

Judgment Book

IN THE SUPREME COURT OF JUDICATUR OF JAMAICA

IN COMMON LAW

SUIT NO. B239 OF 1989

BETWEEN	MARIE BRYAN	PLAINTIFF
A N D	YVONNE TERRELONGE AND	
	BERNARD TERRELONGE	DEFENDANTS

R.S. Pershadsingh QC., Horace Edwards QC and Alvin Mundell for the Plaintiff.

Dorothy Lightbourne for the Defendants instructed by Kelly, Williams & McLean.

Heard: October, 12, 13, 14, 15, 1992
May 3, 6, 7, 19, 20 & 21, 1993
& July 23, 1993

Judgment

RECKORD J.

The plaintiff having obtained interlocutory judgment by default of defence, this action came before me for assessment of damages.

On the night of the 11th of March, 1989, the plaintiff was seated with her infant baby in her lap in the back seat of her husband's car and was being driven along the Stony Hill Road in St. Andrew when the defendant's car coming in the opposite direction crashed in the right hand side of her car. The impact threw her over into the front of the car. She said she lost consciousness and when she recovered she found herself in another car going to the University Hospital.

Her whole face was in blood - she was bleeding through her nose and mouth. Three front teeth were loosened, her forehead was swollen; There were cuts over her right eye-lid, cut on the nose leaving a scar - Her right hand was swollen - there were bruises on both knees and a cut on the right shin. Later she started having pains in the abdomen and chest and she passed blood from her vagina - she also started having severe headaches and was given pain killing tablets. Her cuts were dressed and her right hand was put in plaster from the shoulder to the fingers. She was sent home that same night.

She got a long appointment to the fracture clinic but because of the severe pains she went to see doctor Dundas who after X-ray of the hand recommended surgery. Because of the expense involved she could not go through with it. Her hand was in plaster for six months when doctor Dundas removed it. She could not eat after the accident as her jaw was stiff. Her right hand could not straighten at the elbow and her right knee cap moved from side to side at times. She went to see doctor Ali for a second opinion on her hand.

As a result of headaches and dizzy spells which she started having the plaintiff went to see Professor Owen Morgan. She was not able to concentrate and she kept on forgetting things. She received treatment but because she not satisfied with the way she was feeling she went to doctor John Hall who also treated her. The plaintiff then went to see a psychologist, Mrs. Susan Knight who examined her and made an assessment. At her work place she was making lots of mistakes in her job as a typist. She next went to doctor Crandon concerning the problems she had in concentrating. Up to when she was testifying in court she was still having severe headaches and pains in her right elbow. She was still not able to concentrate or remember things properly.

The plaintiff did not return to work until eight months after the accident and could only work for half days. This went on for about twenty-three weeks after which she had to stop working completely as she could not manage the work because of severe headaches and pains in the elbow.

She incurred medical expenses totalling over \$6000.00

X-Rays	\$ 169.00
Registration at U.C.	\$ 5.00
CAT SCAN	\$ 1,375.00
Transportation by taxi	\$ 720.00
Prescription	\$ 323.00
Other prescriptions	\$ 100.00 which was repeated four times.

Total spent on panadol prescription \$ 300.00.

She returned to work in 1991 and after a couple of days could not continue due to the same problems. She has not worked since. Her salary at the time of

the accident was \$450.00 per week and \$225.00 when she worked for half days.

After the accident the plaintiff employed a helper to assist her at home as she could not use her hand to work - She kept the helper for twenty-nine weeks @ \$80.00 per week.

The Dress the plaintiff had on at the time valued \$150.00 was blood stained Her brazziere was completely broken off valued \$30.00 was blood stained. A gold bracelet she was wearing was lost valued \$500.00; slip valued \$30.00 was blood stained. Gorcery she had in the car was lost valued \$200.00. Since the accident she had become short-tempered and she gets easily upset. She was not like this before.

Under cross-examination she said she worked in a law firm for the past four years. She learnt typing at the Jamaica Commerical Institute.

Her headaches had started about three months after the accident - Until recently she had never been told by a doctor that she suffered from high blood pressure. About July 1992, she saw doctor Cheeks who told her that her blood pressure readings were high and recommended she see her doctor. She had not done so yet. Despite all the doctors she had seen she was still having headaches and dizzy spells.

Medical reports from doctor Dundas and doctor McDonald of University of the West Indies were admitted in evidence.

