20

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1991/E214

BETWEEN	OTHNIEL ELLIS	PLAINTIFF
A N D	JAMAICA PUBLIC SERVICE COMPANY LIMITED	DEFENDANT

Mr. Norman Samuels for Plaintiff

Miss Ingrid Mangatal for Defendant.

Heard: 17th & 18th January & 16th March, 1995

HARRIS, J.(Ag.)

This is an assessment of damages whereby the plaintiff has claimed damages for loss sustained on the 4th October, 1989, during the course of his employment as a linesman with Jamaica Public Service Company, when he received injuries to his left hand and right leg consequent on his hand coming into contact with a high tension electrical wire containing 8000 volts.

He testified that, as a consequence of his injuries, he was hospitalised at the Annotto Bay hospital for three weeks and a few days. He, thereafter attended at the hospital about 50 times to have his wounds dressed. He was subsequently referred to the Kingston Public Hospital to obtain skin grafting and plastic surgery, where he attended on six occasions but failed to have this done.

He stated that he was privately seen by a number of doctors. Dr. Trevor Ottey who carried out a psychiatric evaluation on him and Dr. Leighton Logan who performed two physical examinations on him, were called as witnesses. He also underwent a neurological assessment by Dr. Daniel Graham, on referral by Dr. Logan. Dr. Graham submitted a report which was tendered in evidence by the consent of the parties.

The plaintiff complained of experiencing pain in his left arm and right leg. He stated that he continually felt a sensation of heat radiating throughout his body and that this condition worsened whenever the atmospheric temperature was low.

At times he was unable to sleep as a result of the emission of heat from his body.

He further testified that about six months following the accident, he felt vibrations under the sole of his right foot where he discovered the existence of watery substance accumulating. This prevented him from walking at that time. Then hardened particles were subsequently removed from that area of the foot.

It was also his evidence that he was born on the 4th March 1946 and began working with the defendant company in 1972, as an assistant, removing and installing meters. At the time of the accident, he was not only employed to Jamaica Public Service Limited from which he earned $600.00 weekly but he was also in the employment of a Mr. Grant from whom he earned $1500.00 per week.

He said that at the time of the accident he was engaged in the farming of cows, goats, chicken, turkeys and guinea chicks. After his return from hospital he lost about 300 chickens, four turkeys, five guinea chick and nine goats. While in hospital, he had entrusted the care of the poultry to his two daughters, ages thirteen and ten respectively. He said he lost two cows, which, he had requested a neighbour to tend while he was in hospital but who also became ill and the cows died. A third cow and several of the goats died after his release from hospital, as, his incapacity had made him incapable of attending to the animals.

He said he expended the following amounts:

Fees paid to the Annotto Bay Hospital	$200.00
Fees paid to Kingston Public Hospital	200.00
Fees paid to Dr. Logan	3700.00
Fees paid to Dr. Ottey	700.00
Fees paid to Dr. Graham	500.00
Fees paid to Dr. Arscott	200.00
Costs of transportation	2920.00

In his testimony, Dr. Trevor Ottey, Medical Practitioner and Consultant Psychiatrist stated that he examined the plaintiff on the 23rd April, 1992. The plaintiff gave no pass history of psychiatric illness. He told him that since the accident he had difficulty sleeping and frequently had unpleasant dreams. He further stated that the plaintiff was distressed by the physical damage

to his body and complained of burning sensation and pains over various parts of his body, in particular, in his left hand.

He also testified that the plaintiff displayed features of anxiety and clinical depression. He exhibited no psychotic features. He was in touch with reality. There was mild impairment of his attention and concentration but no impairment of his orientation, or memory.

It was his opinion that the plaintiff was suffering from post-trauma stress disorder with features of anxiety and depression and this would affect his ability to work. He also opined that treatment of the plaintiff's physical disability coupled with a course of psychiatric treatment would assist in alleviating his conditions and estimated the cost of psychiatric treatment at $20,000.00.

FLAVIUS GRANT a licensed electrician gave evidence that he employed the plaintiff continuously on a weekly basis from 1973 up to the date of the accident, on certain days and hours of the week during which he was not in the employ of the Jamaica Public Service Company.

