of England.

In the case of Gough vs Thorae (1966) 3AER 398. Lord Denning said - "A very young child cannot be guilty of contributory negligence. An older child may be, but it depends on the circumstances." - This was quoted with approval in the Jamaica Court of Appeal in S.C.C.A. No - 74/88 - Earl Allen & Conley Sudeal vs Lascelles Watt delivered on the 28th of March, 1990.

No claim or counter-claim was made by the defendant in this case, and her counsel indicated to the Court that she would not be pressing the defence of contributory negligence. However, the question arises in the case and ought to be dealt with.

The Court of Appeal also looked at the case of Jones vs Lawrence (1969) 3 AER. 267. In this Judgment Mr. Justice Cumming

Bruce said ....

> "Now I come contributory negligence. Of course, the infant plaintiff, then aged seven years and three months, should not have run out across the path of a motor vehicle driven down the road at about 50 miles per hour. The problem is whether in the case of a boy seven years and three months the defendant has proved that the boy showed a culpable want of care for his own safety ...."
>
> "In my view the defendant has failed as a matter of probability to show that the infant plaintiff was culpable or that his behaviour was anything other than that of a normal child who is, regretfully, momentarity forgetful of the perils of crossing a road."

I respectfully agree with these words and wish to adopt them as my own.

As submitted by Miss Small I agree that the question of Res Ipsa Loquitur does not apply - See Charlesworth and Perry on Negligence 8th Edition, page 422 & 423. There was evidence from the plaintiff and from Miss Elliott as to how the accident took place.

I reject the defendants version as to how the accident occurred. She has failed to show me that the infant plaintiff's behaviour was anything other than that of a normal child who is momentarily forgetful of the perils of crossing a road.

I accept the evidence tendered by the plaintiff's witness Miss Elliott that the child was walking on the crossing going across the road when the defendant came speeding along obviously in an effort to reach school in Spalding in time, and failed to keep a proper lookout and hit the child.

Accordingly, I find for the plaintiffs.

Re-Damages

I agree with defence Counsel that special damges must be proved. The practice of Attorneys putting a lot of figures together and throwing them at the Court continues dispite the Court of Appeal deploring it. No receipts have been tendered in support of most of the items claimed.

Again, I agree with the defence that the claim for handicap on the labour market does not apply.

Re Loss of Future Earnings:

In Allen vs Watt (Supra). President Rowe said at page 19.

> "A plaintiff is not entitled to ask the Court for damages for loss of future earning without bringing some evidence on which that assessment can be made. Secondly, to encourage trial

juges to make award based on
some principles rather than
upon plucking figures out of
the air supported only by
submission of Counsel."

The claim for accommodation by the mother - 2nd plaintiff is not an unreasonable one, but it has not been supported. This claim is therefore refused.

The claim for transportation to Dr. Cheeks for consultation is also refused. Surely she could have arranged those visits for the same days she was taking the child for theraphy. She has a duty to mitigate her loss.

Special damges is assessed as per claim, less those disallowed = $54,550.00.

Re General Damages

This child was very seriously injured. Some will affect him for the rest of his life. Having looked at the cases referred to by Miss Richardson - Whylie v Campbell (supra) is the nearest to the instant case. I make an award of $1.5 million dollar for pain and suffering and loss of amenities.

In epiletic attack	- no award	$600,000.00
Cost of extra shoes	-	$ 27,000.00
Cost of future care	-	$561,000.00

Re Handicap on the Labour Market

Since going over these figures this morning I have had second thoughts about my refusal of this claim. For the rest of his life the 1st plaintiff will be handicapped by his injuries in whatever form of occupation he undertakes. The practice of the Courts is to award a conventional sum - Accordingly an award under this head is made of $ 20,000.00 - See Judgment of President Rattray in Jamaica Telephone Co. Ltd. vs Delmar Dixon - S.C.C.A. No. 15/91 dated 7th June, 1994, (unreported).

Cost of extra shoes shall be calculated on multiplier at 16 rather than 18 suggested by the defence = $24,000.00 similarly, multiplier of 16 instead of 18 shall be used; in calculating costs of future care = $499,200.00.

Re Claim for Epileptic Attack

From the evidence of the 2nd plaintiff, the infant has no further sign of seizure since he has returned home over two years up to date of trial. There is only a 4% possibility of he having such an attack during the next three years as stated by Dr. Cheeks in his final report. The likelihood now is so remote that no award should be made for this claim.

I had unfortunately overlooked Dr. Cheeks 4% possibility. The award of $600,000.00 previously made is hereby revoked for the reason that it cannot be supported on the evidence.

General Damages is therefore assessed as follows:-

Pain & Suffering and loss of amenities	-	$1,500,000.00
Handicap on the labour market	-	20,000.00
Cost of extra shoes	-	24,000.00
Cost of future care	-	499,200.00
		$2,043,200.00

In summary special damages assessed at $54,550.00 with interest at 3% from the 26th of September, 1996 to date of judgment 26/11/99.

General Damages assessed at $2,043,200.00 with interest on $1.5M at 3% from date of service of the writ until the date of judgment 26/11/99.

Cost to the plaintiffs to be agreed or taxed.