

NOTE OF ORAL JUDGMENT  
SUIT NO. C.L. C-147 OF 1994

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN COMMON LAW

|         |                         |               |
|---------|-------------------------|---------------|
| BETWEEN | CAROLYN COOPER          | 1ST PLAINTIFF |
| A N D   | KATHRYN SHIELDS-BRODBER | 2ND PLAINTIFF |
| A N D   | RALSTON SMITH           | DEFENDANT     |

JUDGMENT

Heard 23rd, 24th , 25th & 28th April, 1997

Judgment delivered by the Honourable Mr. Justice Cooke on 29th April, 1997.

It is between 5 and 6 p.m. on 20th June, 1989.

Travelling on Old Hope Road going in the direction of Papine is one of the Plaintiffs - Dr. Kathryn Shields- Brodber.

She is in a line of traffic and on the road on which she travels it is 2 lanes going to Papine and 2 lanes going to Liguanea.

The traffic is a stream.

She is driving in the right lane going towards Papine.

She is now in the vicinity of the Hope United Church when she swears a minibus which was travelling on her left suddenly swerves and hit the left part of her car which impact propelled her into a light post on the left part of road.

Her car thus propelled violently kissed the post and there was affixed in an unwilling embrace.

Meanwhile the bus had gone across the dual carriageway proceeding towards Liguanea and there come to a rest.

Mr. Moses the driver of the bus swore that he was driving the bus for his Employer and was driving in the right lane and as he proceeded he was driving at 20 -25 mph when the bus fell into a pot hole and swerved right across the road and into a J Wray & Nephew van. He denied ever hitting the car driven by the 2nd Plaintiff. He came out of bus and thanked the Almighty that no harm had come to him and about 1/2 hour afterwards was the first time he noticed the car on the light post.

I go back to Dr. Shield Brodber's evidence and in respect of cross examination the inference being asked to be drawn of the Court is that Dr. Brodber was gazing and inattentive and the author of all that happened.

I will now succinctly deal with other evidence.

Mr. Duhaney of Binns Motor to which place of business the car taken for repairs - Dr. Cooper's car- noticed damage to the left front of the car.

Dr. Michael Miller -at that time pastor to Hope United church was administering to his flock when a sound caught his attention and he went outside. His evidence is that the point of impact was to the left front.

The evidence of Evon Brodber as to what the driver Moses Grant said is that Mr. Brodber arrived at the scene and sought out the driver. The driver said that he had told his employer not to allow the bus on the road because the front end was defective.

He hit the pot hole, darted across road ended up in Mona Heights. There was nothing he could do.

This in response if to a question as to how the accident happened. I wish to deal with demeanor.

This tribunal was most impressed with the demeanor of Dr. Kathryn Shields - Brodber.

Her evidence was given in an unvarnished manner.

There was no sweetening, there was no attempt to exaggerate in any way.

I found that the demeanor of Moses Grant was as unimpressive as Dr. Shields- Brodber was impressive.

He sought to bring down Jesus Christ into this Courtroom - that did nothing for his credibility.

But there are other facts. The car Dr. Brodber driving had impact on the left. She said so. That was the evidence of Dr. Miller and Mr. Duhaney. That is real evidence.

If she had driven into the post, how would that damage be there?.

Then there is the evidence of Mr. Evon Brodber and what he said was said by Moses Grant.

Of significance is that what he says supports the account of Dr.

Shields-Brodber of how the accident happened - when she says he swerved across the road and to his right.

There is evidence of the pot hole.

When I look at the evidence of Dr. Brodber - it fits hand in glove Therefore I have not the slightest difficulty in finding judgment for the Plaintiff on liability.

#### SPECIAL DAMAGES

Repairs to motor vehicle . \$28,000 allowed.

I accept the evidence of Duhaney

Loss of use for 90 days not allowed . I accept Mr. Johnson's submissions. I allow 3 weeks - \$6,300.

I allow telephone company contract - \$3,570.

Doctor's fees allowed. Physiotherapy \$7,000.

General damages and claim for \$200,000 loss of earnings.

In dealing with this aspect of the claim the issue is this whether or not the court should award damages for loss of earnings on the basis that there was a real likelihood and distinct probability that Dr. Brodber would have been appointed Senior Lecturer but for her injuries.