He described him as a punctual and hardworking person and stated that, if he had not been injured in the accident, he would have currently been in his employment. The plaintiff's duties entailed planting electrical poles, installing wires, insulators and "guying" wires to hold poles.

He also stated that if the plaintiff was presently working for him, he would be paid $2000.00 or more weekly.

Howard Daly who also was called as a witness said he had known the plaintiff for three years. He visited him from time to time and had seen his injured hand and had seen him cry frequently on account of pain.

The salient aspects of the findings in Dr. Daniel Graham's report were expressed in the following terms:-

"Seen in consultation on April 23, 1992 the patient's complaints included:

(i) Numbness of the index, mid fingers of the left hand.

(ii) Numbhess of the right lower extrimity.

(iii) Persistent sensatioh of "heat" in the right lowet extrimity.

(iv) Persistent numbness and vibratioh in both upper limbs similar to the passage of an electrical current.

Past medical history was non contributory.

Physical and neurologic examination findings (April 23, 1992) included:
Scarring and contracture at the bases of the index, mid and ring fingers of the left hand (palmar surface).

Mildly impaired vibratory sensation at the ankles.

Evidence of partial plantar wart excision from the right heel (the patient claimed approximately one year after sustaining the high voltage injury he began experiencing pain in the right heel from which "blue water" and a "natural heat" flowed when he "picked" his way through the hard surface on the sole of his foot).

I performed Nerve Conduction Studies on the patient's left upper extremity and these (studies) revealed normal data.

As you know power lines carry voltage sufficient to cause tissue damage and fatality. A volt of electricity from a high tension power line is conducted through blood, muscles and nervous tissue and out through a contact with ground. Coagulation necrosis, muscle damage, burning and scarring and vascular lessions occur at the point of entrance and exit of the current the result of conversion of electric energy into heat energy. The more resistant the tissue, the more heat is generated as current flows through it - the current density being greatest in fat and nerves. Central nervous system complications are said to occur in 75% of patients who sustain electrical injuries; these include cerebral edema, temporal haemorrhage and spastic paralysis. Electrical injury to peripheral nerves causes reversible changes in latency and amplitude of motor nerve fibres and reduced conduction velocities concomitant with clinical observations of weakness and a transient loss of nerve function.

Peripheral neuropathy has been weel documented in patients who have come in contact with high tension lines as evidenced

by impaired sensation of touch, temperature, pain and vibrator/joint position.

Direct injury to an arm may be associated with residual damage to the brachial plexus and motor neurons in the cervical spinal cord.

Its likely this patient sustained reversible peripheral nerve injury as evidenced by the normal nerve conduction data; the impaired vibratory sensation in the legs may or may not be associated with this injury.

I am unable to explain the patient's persistent symptoms in the light of the normal conduction data."

Dr. Leighton Logan a registered Medical Practitioner and Consultant Plastic Surgeon testified that he examined the plaintiff on the 28th January 1992 and 1st November, 1994.

His findings revealed that the plaintiff's left hand was generally contracted with flexion deformities in his index, middle and ring fingers. In each finger the metacarpal phlangeal and inter phalangeal joints were involved in the contraction. There was decreased sensation in the middle and index fingers. He palpated an object in the elbow joint which appeared to be a foreign body.

There was a four centimetre scar on his right medial thigh and a callosity (bunion) on the sole of his right foot. In the left limb there was a decrease in the medial and ulnal nerve function.

In order to attempt correction of the contraction of the hand, the scar on the leg and the callosity on the sole of the foot, skin, graft and plastic surgery would be necessary. The foreign object in the elbow could also be removed by surgery.

When he examined the plaintiff in 1992 the hand was permanently disabled partially by 35% of the right upper limb. The examination in 1994 revealed a 52% permanent partial disability of the right upper limb. He assessed the 35% permanent partial disability as being 16-18% of the whole person and the 52% permanent partial disability as being 25-28% permanent partial disability of the whole person.

He averred that he was familiar with electricity burns and the injury to the plaintiff's left hand was consistent with entry of electricity through the hand and the scar on the left foot related to the exit point of the electricity. He further stated that when high voltage of electricity current passes through the human body the continuous sensation of heat radiating from the body is not unusual, although there is no scientific explanation for this phenomena. He said that this is so, even though nerve conduction problems caused by the electricity in the body are resolved early. Physical damage of the magnitude suffered by the plaintiff would have psychological effects.