Mrs. Susan Knight next testified on behalf of the plaintiff. She is the holder of a Master of Arts degree in Clinical Psychology and is a chartered psychologist with the British Psychology Society. She examined and assessed the plaintiff on the 17th of May, 1990. She got report from the plaintiff of her accident and of the problems she having since the accident. The plaintiff completed all the tests she gave her but she appeared anxious and distressed at times. She noted that the plaintiff had particular difficulty with any task requiring visual and spacial organization and short term memory. The plaintiff had reported that she began experiencing severe headaches and dizzy spells shortly after the accident.

The first test she put the plaintiff through concerned her social functioning - She was able to function without supervision and managing with her baby except for the problem with her arm.

She carried out the Wechsher Adult Intelligence Scale - the revised version and the Wechsher Memory Scale - this is the most widely used intelligence test.

From her educational background it suggested she had an I.Q. within the average range and had no significant cognitive problem. She completed the 10 sub-tests but had difficulty with some. She noted that the plaintiff did not always note the mistakes she made or made any attempt to correct them. She obtained a verbal I.Q. of 86 points and a performance I.Q. of 71 points - When put together this gave her an overall I.Q. of 77 points which would place her below average or slow learner range for age. Her scores were generally lowest in the sub-tests requiring visual, spacial organization, short term memory and attention. Her overall I.Q. performance placed her in the 7th percentile for age - that is, she was performing lower than 93% of adults within her age group. She found evidence that there was deterioration in her intellectual function and her findings were consistent with the picture one gets following a closed head injury usually accompanied by some degree of brain damage.

She had discussed her findings with doctor John Hall, a specialist Neurologist and had no reason to change her findings. The results of her tests suggested that the plaintiff was functioning at a lower level than her past history suggested she should. In looking at the pattern and quality of these defects, they were mostly consistent with a picture of brain damage suggestive of a lesion in the fronto-temporal area probably on the left side. Mrs. Knight was of the opinion that the plaintiff could not sustain a job as a typist or secretary - It would be difficult for her to maintain a job as secretary as she was unable to detect errors by herself.

Under cross-examination Mrs. Knight said all the plaintiff's history was obtained from the plaintiff herself. The entire I.Q. test consisted of 11 sub-tests, 6 deals with verbal I.Q. while other 5 deals with performance I.Q. The verbal I.Q. test consisted of information, diget span, vocabulary, arithmetic, comprehension and similarities - She gave details of these tests. The Wechsler Memory test consisted of 7 sub-tests - she also gave details of these. She admitted that because a person gets a low I.Q. overall this does not mean that person had brain damage. From what she saw of the plaintiff she expected that there will be a depreciation.

Doctor Ivor Crandon, consultant neurological surgeon at the University of the West Indies, F.R.C.S. (Edin) next testified. He saw and examined the plaintiff on the 3rd and 7th of October, 1991 - She was complaining of headaches and dizzy spells, poor memory and poor concentration for over 2 years. She gave him details of the accident, her injuries and the treatment she received. She reported headaches started six weeks after the accident, varying in severity and sometimes accompanied by vomiting -- She described an aura preceeding the headaches consisting of a transient cold feeling, a sensation of flashing lights unsteadiness and dizziness - spinning room - forcing her to lay down. The headaches had been so intollerable that they prevented the completion of any task at hand and interfered with her ability to work or enjoy her social life. She felt that her difficulty with memory mainly affected her recall of recent events. She gave him a history of her education.

On examination doctor Crandon found her speed of mental processing and her ability to do simple calculations were slow taking into account her level of education. Her memory was impaired which affected mainly short term memory. Her long term recall was good. In his opinion the plaintiff had suffered an head injury and had evidence of brain damage. The evidence was her difficulty with memory, word spelling, concentration and the reported personalty change. His opinion was also based on objective evidence of low performance I.Q. scores which had demonstrated difficulties with visual spacial organization and short term memory. The plaintiff's problems were well recognized sequila of head injury in human beings. Her difficulty with word spelling reflected the inability of her brain to access information previously stored. This difficulty was further evidence of memory impairment. Personalty change is the most consistent result of a blunt head injury and may affect the drive, motivation or disposition of the injured person.

