

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B270 OF 1990

BETWEEN KORIAN BRADY PLAINTIFF
AND TOP SECURITY COMPANY LIMITED DEFENDANT

Ainsworth W. Campbell for Plaintiff.

Patrick Foster instructed by Dunn Cox and Orrett for Defendant.

Heard: April 26, 27, 28, 29 &
 July 1, 1994.

LANGRIN, J

In this action the Plaintiff Korian Brady was the rider of a pedal cycle which collided with a motor vehicle licenced 9944 AC registered in the name of the Defendant and driven by Arthur Fearon Jnr. along the Red Hills main road, St. Andrew on the 5th March, 1990.

In his amended Statement of Claim the Plaintiff averred that the Defendant's driver negligently drove and or controlled its motor vehicle in such a manner that it collided with the Plaintiff as he was lawfully riding his bicycle along the road causing him to sustain bodily injuries and to suffer pain, damage and loss. The particulars of negligence are stated as under:-

Particulars of Negligence

- (a) Turning suddenly across the path of the Plaintiff.
- (b) Failing to keep any or any proper look out
- (c) Failing to have any or any sufficient regard for other users of the road including the Plaintiff.
- (d) Driving the vehicle without due care and attention.

The Plaintiff's Case

He was riding his pedal cycle about 20 m.p.h. along Red Hills road. At the material time he saw no vehicle going in the same direction as he was travelling. In fact there was no traffic on the road at the time. He was however, uncertain as to whether

vehicles were behind him.

The defendant's vehicle was close to him when it turned across the road and caused him to collide with it in its middle section. The driver suddenly turned right across his path and he suddenly grabbed his brakes but in spite of that collided with the vehicle.

The Defendant's Case

Arthur Fearon, driver of defendant's vehicle testified that he was an employee of the defendant, and his father was the Manager of the company. While driving along Red Hills Road he came to a halt, turned on his indicator to make a right turn. There were about four vehicles proceeding from the opposite side of the road. The vehicle in front slowed down and flashed its light signalling him to turn. He proceeded to turn after ensuring that no vehicle was coming towards him. After going through the intersection he felt an impact to the side of his vehicle and subsequently saw the plaintiff lying in the middle of the road.

Under cross-examination he admitted that he really does not know how the accident happened. While he was turning across the traffic he could see to his left about 3 to 4 chains but did not see the plaintiff riding his bicycle.

Legal Issues

Sec.51 of the Road Traffic Act provides:-

- "(1) The driver of a motor vehicle shall observe the following rules - a motor vehicle
- (a) shall not be driven so as to cross or commence to cross or be turned in a road if by so doing it obstructs any traffic;
- (3) For the purpose of this section -
- (a) A motor vehicle obstructs other traffic if it causes risk of accident thereto;"

Furthermore, it is trite law that the duty of a driver changing direction is first to signal and more importantly to see that no one was incommoded by his change of direction.

Anyone making such a move must naturally take special care to see that he does not get into the path of other traffic. Failure to take such care imports a high degree of culpability.

The question which arises for consideration is whether the defendant's driver was exercising that degree of care and attention which a reasonable and prudent driver would exercise in the circumstances. This question is one of fact and not law.

The Defence contends that the driver did everything that was reasonable and no blame should be attached to him for not seeing the bicycle rider even though he had looked. Further it was argued that it is not improbable that swift movement of a bicycle going at 20 m.p.h. down Red Hills Road could have resulted in the cyclist quickly passing stationary vehicles and collided with the Defendant's vehicle without his knowledge.

Counsel relied on the case of Clarke v. Winchurch & Ors (1969) 1 AER 275, but this case was easily distinguished from the instant case.

In the light of the clear admission of the defendant's driver that he never saw the cyclist at any time I am forced to the conclusion that the defendant's driver was not keeping a proper look out. On the facts I find that the defendant was cutting across the line of traffic coming from the opposite direction. It was for him to take care that he could execute the manoeuvre in safety. In my judgment he had failed to do so.

I find that on a balance of probabilities the defendant's driver was negligent in his driving and is fully to be blamed for the accident.