He stated that the damage did not affect the plaintiff's walking when he saw him, but the callosity on his foot could cause some discomfort. It was his opinion that if the plaintiff had submitted to surgery soon after the accident his prognosis would have been fair.

In terms of the plaintiff's prospects of returning to his job, he indicated that his chances would have been good had there been early intervention by way of surgery, followed by physiotherapy.

It was also his view that the plaintiff could not be considered completely incapacitated and could have worked at some other vocation, other than a linesman.

He was careful to point out that there are factors which could have militated against the plaintiff's recovery of the full use of his hand. He cited the degree of fibrosis in the hand, the time when surgery was done and the patient's will to recover, as some of these factors.

He expressed strong disagreement with the findings of Dr. Graham in the last paragraph of his report, in view of his statements in earlier paragraphs, in particular paragraph 8 and concluded that peripheral neuropathy was exhibited in the plaintiff. He also stated that although Dr. Graham's report stated that the nerve conduction study revealed normal data, the test done, although shown to be normal, might yet be at variance to the plaintiff's feeling and does not exclude the fact that there might be injury to the nerves.

His assessment of the cost of corrective surgery was placed at $59000.00.

General Damages

I will now direct my attention to the general damages and will first consider the claim relating to pain and suffering. Sufficient evidence has been adduced to establish that the plaintiff's left hand and right leg were injured as a result of electrical burns. The extent of the damages to be awarded, in light of the injuries received by the plaintiff now stands to be determined.

There can be no controversy that the plaintiff had undergone a horrendous ordeal, that he suffered excruciating pain. There is evidence which I accept, that he still feels pain. In his description of the wound to his hand, he stated that the flesh was so badly burnt that the bone was exposed. He made reference to removal of dead tissues from the wound whenever the wound was dressed. He also referred to his inability to walk when watery substance accumulated on the sole of his feet.

When he was first seen by Dr. Logan in 1992 he was assessed as having 35% permanent partial disability of the left upper limb which amount to a 16-18% permanent partial disability of the whole person. On examination again, by Dr. Logan in 1994 his condition had deteriorated, as he was then assessed as having a 52% permanent partial disability of the left upper limb which was translated into a 25-28% permanent partial disability of the whole person.

It was urged by Miss Mangatal that in assessing the damage, the fact that the plaintiff had not submitted to reconstructive surgery followed by a physiotheraphical programme must be taken into account as by this action, the plaintiff had failed to mitigate his loss. It was Dr. Logan's opinion that if the plaintiff had undergone surgery earlier, in addition to a course of physiotheraphy, his prognosis would have been fair. He however went on to state that there were a number of factors which could have operated against the plaintiff's recovery of the full use of his hand. It cannot be said that the plaintiff did not make an attempt to complete plastic surgery and skin grafting. He attended the

Kingston Public Hospital on six occasions but never had surgery. Although he advanced no explanation for his failure to have the procedure done, the fact is, that he had taken steps to have surgery done by his attendance at the hospital. It cannot be reasonably inferred from the plaintiff's conduct that he had neglected to follow medical advise and this caused his condition to worsen. The plaintiff's injury and present physical condition is a direct consequence of the defendant's negligent act. The assessment of his permanent partial disability must be assessed at 52% of left upper limb.

It was also Miss Mangatal's contention that any mental pain which the plaintiff might have endured ought not to be treated as as a separate component of his physical pain and suffering. Although the mental anguish suffered by the plaintiff cannot be regarded as a separate sub-head of pain and suffering, I must give special consideration to the fact that the plaintiff underwent great mental agony. The accident was no doubt a traumatic event for the plaintiff. Recounting the incident, he said he thought he would have died. He encountered sleepless nights and nightmares as a result of the accident Dr. Ottey's evidence established that the plaintiff suffered post traumatic stress disorder as a result of the unpleasant recollection of the accident. His complaint of continuous heat being emitted from his body coupled with the disfigurement of his hand must be irritating and distressing to him. Further, I accept Dr. Logan's opinion that the plaintiff's injury could have resulted in his experiencing peripheral neuropathy.