Doctor Crandon said he was familiar with the Wechsher Adult Intellegence Scale. Performance tests like these are independent of education and cultural influences prior to the injury and are generally accepted to reflect non verbal aspects of higher mental function. They measure things such as motivation, attention the ability to organise complex tasks over a period of time, spread of

performance and perserverance. They reflect the function of the brain as a whole.

When he saw the plaintiff on the second occasion he concluded that her ability to return to her previous occupation had been seriously impaired; that her opportunity for advancement in that field or to learn another further reduced. In his opinion from a career standpoint she may be forced to accept a less skilled occupation requiring repetative tasks learned long ago. Her ability to learn new skills was reduced. It was his opinion that head injuries of this nature could cause epilepsy.

Doctor Crandon was familiar with a catscan but was of the opinion that a catscan done two years after an injury like this was of little significance as the kind of damage is very often not visible on a catscan which will detect structural abnormality of the brain usually larger than one centimetre in size.

On being cross-examined doctor Crandon said her speech was normal, so were her eye movement, confrontation and social sensation - Her conversational hearing, sensory function, vibration and position senses were also normal; she had no evidence of a skin injury which could affect the brain nor any turbulent blood flow which could result in brain damage. However, he did not check her blood pressure. About a quarter of persons having head injuries has had epilepsy starting after four years. Most patients have their first fit within the first four years and the risk decreased with time.

Doctor Crandon said that loss of consciousness even for 15 - 20 minutes normally means that the person has had a significant head injury. For one to lose consciousness for 15 - 20 minutes there must be damage to the brain. Whether such damage will go on to cause a permanent defect or not is very variable. Loss of consciousness can cause a reduction in recent memory function but this will improve overtime. He saw evidence of brain disfunction, and brain damage is a cause of brain disfunction. Under further cross-examination doctor Crandon said "In my opinion this brain disfunction followed the head injury. This conclusion is based on her report to me. My examination showed impaired memory, impaired speech of mental processing and ability to perform calculation. These

amount to disfunction - it is these things that led me to the conclusion that she had abnormal brain function. The conclusion that this abnormal function resulted from the injury is based only on her report to me since I had not seen her before the injury and I did not look after her."

Doctor Crandon did not see any school record of her level of education. If her level of education was lower than what she told him this would have affected his findings. The tests he carried out indicated that her temporal lobes were not functioning normally. This was most likely due to damage to the temporal lobes. The tests he did were entirely clinical. He did not order a cat scan. The damage may not be due to head injury or any injury at all. He had seen a report of an EEG test which was abnormal. There was no need for him to order an EEG test. He never saw the EEG tracing of the plaintiff. "The headaches she told me she had did not in my opinion be symptoms of high blood pressure. I did not check her blood pressure." He agreed it would have been prudent to do so and that if she had diostlic pressure of 110 that would be high blood pressure. Symptoms of high blood pressure, the patient may complain of headaches, blurring of vision and dizziness -- "Migraine headache can include an aura and very often does; It includes dizziness, blurring of vision, flashing lights, I can't say whether these symptoms were because of migraine or high blood pressure -- They could be." After brain damage one can make a complete recovery.

At present doctor Crandon is a consultnat neuro-surgeon to the University Hospital and a lecturer in neuro-surgery to University of the West Indies.

Mrs. Gloria Harry, a secretary in a law firm, said she knew the plaintiff who was her assistant and who at the time of her accident was bring paid \$450.00 per week. Her performance was very good up to that time. She returned to work in October 1989. On her return her performance was poor - Her spelling had deteriorated. She complained of terrible headaches -- She worked for half days at \$225.00 per week for 23 weeks. In March, 1990, she left the job as she could not remember anything, she misplaced words and letters and was repetitious.

She received bonus three times per year, \$500.00 for Easter, \$500.00 for Summer and \$1000.00 for Christmas. For her holiday pay she was paid \$1000.00. If she was now working in her office she would be getting at least \$1000.00 per

week. In 1992 she would earn \$750.00 per week and 1993 \$1000.00 per week.

Mr. Winston Allen, a gardener of Stony Hill, was in the vicinity of St. Jude's Church on the 11th of March 1989 when there was a motor vehicle accident. He assisted in taking the plaintiff and her family from the car. They were all unconscious. After about 15 - 20 minutes they were still unconscious and were sent off to the hospital.

After some amendments to the statement of claim the plaintiff closed her case.

