

Judgment Book

33A
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L. 2000/D-006

BETWEEN	KEITH DEAN	PLAINTIFF
AND	RUDOLPH SHAW	1 ST DEFENDANT
AND	KENNETH MCKENZIE	2 ND DEFENDANT
AND	HEPBURN HARRIS	3 RD DEFENDANT
AND	POWELL TAYLOR	4 TH DEFENDANT

Mr. Maurice Frankson instructed by Messrs. Gaynor & Fraser for plaintiff

The defendants were unrepresented

Heard: April 22 and May 3, 2002

ASSESSMENT OF DAMAGES

JONES, J. (Ag.)

The plaintiff is a contractor builder residing at Vanfair Gardens Linstead in the parish of St. Catherine. In May 5, 1998, he was riding his bicycle from Vanfair Gardens to Rosemount. While on the soft shoulder at the intersection of Guy's Hill and the Linstead bypass there was a collision between two vehicles. The plaintiff was hit by one of the vehicles. Liability has not been denied and it therefore leaves only for damages to be assessed.

After the accident the plaintiff was taken to the Spanish Town Hospital and discharged on the same date. He suffered the injuries set out in the following medical report:

HOSPITALS (SPANISH TOWN REGION) MANAGEMENT BOARD

SPANISH TOWN HOSPITAL

SPANISH TOWN

~~Reference~~

Linstead Public Hospital
Linstead P.O.
St. Catherine,
November 3, 1998.

Gaynor & Fraser
Attorneys-at-Law
9-11 Church Street
Kingston

Dear Sir/Madam

~~MEDICAL REPORT RE: KEITH DEAN~~

This is to certify that Mr. Keith Dean was treated at Linstead Hospital after allegedly being involved in a motor vehicle accident on May 5, 1998.

Injuries:

An extensive laceration on the right heel. The heel pad was separated and was sutured.

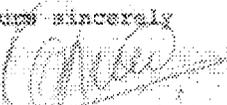
A laceration on the upper third of the right leg.

He was treated and discharged on May 5, 1998.

He was dressed three times per week until August 5, 1998.

Review in October 1998 showed that the heel is still tender and is unable to be placed on the ground with full weight of body. The injury is of a serious nature.

Yours sincerely


Kotalak Ratnayegoda
Senior Medical Officer
Linstead Hospital

I accepted that the special damages in this case, as proven, amounted to

\$24,990.

I do not accept the plaintiff's evidence about his loss of earnings. Although he was a builder/contractor, his evidence was not supported by copies of a contract or any other documentation. I am at all times reminded of the guidance given by Rowe P. in *Hepburn Harris vs. Carlton Walker (unreported) SCCA 40/90* delivered on December 10, 1990, where he said:

"plaintiff's ought not to be encouraged to throw up figures at trial judges, make no effort to substantiate them and to rely on logical argument to say that specific sums of money must have been earned..."

In *Stafford Hamilton vs. Deward Singh* reported at page 381 of Harrison's "Assessment of Damages for Personal Injuries" the plaintiff suffered from "bruises and abrasions to the feet; lacerations to the left heel and the right proximal forearm". He was unable to work for five weeks (35 days) and could not wear shoes for that period. Damages were assessed on March 12, 1992 for \$27,000 which represents \$111,500 in today's dollars. I accept that the plaintiff in the present case had a more serious laceration to the heel which had to be dressed three times per week for three months (92 days). Accordingly, I have increased the award by a factor of almost three.

General Damages are assessed as follows:

Pain & suffering and loss of amenities	\$293,000
Interest is awarded at the rate of 6% per annum from the date of service of the writ of summons up to today.	

Special Damages	\$24,990
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Interest on special damages is awarded on the sum of \$24,990 with interest at the rate of 6% per annum from May 5, 1998, up to today (May 3, 2002).

Judgment for plaintiff for sum of \$317,990 with cost to be taxed if not agreed.