There is a paucity of cases relating to electrical burns. Mr. Samuels in assistance to the court in relation to cases which might be used as a guide in arriving at an appropriate award referred to two cases pertaining to burns, other than those caused by electricity, namely:

Ellis v. Industrial Chemical Volume 2 Khan's Report Page 165.

Levy v. Esso W.I. Ltd. Volume 2 Khan's Report page 175.

In the case of Ellis v. Industrial Chemical the plaintiff suffered extensive acid burns to 40% of his body surface including right side of his back, front trunk, chest, abdomen, groin including penis, both legs and both arms. He suffered no functional disability.

He was awarded $150,000.00 for pain and suffering and loss of amenities.

In the Levy v. Esso W. I. Ltd. the plaintiff suffer superficial burns from an explosion, scarring 42% of his body, especially over his chest, back and right side of face, lateral aspect of his right lower leg and posterior aspect of upper half of thigh and both limbs. General damages for pain and suffering, loss of amenities and handicap on the labour market, were agreed at $125,000.00 inclusive of costs in April 1984.

The injuries caused Levy physical and mental pain. He became a social recluse, his right hand disabled was painful and he suffered a 30% functional disability of the hand. In the present case the plaintiff suffered a 52% disability of one of his hands. Levy's injuries caused him mental and physical suffering. The burns caused major scarring of Levy's body while the plaintiff suffered scarring to a much less degree. In the case under consideration, the plaintiff also suffered physically and mentally. In computing an award, I am of the view that Levy's case offers better guidance than Ellis's case.

Although there is no indication whether Levy was right handed, the fact is that there was restriction in the use of his injured hand caused by contractions. Similarly, in the case of the plaintiff, the use of his injured hand was restricted, as he had developed contractions. Levy obtained corrective surgery and physiotherapy to improve the function of his hand. The extent of disability suffered by the plaintiff exceeded that suffered by Levy by 22%. The degree of scarring to Levy's body was much more when compared to the plaintiff's Levy's scarring and disfigurement was more conspicuous than the plaintiff's. It made him a recluse. There is no evidence that plaintiff had become a recluse after the accident.

Taking all factors into consideration, if an award had been in the present case, in April 1984, the plaintiff could have received $80,000.00 for pain and suffering. Applying the present consumer index of 687.3 to that sum, the plaintiff would be today entitled to the sum of $988,920.00 for pain and suffering.

The next item of general damages which falls for consideration, is that relating to loss of future earnings. The principles governing this sub-head of damages were clearly enunciated by Brown L.J. in the case of Mcolikee v. A. Reyrolle & Co. Ltd. 1977 1 AER page 17

where he stated:

> "The consideration of this head of damages should be made in two stages. Is there a substantial or real risk that a plaintiff will lose his present job at some time before the estimated end of his working life? If there is (but not otherwise), the court must assess and quantify the present value of the risk of the financial damage which the plaintiff will suffer if that risk materialises, having regard to the degree of the risk, the time when it may materialise and the factors, both favourable and unfavourable, which in a particular case, will or may, affect the plaintiff's chances of getting a job at all, or an equally well paid job."

The plaintiff was 49 years on the 4th of March 1995. He was age 43 years at the time of the accident. He was a skilled linesman. He worked with the defendant company since he was 26 at which time, he assisted in installation and removal of meters. His job as a linesman is superior to that which he had when he first started with the company. from this it can be inferred that he had been promoted. Mr. Grant described him as punctual and hardworking and intimated that he would still have been in his employ and he would have been paying him at least $2000.00 weekly had he not been disabled. It is obvious that if he were still with the Jamaica Public Service Company, it is likely that he could have graduated further and earned more.

He was a good worker and would have been continuously employed, had it not been for the accident. He could have enjoyed at least another 10 years of working life had it not been for his incapacity. However, the impairment from which he suffers will no doubt offer great risk in his ability to obtain a job. On the other hand, it is likely that he may secure a job but the deformity of his hand may render him incapable of performing and in that event he would have to relinquish it.

There is evidence that if the plaintiff was uninjured and currently employed, his earnings would have been in excess of $2000.00 weekly. However, in his present condition, if he even obtains a job, there is a strong possibility that he might never be able to secure one from which he could earn an amount over and above $2000.00 weekly.

