

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C070 OF 1990

BETWEEN MICHAEL CAMPBELL PLAINTIFF
A N D YORK HOME & REALTY LIMITED DEFENDANT

Mr. Ainsworth Campbell for the Plaintiff

Miss H. McLean for the Defendant

HEARD: January 8 & February 15, 1991

CORAM: LANGRIN, J.

This is an assessment of damages arising out of an accident on the 2nd day of March, 1989 along the Windward Road in the parish of Kingston.

The plaintiff who owned a motor cycle licenced B.3366 was riding along the main road when the defendant's motor vehicle licenced CC 2706 due to the negligence of its driver crashed into the plaintiff causing damage to him.

The particulars of injuries are stated as follows:-

- (i) Concussion with post traumatic amnesia
- (ii) Abrasion to the right elbow.
- (iii) Abrasion to the right leg.
- (iv) Permanently deformed left thigh with recurvatum.
- (vii) Permanent limp.
- (viii) One inch shortening of the right lower limb.
- (ix) Fifteen percent (15%) permanent partial disability of the left lower limb.
- (x) Headaches and dizziness.
- (xi) Persistent pain in the right wrist.
- (xii) Wasting of the left thigh muscles.
- (xiii) Development of osteoarthritis in the left knee and hip joint, both legs and in the right wrist.
- (xiv) Probability of post traumatic epilepsy developing
- (xv) Probability of early onset of post traumatic Alzheimers disease and post traumatic Parkinson's disease.

When the plaintiff fell, as a result of the impact he suffered a 'black out' and did not know that he was in hospital until the following day

Having regained consciousness he saw a pin which ran across his left foot at a point below the knee.

The plaintiff had an Xray examination which showed fracture of the femur and right wrist, but his skull and knee were normal. He was treated by means of skeletal traction for the fracture of his left femur and scaphoid plaster cast for his right wrist. The traction was removed on April 20, 1989 and the plaintiff started on physiotherapy. On April, 1989 the pin was removed and he started to wear crutches. He was discharged from hospital on the 25th April, 1989 and was followed up as an outpatient one month later. He stopped using a crutch sometime in May and he went back to work on the 28th August, 1989.

Following the accident he suffered pains especially where the pin was placed as well as in his forehead. At present he feels pain in his wrist and if he walks fast he feels pain. He says there is dizziness in the head but the pain "go and come".

Dr. John Hall, a distinguished consultant neurologist saw the plaintiff on 26/6/90, some sixteen months after the accident. The Neurologist had the benefit of reports from the Orthopaedic Specialist as well as a medical history from the plaintiff relating to the accident. He complained of dizziness and of feelings of movement of things around him. These are properly described as hallucinations of movement which is a sensory feeling of movement without actual physical movements. The attacks occur about 4 or 5 times per day and continues for 5 or 10 minutes.

It is the opinion of Dr. Hall that these symptoms and signs relate to the severity of the head injury at the time of the accident when he was unaware of the surroundings. It means, the Dr. opines, that the plaintiff is having simple partial seizures which point to greater possibility of post traumatic epilepsy. There is also an increased possibility of post traumatic Parkinson's disease as well as Alzheimer's disease occurring in about 2.5% of similar cases. The epilepsy may occur in about 5 to 10% of cases.

The Medical Reports by the Orthopaedic Consultant were admitted in evidence by consent. The injuries to the leg and wrist lead directly to development of osteoarthritic change in the lumbar sacral joints of the spinal column and in the wrist joint as well. It can be anticipated that within 5 years the osteoarthritic process will develop. His total disability is about

20%.

Significantly, Dr. Hall stated that it is possible to confirm brain damage if brain wave studies are done. That being so, the question arises as to why the plaintiff has failed to pursue such a reasonable course in this case. It would have been of invaluable assistance. Finally, it is Dr. Hall's opinion that the plaintiff could carry on his trade as a mechanic but his ability to perform at full capacity because of his problem with his right hand will be reduced as also his neurological problem will cause him some difficulty in obtaining full-time employment.