Damages

The particulars of injuries pleaded are as follows:-

- (i) Laceration to the occipital region of the head
- (ii) Shock and unconsciousness
- (iii) Head and brain injuries
- (iv) Dizziness with headaches
- (v) Dislocation of the left shoulder
- (vi) Fracture of 2 ribs

- (vii) Laceration of the tongue resulting in impediment in speech.
- (viii) Wave form anomalies in the right fronto-centro-parietal area and in the left temporal area of cerebral cortex.
- (ix) Post traumatic epilepsy.
- (x) Closed head injury and brain damage.
- (xi) By reason of his injuries the Plaintiff will require constant therapy.
- (xii) By reason of his injuries the probabilities are that the Plaintiff will develop:-
 - (i) Post traumatic Alzheimer's dementia;
 - (ii) Post traumatic Parkinson's disease'
 - (iii) Normal pressure Hydrocephalus,
and in this case the probabilities are very high by virtue of bilateral cortical atrophy.
- (xiii) By reason of his injuries the plaintiff is unable to lift weights or do any work.
- (xix) Fracture of two metacarpals of the right hand.
- (xv) Laceration that almost severed the first finger on the left hand.
- (xvi) Deep laceration on the left upper arm.
- (xvii) Loosening of the front teeth.
- (xviii) Laceration to the left knee.

Plaintiff testified that he became unaware of himself as a result of the accident until about 3 days later he came to himself in a bed at the University Hospital of the West Indies where he found his head bandaged. There were cuts at back of his head and his left shoulder was dislocated and both hands bandaged. His ribs were fractured and he sustained wounds.

He was visited by persons from his work place and the driver of the Pick-Up, as well as the driver's parents. These latter persons were gracious to him and when he was discharged from the hospital they took him to their home and gave him boarding and accommodation. He was taken to the hospital by them for follow-up

treatment.

The plaintiff, age 23, worked as a handy man. He was unable to restart his employment and so he finally went back to Trelawny to stay with his mother. He started to suffer from dizziness, headaches and frequent 'black outs'. Glenroy Powell, a former supervisor of the plaintiff testified of the plaintiff's black-out some time in 1991. The plaintiff spent 3 weeks in hospital.

Dr. John Hall - an eminent Registered Medical Practitioner with specialty in Neurology since 1958, testified that he carried out clinical and neuropsychological examination of the plaintiff. The plaintiff was neither numerate nor literate. However, there was no demonstration of neurological deficit. Plaintiff gave him a history of repetitive bouts of headaches and giddiness and an attack of loss of consciousness. Dr. Hall carried out an EEG examination on August 13, 1991 which revealed certain abnormalities in the right centroparietal area as well as left temporal area of the brain which are well known areas of vulnerability. He found that the plaintiff had suffered from head injuries.

The abnormality revealed by the EEG indicates that the plaintiff was having post traumatic Epilepsy due to aftermath of head injuries of the type suffered by the plaintiff. In his opinion he had no doubt that the head injury on 5th March, 1990 was the genesis of the EEG abnormalities shown in his laboratory on 13th August, 1991. There would be no improvement in his condition. The Consultant opines that there is a probability of Post Alzheimer Dementia. He could lose global function to the extent that he might not be able to look after his personal affairs and interact in the community.

Additionally, there is a likely onset of Post Traumatic Parkinson's disease or 'Shaking Palsy' because of the nature of the injury shown on the EEG.

Dr. Kenneth Vaughan, Orthopaedic Consultant, examined the plaintiff on the 26th April, 1994. His report (Ex.1) reads as follows:-

"Mr. Brady was seen by me on the 26th April, 1994 for the purpose of writing this medical report. I had available to me his University Hospital of the West Indies notes.

It is alleged that Mr. Brady was riding his bicycle when a van swerved in front of him resulting in an accident. He reportedly lost consciousness for a period of time.

Mr. Brady was taken to the Medical Associates Hospital where he was examined and had Radiographs done. He was subsequently referred to the University Hospital of the West Indies where he was seen and admitted.

When examined at the University Hospital he was alert, fully conscious, probably had difficulty speaking because of a laceration to his tongue. Other significant injuries include injuries to both hands and his collar bone. There was also some tenderness within the cervical spine. There were also abrasions to the elbows and the hands. Review of the Radiograph done showed the following fractures:

1. Fracture of the left clavicle.
2. Fractures of the left second and third metacarpal bones.
3. Fracture of the second right metacarpal bone.
4. Fractures of the 8th and 9th ribs on the right side.