A further submission by Miss Mangatal was that the plaintiff was not entitled to loss of prospective earnings as he had failed to mitigate his loss, since he ought to have sought employment. It is my view that this is not necessarily so. There is no guarantee that if the plaintiff had undergone reconstructive surgery, he would have been employed. Further, the disfigurement of his hand has placed limitation on the scope and type of job he could perform. There is no doubt he will suffer loss of prospective earnings as a consequence of his injuries. There is also a distinct possibility that his capacity to earn an income in the future will diminish. He ought to receive an award for loss of future earnings.

In making the award, his net income is assessed at $1700.00 weekly. Given the uncertainties of life and considering all circumstances, a multiplier of 7 will be used and the sum of $618800.00 will be awarded to him for loss of future earnings.

I will next make reference to the claim relating to future medical expences. There was evidence from Dr. Logan and Dr. Ottey surgery and psychiatric treatment would be $79,000.00. This sum is allowed. There was no evidence with respect to the cost of physiotherapy, for which $6000.00 had been claimed and the claim for this item is disallowed.

SPECIAL DAMAGES

I will at this juncture address the matter of special damages and accept the plaintiff's evidence that he paid the various sums which he claimed for hospital fees, doctors' fees, travelling to and from the hospitals and doctors' offices amounting to $8420.00 and to this, there was no contest.

There was however, strong opposition as to the amount he ought to receive for loss of earnings. It was contended that had he dealt with his injuries timeously, he would have had a good chance of returning to his former job, as it was Dr. Logan's view that he

could have returned to work by December 1990 had he taken remedial action to arrest his disability. The plaintiff stated that he had gone to Kingston Public Hospital for skin grafting and plastic surgery but this was not performed. The evidence is that he attended on six occasions in order to have surgery and it was not done. There is no evidence that he refused to undergo surgery, from which it could be inferred that he acted unreasonably and in so doing allowed his condition to deteriorate.

I accept Dr. Ottey's findings that the plaintiff was unable to work as he was suffering from post trauma stress disorder. Although Dr. Logan stated that when he saw the plaintiff, he was capable of working, is right handed, had the full use of his right hand and could run and walk, the plaintiff stated he was unable to walk and when he tried to use his right hand he also felt pain in that hand and both shoulders. I accept that the plaintiff was unable to work after the accident. I find that his failure to secure reconstructive surgery is not tantamount to a refusal to do so. He is therefore entitled to recover loss of wages from October 1989 to date of trial. An award of $385,000.00 representing net salary of $1400.00 weekly will be made.

I must finally allude to the claim for loss of farm products. The question here, is whether the claim for the loss of the plaintiff's animals and poultry could properly be admitted as arising as a direct consequence of the defendant's act. There is evidence that the defendant was liable for the plaintiff's injuries. Is there nexus between the disability the plaintiff sustained in relation to his injuries and his loss of his livestock? The plaintiff stated that he entrusted the care of his cows to a neighbour who consequently became ill and two cows died then. A third cow died after the plaintiff's return from hospital. The plaintiff did not state to whom he entrusted the care of the goats but he stated he left the poultry in his children's care. It appears to me that the failure of the neighbour and the children to tend and take proper care of the animals, contributed to their deaths and liability cannot be attributed to the defendant. It follows, therefore, that

the plaintiff is not entitled to be compensated for the animals which died while he was hospitalized, as the loss could not be regarded as being directly caused by the defendant's act but by the act of the neighbour and the plaintiff's children. He should however be compensated for the loss of those animals which died after his return from hospital, as he was then not in a state to take care of them. I will make an award of $5200.00 for loss of a cow and 2 goats.

Damages are assessed as follows:-

General Damages	
Pain and suffering	$988,920.00
Loss of future Earnings	$618,800.00
Future Medical Expenses	$79,000.00
Special Damages	
Cost of Medical expenses	$5,500.00
Cost of transportation	$2,920.00
Loss of earnings	$385,000.00
Cost of animals	$5,200.00

Judgment for the plaintiff in the sum of $2,085,340.00 being $1,686,720.00 for general damages with interest on the sum of $988,920.00 at 3% per annum from the date of service of the writ and special damages in the sum of $398,620.00 with interest thereon at the rate of 3% per annum from the 4th October, 1989.

Costs to the plaintiff.