Doctor Randolph Cheeks (F.R.C.S.) a registered neurological surgeon testified on behalf of the defendants. He had first seen the plaintiff on the 7th of April, 1989, within one month of the accident. She then complained of right sided headaches, variable fogginess of vision on the right side - she said she was a little forgetful particularly of names - She described being involved in an accident and that she had sustained a blow to her forehead and was knocked out for 5 minutes - She also had a fracture of the right elbow.

He examined her and found her blood pressure to be elevated marginally. He conducted a neuro-logical and psycometric assessment. He found no neurological abnormality but found a slight reduction of the reverse digit span - He diagnosed a mild post concussion syndrome, prescribed some medication and reassured her that the memory problem which was confined to recent memory would improve - Her concentration, reasoning ability, abstract thinking and forward digit span were good. She was slow with mental arithmetic but this did not indicate any damage.

The second time doctor Cheeks saw the plaintiff was on the 2nd of July, 1992. She repeated history of her accident and complained of headaches, swollen right elbow, and that she was not concentrating on her work and making errors - She made no mention of blurred vision. ON examination she seemed a little anxious but soon settled down. Assessment of her vital signs revealed blood pressure of $\frac{150}{110}$ which was dangerously high. Neurological examination showed normal mental state - pupils were equal - Fundoscopic appearance was normal - visual fields were normal with 20.20 vision. All twelve pairs of cranial nerves were tested and found normal. She had difficulty in fully straightening the right elbow. In respect of reflexes sensation, muscle tone, muscle power and co-ordination he found no abnormality of the cerebella function of the parietal. Her gait and posture were normal - Her

psychometric examination showed she had normal reasoning ability, normal abstract thinking, normal digit span, normal motional status and normal concentration. She sustained her concentration well focussed through out the two hours interview. Her memory function was also normal.

Doctor Cheeks came to the following conclusions: The scar across the nose bridge was a cosmetic defect. Although small it was visible at conversational distance. From a neurological stand point the elbow injury did not produce any functional disability at the hands and wrist which are the active joints when typing - The headaches had the attach profile of migraine and could be stress (triggered) migraine aggravated by her cronic hypertension. He was alarmed at the level of her blood pressure and did two further recordings - All three were markedly elevated. He gave her a prescription for anti-hypertensive medication and advised her to see her doctor. No evidence of structural brain injury was detected by doctor Cheeks, but because of the plaintiff's complaint that her typing errors were unusual he did two other tests - The computerised cat scan of the brain and a computerised EEG recording of the brains electrical wave patterns both of which were normal confirming his clinical impression that there was no damage to the plaintiff's brain. Headaches are such a common symptom of high blood pressure that the neurological society holds that any patient who complaints of headaches must have his pressure measured. It is also standard practice to admit for observation any patient who says that they were unconscious. He found no impairment of her cognitive functions and saw no neurological reason why the plaintiff should not be able to do her pre-accident job now.

Doctor Cheeks said that the idea that a difference in verbal and performance I.Q. meant brain damage arose decades ago before sophisticated computerised X-rays which can pin point minute areas of damage came on stream. Because of the unreliability of those tests for the purpose of assessing brain damage the I.Q. tests and verbal performances tests have been discarded. The current generation of cat scanners can identify an abnormally smaller lesion than the head of an ordinary common pin which is smaller than 1cm. If there is damage to the inner part of the temporal lobe, the cat scan would pick it up. He formed the opinion that if up to the present time the plaintiff had no epilepsy, the likelihood of her develop-

ing epilepsy was negligible, almost non-existent.

On his examination doctor Cheeks said he found no emotional problem and got no history of irritability or aggressiveness and saw no evidence of this during the entire time that he spent with her. He found nothing to indicate damage to the frontal lobes of the brain. Her difficulty with spelling could not refer to memory impairment because spelling refers to long term memory which was not impaired by the trauma.

After qualifying as a surgeon doctor Cheeks said he has worked exclusively in nuero-surgery for the past 17 years.

Under cross-examination doctor Cheeks said when he first saw the plaintiff he had no reports from anyone except herself. After the second examination he sought independent medical corroboration surrounding her condition on the date of the accident and got report from doctor McDonald of the University Hospital. He read her blood pressure three times over a two hour period. A normal diastolic is between 70 - 80. "I have no doubt that Marie Bryan has no brain damage based most importantly on neurological examinations on two occasions; psychometric examinations on two occasions supplemented by normal findings from EEG and CAT SCAN. I further believe that her symptoms are the result of hypertension which is not trauma related. I think that her hypertension is related in part to her weight gain between 1989 an 1992. She weighted 145 lbs in 1989 and increased to 158 lbs in 1992. Weight gain is known to cause or contribute to high blood pressure."