There was no evidence of any cervical spine fractures.

Mr. Brady had a cervical collar fitted along with a Plaster of Paris back slab to the left hand and a crepe bandage to support the right hand. All his abrasions were cleaned and dressed and his tongue laceration was treated by frequent mouth washing gargles. Mr. Brady spent the period from the 5th March 1990 up until the 9th March, 1990 at the University Hospital. Over this period his general condition improved and he was discharged home with an appointment to the Out-Patients department.

Mr. Brady was seen on the 16th March, 1990 in the Orthopaedic clinic at which time his abrasions and wounds were healing well but swelling of the hands were diminishing and his cervical spine was less tender. This was his last recorded visit to the clinic.

When seen for the purpose of writing this report Mr. Brady was complaining of giddiness of the head with occasional black out spells. When examined he was a healthy gentleman, he was alert, he was fully conscious and orientated. He had a full range of movement of his cervical spine with no restriction. His clavicular fracture had healed fully and there was no tenderness. He had a full range of movement of the left shoulder joint and distally both wrist and fingers were moving fully and were pain free. Clinically, there was evidence that all his metacarpal fractures had healed.

As a result of his injuries Mr. Brady would have been incapacitated for a total of three months."

It is significant that the report does not indicate any permanent partial disability.

Plaintiff relied on the award made at Vol.3 of Mr. Khan's complication at page 99. Bucknall v. Forrester Suit No. C.L. 1989/ B110.

An award of \$50,000.00 translated in the money of the day would be \$225,000.00

Based on this award I make an award of \$200,000.00 for the Orthopaedic injuries.

Dr. Hall who had not seen the plaintiff until August 1991 confirmed by his Clinical and laboratory tests that he was suffering from General Tonic Trolley Disorder which would lead to the neurological condition previously adverted to by him. However, he was of the opinion that the plaintiff could function as a Handy man.

This part of the claim falls to be considered under the following heads:-

- (a) Brain Damage
- (b) Future Medical Expenses

Brain Damage

Based on the plaintiff's evidence as well as the impressive neurological account of the plaintiff's injuries given by Dr. Hall and having examined the cases cited by Mr. Campbell I am of the opinion that an award of \$800,000 would be reasonable.

Future Medical Expenses

Dr. Hall testified that the plaintiff should be seen at least once every 2 months. The present charge for such a visit is \$800. The desirable medication is anti-convulsant which costs about \$8 per tablet, requiring about 3 tablets per day.

The plaintiff is 24 years of age and I considered a multiplier of 16 to be appropriate. Future Medical Visits would therefore be as under:-

$$\$4,800 \times 16 = \underline{\$76,800.00.}$$

Future medication at \$24 per day for tablets would be as under:-

$$\$365 \times 24 \times 16 = \underline{\$140,160.00}$$

$$\text{Total} = \underline{\$216,960.00}$$

Special Damages

Based on the medical evidence the plaintiff was fit to continue his occupation as a Handy man after a duration of twelve weeks from the accident. There is no credible evidence adduced

by the plaintiff that he was unable to find employment at the end of that period. Accordingly, I make an award for Loss of Earnings as under:-

Loss of Earnings

\$450 x 12 weeks	=	\$5,400.00
<u>Medical Bill</u>	-	3,820.00
<u>Travel Costs</u>		<u>300.00</u>
		<u>\$9,520.00</u>

Summary

General Damages:

Pain & Suffering

(1) Orthopaedic Injuries	-	\$200,000.00
(2) Brain Damage		800,000.00
		<u>\$1,000,000.00</u>

Future Medical Expenses

\$216,960.00

Special Damages:

\$9,520.00

Judgment is accordingly entered for the plaintiff against the defendant as indicated in my summary with interest awarded on the General Damages at 3% from 26/10/90 to 29/4/94.

Interest awarded on the Special Damages at 3% from 5/3/90 to 29/4/94.

Costs granted to the plaintiff to be agreed or taxed.