It is now necessary for me to review the evidence.

As I understand it Dr. Brodber joined the staff of the department of Linguistics in 1979.

At that time she was doing the Use of English course and had not yet secured her doctorate.

By 1986 she had secured her doctorate.

By 1988 she was tenured.

My impression is that once she was tenured she now aspired to become Senior Lecturer and it is her evidence that by 1993 she would fall to be considered.

What is the procedure?

The procedure is that application is made to the promotion and placement committee of UWI.

There are 3 areas to be considered:

- (1) Research including publications.
- (2) Participation in university life - no doubt this will include being part of the social ambiance.

(3) Teaching methods - i.e demonstration of proficiency in teaching.

As I understand it further even if the placement committee came to a conclusion then there is still reference persons outside the university for them to get an opinion and one can understand that given the universality of academic standards.

Up until this time Dr. Brodber because she is not ready - meaning she does not have sufficiency of publications and therefore not sufficient testament of her research skills and capability, has not applied for senior lectureship.

She says this is because of her injuries.

Because of her whiplash injury she has intermittent pain when sits in one position - marking scripts, using the computer.

Because it takes so much longer to do these compulsory duties, there is not sufficient time to pursue research.

Before 1989 she wrote 5 papers which were accepted for publication and succeeded in writing and obtaining her PhD.

Since 1989 - 5 papers were accepted for publication and she is in the process of writing a book.

Dr. Devonish came and gave a commendable report.

He is the person to make the recommendation.

His evidence is that all things being equal she with the ~~E~~ffluxion of time would pass the committee and find favour with the external assessors.

It was his opinion that on average the time promotion from tenure to Senior Lecturer was 5 years.

He himself being possessed of brilliance did it in 3 years.

Others took longer.

He said that from 1979 when he joined the department - 17 years - 2 -3 persons had become senior lecturers.

Obviously this position of distinction would appear to be one not easily earned.

At this point I wish to state that the promotion is not automatic It is not as if you pass an examination and are automatically promoted. There is a critical distinction between passing an examination and finding favour with the Assessment Board.

In an examination - you do the sums correctly - and you pass.

One could never tell the factors influencing assessment.

So although the Head of Department would have given Dr. Shields Brodber excellent grades, I cannot say whether it would be more probable than not that if she had worked at normal level she would have succeeded in being promoted to a Senior Lectureship.

A number of cases were cited.

K. Ratnasingam v Kow Ah Dek alias Kow Lian Poi & Another [1983] 1 W.L.R 1235.

Kiskimo Limited v Deborah Salmon [1991 Supreme Court Civil Appeal No.61 of 89.

This Court is of the view that there is a distinction between persons who are injured and because of mental impairment are precluded from progress and this case, which is not a case of mental impairment. There is nothing to indicate mental impairment. She is now writing a book. Those cases are not helpful.

It is my view that the highest that the Plaintiff can say is that because of the injuries I was prevented from putting myself within the class of persons eligible for promotion.

Having come to this view I think the proper approach is to regard the pain and suffering which precluded her from putting herself within that class as part of the loss of amenities and pain and suffering.

We now go to the question of pain and suffering.

I have read all the reports and would highlight the following:

(i) Up to 1992 she was significantly disable and suffering severe disability.

(ii) After 1992 she was moderately disabled.

(iii) The disability is permanent. It remains the same, and may have decreased slightly.

(iv) As a result permanent partial disability is 6%.

(v) Her vocation is limited and of course her whole being is limited. She can no longer tinker ivories, and she is a highly qualified musician.

So her ability to enjoy life has been impaired.

Her whole being has been affected.

A number of cases were cited.

Mr. Johnson says \$120 -140.000.

With characteristic boldness, Ms. Davis says \$500,000.

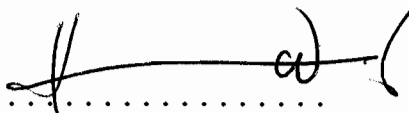
My view is that \$275,000 is a reasonable figure in the circumstances.

I award special damages of \$72,182.00 with interest at 5% from 20th June, 1989.

General Damages \$275,000 with interest at 5% from 31st July, 1994.

Costs to the Plaintiff to be agreed or taxed.

BY THE COURT

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THE HONOURABLE MR. JUSTICE COOKE