Miss Vivienne Graham, the records secretary at Holy Trinity Secondary School said she had the school record of the plaintiff which showed she attended Holy Trinity as a new student in 1978 - 79 School year in grade 10. She did Language and Communication for which she got grade D - 60%, Mathematics grade E - 50% Life Skills grade D; Clothing and Textiles grade D; Character-General Behaviour C - 70% Co-operation D. Attendance D; Punctuality D. She spent one year at that school and left in grade 10 without graduating.

This was the case for the defendant.

Submissions

Miss Lightbourne submitted that several items set out in the particulars of personal injuries were not proved especially (X) as amended which reads "Impaired

memory and concentration indicating malfunction of the brain. Brain damage, epilepsy, complex partial seizures, aggressiveness, irritability, personality changes, premature alzheimer's dementia and Parkinson's disease."

The conclusions came to by Mrs. Knight, counsel suggested, were based on what she took the plaintiff's emotional standard to be as she never had any independent history of her behavioural pattern before the accident. She had placed the plaintiff on a higher intellectual level than what was established by the evidence.

Counsel had the same criticism of a large part of doctor Crandon's evidence. He never carried out any I.Q. test on her; several medical tests he did proved normal. He never tested her blood pressure. Since her long term memory was not affected the plaintiff could not return to her job of typing. Same reasoning applied to her spelling - if she could spell before, her ability to spell could not be affected. Doctor Crandon never requested an EEG - never saw an EEG tracing. He never knew whether the symptoms complained of were due to migraine or high blood pressure. If the court found that short term memory loss was due to trauma, she submitted that this would improve with time and may even lead to complete recovery.

There was conflict between Mrs. Harry's evidence and that of the plaintiff concerning her educational achievements. Can Mrs. Harry be believed, asks counsel.

Counsel suggested that the evidence of Vivienne Graham gave proper picture of the plaintiff's education. From plaintiff's evidence it would appear she had her formal education at Holy Trinity Secondary School while on Miss Graham's evidence she had attended that school only one year between 15 - 16 years old. The commercial courses the plaintiff did were at the elementary stage. She submitted that the plaintiff was at an elementary stage of education and that the I.Q. tests bore this out.

Doctor Cheeks had seen the plaintiff within a month of her accident. He told her that her memory loss was short term which would improve. He conducted a neurological assessment and found no abnormality. When he next saw her over two years later again her neurological examinations were normal but her blood pressure was dangerously high. His CAT SCAN and EEG tests confirmed clinical

impression that there was no brain damage. In view of these, counsel asked the court to accept the findings of doctor Cheeks and to reject that of Mrs. Knight and doctor Crandon. Looking at the demeanour of the plaintiff it did not suggest she was a person suffering from brain damage. The plaintiff had given evidence of her life both short term and long term. At most, counsel suggested, the plaintiff suffered from a concussion. The medical certificate of doctor McDonald (Ex. 2) who saw her on admission, there was no referral to the neurosurgery department. In doctor Dundas' report (Ex. 1) the plaintiff told the doctor she was feeling fine.

On the question of general damages counsel referred the court to several cases in Mrs. Khan's book on personal injury awards.

See Willis v. Hamilton - C/L W 844/87 - page 110 - Vol. 3 - On the 20th of June 1990 the court awarded \$40,000.00 for pain and suffering and loss of amenities. Injuries were:- Unconsciousness; fracture of right humerus shaft with deformity and tenderness of the right upper arm; tenderness on right buttock and outer quadrant 1" laceration over left palm - multiple bruises over left side of body. The resultant disabilities were similar to instant case. This when converted using consumers prices index for March, 1993, is equivalent to \$123,764.00; Miss Lightbourne submitted that there ought to be no award for handicap on the labour market as doctor Cheeks had testified that the plaintiff was able to carry out job as typist and her only disability she had was lifting heavy objects.

There was also no evidence to support any claim for future loss of earnings. There was no evidence that she tried to mitigate her loss by trying to get other jobs.