Clinton Henry gave evidence on behalf of plaintiff. He deposes that he assists the plaintiff with his mechanic work and observes that the plaintiff gets giddy at times. I did not regard him as a credible witness.

SPECIAL DAMAGES

The plaintiff, a mechanic and 38 years of age testified that he was absent from his employment at the Ministry of Works for 30 weeks but had not lost his wages for the period. However, he was unable to perform his private part-time mechanic jobs which he used to do at home outside of his main employment period. There was no claim in the pleadings for this work, therefore he could not recover.

There was an agreement on the other items as under:-

Repair to motor cycle	\$1700
Cost of estimate for motor cycle repairs	100
Cost for medical certificate	100
Loss of shoes	235
Loss of pants	80
Loss of shirt	45
Cost of Xrays	50
Loss of watch	250
Transportation	211
Medical Bill	950
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	\$3,721.00

GENERAL DAMAGES

In view of the lapse of time since the accident when Dr. Hall saw the

plaintiff it appears impossible to make an exact judgment of whether or not the plaintiff had a brain damage and, if so, what was the cause of the damage. It must be observed that Dr. Hall's findings in relation to the brain damage were based upon what the plaintiff told him. Under cross-examination by Miss McLean Dr. Hall opined that dizziness is a common complaint. Having observed the plaintiff while he was giving his evidence and the manner in which he answered questions I am not satisfied that he suffered a brain damage. Even if there was any proof of damage to the plaintiff's brain its cause in my judgment is speculative. I hold on a balance of probabilities that that aspect of the claim has failed.

Turning to the question of loss of future earnings the evidence is that the plaintiff used to earn about \$12000 per year on his part-time employment. This is in addition to his income from the Ministry of Construction as a mechanic. After clearing expenses for cost of gear oil and other expenses which he did not enumerate he would be left with a net income of \$700 per month or \$8400 per annum. I accept the evidence that his overall disability is about 15%. Consequently he would not be expected to lose more than $8400 \times 15\% = \$1260$ per annum. Income tax is paid on 1/3 of his income, hence the additional annual net income lost to the plaintiff would be $\$1260 - 420 = \840.00 per annum.

The plaintiff is now 38 years of age and taking the usual contingencies into consideration such as early death or periods of unemployment I hold that the multiplier should be 12. Loss of future earnings is computed as follows:-
 $\$840 \times 12 = \10080.00 .

I reject the submission based on the medical evidence that the plaintiff should be compensated for help in doing his part-time jobs in the future.

Mr. Campbell for the plaintiff submitted that an award of \$75,000 to \$80,000 would be adequate for injuries sustained by the plaintiff on his left lower leg. An additional sum should be awarded for fracture of the right wrist. The rest of injuries, he submits, would attract an award of half a million dollars.

Miss McLean submitted on behalf of the Defence that the case of C.L. 1963 FC58 Noel Falconer vs. Alfred Cocke reported at Volume 2 of Khan's

digest of Recent Personal Injury Awards made in the Supreme Court of Jamaica should be followed. With this I agree. If one substitutes in the cited case the compound fracture of left ankle with fracture of the right wrist there will be a similarity of injuries in the instant case. There is a similar permanent partial disability of 15% in the cases. She invited the Court to make a similar award to reflect the 'money of the day'. The sum awarded in 1985 for Pain and Suffering and Loss of Amenities was \$25,000.00.

It is beyond question that the plaintiff suffered serious injuries.

In my judgment an award of Seventy thousand dollars for pain and suffering in all the circumstances of this case is adequate.

The award of damages assessed by the Court is as under:-

Special Damages	\$3,721.00
<u>General Damages:</u>	10,080.00
Loss of future earnings:	70,000.00
Pain & Suffering	<u>\$80,080.00</u>
Total	<u><u> </u></u>

Interest at 3% on Special damages from 2/3/89 date of cause of action to 6/12/90.

Interest at 3% on \$70,000.00 from 14/3/90 to 6/12/90.

Cost to be taxed, if not agreed.