On the claim for special damages, Miss Lightbourne said that these did not add up to the amount claimed. However the property damage and transportation for \$750.00 were not being contested. She questioned the claim for helper for 29 weeks as there was no medical evidence how long the hand was out of commission. She suggested an award of not more than two months. Her claim for loss of earnings also should be for not more than two months. With regard to her claim for half pay for 23 weeks, Miss Lightbourne submitted that if doctor Cheeks's evidence is accepted that high blood pressure caused the ~~headaches~~, then this claim should not

be entertained as this had nothing to do with the accident. The claim for \$1512.00 for transportation was not supported by the evidence and ought not be allowed.

Mr. Pershadsingh, on behalf of the plaintiff, submitted that doctor Cheeks ought not to be relied on. He had brought no chart to support his findings and no literature to support his evidence of recent psychological findings. Doctor Cheeks 1992 blood pressure test should not be accepted as such cannot be scientifically concluded by three testings within a two hour period. Same had to be done over period of several weeks. On the question of brain disfunction counsel submitted that the evidence of the plaintiff of head-on crash and she being thrown from back to front seat supported this claim.

The court was referred to the following literature. Forensic Medicine by Sydney Smith and Fiddes, 10th Ed. page 141 and Diagnostic and Statistic Manual of Mental Disorders - 3rd Ed. (1985) p. 111 - Diagnostic criteria for dementia - one of them is memory impairment - Other references were Clinical Neurology for Psychiatrist by David Kaufman M.D. (1981). Psychological testing at page 235 - 237 - Psychologist play an important part, but none was called by the defendant.

Mr. Pershadsingh asked the court to find that on the weight of the evidence and the preponderance of probability the plaintiff had suffered brain damage. The court should also find whether it was mild or more than mild. The court should accept the evidence of doctor Crandon and Mrs. Knight that the plaintiff is not able to cope with the secretarial duties at her job.

Re Medical Expenses.

A number of receipts for medical expenses incurred were agreed upon by the Attorneys. Receipt dated 3rd of May, 1990 from Diagnostics Associates for

EEG	\$ 400.00
U.W.I. Receipt dated 28th of November 1989 for 2 medical reports - 2 for \$300.00 - 1/2 cost	\$ 150.00
Receipt from Mrs. Susan Knight for both mother & child for \$1170.00 - 1/2 cost	\$ 585.00
Receipt from doctor Dundas for	\$ 60.00
Receipt from doctor Ali	\$ 300.00
Cheque dated 11th of November 1991 to doctor Crandon	\$ 2,750.00
Payment to doctor John Hall	\$ 500.00
	<u>\$ 4,745.00</u>

Mr. Pershadsingh submitted that the claims for helper, loss of earnings for 29 weeks and partial loss of earnings for 23 weeks were all reasonable - He asked for an award for future loss of earnings and suggested that at age 31 an appropriate multiplier would be 12.

On the question of pain and suffering and loss of Amenities counsel referred the court to a number of cases reported in Mrs. Khan's books. One such case was C/L B 44/85 Clovis Bryan v. Leonard Hines at page 108 Vol. 3.

The plaintiff in this case suffered laceration to right forearm and dorsum of right hand; fracture of distal end of right radius; fracture dislocation of right elbow and headaches and pain - On the 18th of January, 1990, he was awarded \$120,000.00. This would be equivalent to just over \$400,000.00 due to inflation.

Findings

The main conflict between the parties is the claim for brain damage : There is no dispute that the plaintiff suffered a fracture at the right elbow which is her dominant hand and had minor cuts and bruises. Her evidence that she was unconscious for about 15 - 20 minutes was unchallenged. Undoubtly, she received a blow to her head when she was thrown from the back to the front of the vehicle.

The plaintiff, through the evidence of Mrs. Knight and doctor Crandon, claims that this blow caused her brain damage which has prevented her from performing her job. The defendants, through the evidence of doctor Cheeks, are adamant there is no brain damage and that any difficulty which the plaintiff experienced was because of cronic hypertension unrelated to trauma. All these persons are experts in their fields. In assessing the plintiff, Mrs, Knight relied upon the educational standard as given by the plaintiff herself:- Two of her certificates including the one for English were at elementary stage. She complained of poor spelling. Her spelling could have deteriorated if her long term memory was affected. But both sides agree she suffered from short term loss of memory, not long term. From the educational background given by the plaintiff Mrs. Knight placed her I.Q within the average range. It appears to me that Mrs. Knight place the plaintiff at higher intellectual level than she really was. Would this affect her assess-ment? Doctor Crandon said that it could. In any event, in view of results of the CAT SCAN and the EEG examinations I would have great difficulty in accepting

the findings of Mrs. Knight over that of doctor Cheeks.

Doctor Crandon also based his finds on history of the plaintiff given by herself. He never carried out an I.Q. test; never tested her blood pressure; he never did an EEG or a CAT SCAN. He admitted that if her level of education was lower than what she told him that would have affected his findings. He also said some of the symptoms she complained of could be because of migraine or high blood pressure.

When the plaintiff testified before me in October last year I took the opportunity of observing her demeanour especially under cross-examination. She gave her evidence with clarity giving details of the accident which had taken place over three years before and details of her injuries and the follow up treatment. She listed the names of over six doctors whom she had been to for treatment and the treatment she got. She also gave details of expenses she incurred. She gave details of educational background and certificates she had obtained. She promised to produce her certificates in court and did so the following day. I saw nothing from this display in the witness box to indicate that she was suffering from any loss of memory at the time.

On the other hand, I was impressed with the evidence of doctor Cheeks. Not only did he examine the plaintiff within a month of her accident but also over two years later. On both occasions both his clinical and neurological tests indicated no damage to the brain. Further computerised CAT SCAN and EEG tests confirmed his previous findings.

On the totality of the evidence, I accept doctor Cheeks evidence that there was no brain damage and the reasons he gave to support such a conclusion. His opinion that the plaintiff's symptoms could have been caused by chronic hypertension as a result of her increase in weight was not challenged. I find that the plaintiff suffered a concussion which caused some shortterm memory loss. This from all appearances, has improved in keeping with doctor Cheeks' prognosis and seems no longer a problem.

The claim for memory loss having been disposed of, I will now turn to the other claims.

Special Damages

Claim/for property damage uncontested --	\$ 910.00
Transportation	\$ 720.00
Claim for helper for 29 weeks is not unreasonable;--	
Plaintiff's hand in plaster for 6 months: 29 X \$80.00	\$ 2320.00
Loss of earnings for 29 weeks @ \$450.00 per week allowed	\$13050.00
Claim for loss of $\frac{1}{2}$ weeks salary for 23 weeks is disallowed -- her headaches etc. not as a result of trauma.	
Further claim for \$1512.00 for transportation is not supported by the evidence and is disallowed.	
Medical expenses as agreed	\$ 4745.00
X-rays	\$ 169.00
Registration fee	\$ 5.00
CAT SCAN	\$ 1375.00
Prescription	\$ 323.00
Total	\$23617.00

General Damages

The claim for future loss of earnings cannot be entertained as any such loss was unrelated to the accident.

For pain and suffering and loss of amenities I have looked at the several cases referred to by both counsel and find that the case of Willis v. Hamilton at page 110 Vol. 3 Khans is similar in several respects to the instant case. The sum awarded in that case when converted using the consumer prices index for May 1993 of 437.2 would amount to a sum of \$125,755. From Dr. Ali's certificate (Ex. 4) it would cost about \$30,000.00 to correct injury to plaintiff's elbow which at present has a permanent partial disability of 5 -- 10%. An additional sum is awarded for this to make the assessment under this head at \$150,000.00.

The question of costs has caused me some concern. Had it not been for the issue of brain damage, this assessment could have been completed easily within two days -- instead it lasted ten days, the last three of which

were taken up in legal submissions, primarily confined to that issue. The two neurologists and the psychologist occupied the witness box for five days. The plaintiff saw Dr. Cheeks early after her accident and was advised she had no brain damage. She was not satisfied and went shopping around. The plaintiff did not succeed in that issue. Should the defendant pay costs for all those days - I think not.

Indeed, in the order to proceed to assessment the estimated length of the hearing was one day.

In summary, damages are assessed as follows:-

<u>Special Damages</u>	-	\$23,617.00
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with interest @ 3% per annum from the 11th March, 1989 to date of judgment.

General Damages

Pain and Suffering and Loss of Amenities	-	\$150,000.00.
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with interest @ 3% per annum from date of service of the writ to the date of judgment.

Costs to the plaintiff limited to 3 days for one leading counsel and a junior to be taxed if not agreed.