

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L. NO. G 088/2001

BETWEEN	PENNY-ANN GOLDING	PLAINTIFF
AND	EDGAR MORRISON	1 ST DEFENDANT
AND	JAMES MORRISON	2 ND DEFENDANT

Mr. Leslie Campbell for plaintiff
No appearance by or for defendants

Heard July 12, 2002 and July 15, 2002

ASSESSMENT OF DAMAGES

Sykes J (Ag)

This assessment has its genesis in an accident that occurred on July 13, 1999 on the Salt River Main Road in the parish of Clarendon. Young Miss Penny-Ann Golding, a bartender, received injuries after a truck hit the car in which she was traveling. The car in which Miss Golding was a passenger had pulled over to the left side of the road (i.e. its correct side). The truck was on the same side of the road as the car and traveling very quickly. The collision was inevitable. Judgment in default of appearance was entered against both defendants.

INJURIES

Miss Golding was taken to the Spanish Town Hospital where she was treated and sent home. She received cuts and bruises on her right cheek, forehead, elbow, eyelid, back and left knee.

She was referred to the National Chest Hospital and thereafter she was treated by Dr. Rao of May Pen, Clarendon and Dr. Junior Taylor. At Dr. Rao she said she received an injection and tablets. She visited Dr. Rao twice.

She visited Dr. Taylor three times in all. There is no medical report from Dr. Rao. Dr. Rao was treating her for the pain and discomfort that resulted from the accident.

The medical report from the Spanish Town Hospital dated November 18, 1999 says that she received:

- i. several superficial abrasions to the right forehead;
- ii. superficial lacerations to the right orbital area;
- iii. superficial wound with skin loss to the right cheek;
- iv. several superficial lacerations to the left leg.

She was given anti-tetanus antibiotics and pain killers.

The report from Dr. Taylor dated July 13, 2000 provided more detail. This is not surprising because he is a plastic and reconstructive surgeon. One would expect him to note injuries in more detail.

He saw her on July 6, 2000 and noted the following:

- i. vertical scar in the center of the forehead 2cm long x 0.4cm wide;
- ii. 1cm large vertical scar on forehead;
- iii. scar on right cheek 2cm long x 0.5cm wide;
- iv. loss of lateral third of right upper eye-lid. She has recurrent burning in the right eye and increased sensitivity to light;
- v. multiple small scars on right cheek and right forehead;
- vi. multiple small scars on both elbows, right hand and right knee.

Dr. Taylor also said that the scars on the right cheek, forehead and the right upper eyelid could be improved surgically. The cost of such an operation would be \$100,000.00. This sum includes the anaesthetic and surgical fees as well as the cost of hospitalisation. The scars cannot not be removed but can be reduced in size.

The plaintiff says that because of the scars insensitive persons constantly ask her how she got them. She even said that persons think that she is "bad" girl. The scars itch her from time to time. She is greatly embarrassed by the scars.

Since the accident her eyes burn and become very moist in bright sunshine. She now has to wear dark glasses and/or a hat whenever she is out in the sun. If she is traveling she prefers to do so at time when the sun is not shining brightly.

SPECIAL DAMAGES

For special damages she is claiming

(a)	loss of earning for 16 weeks at \$2,500.00 per week	\$40,000.00
(b)	Transportation	\$ 7,500.00
(c)	Loss of clothing	\$ 2,000.00
(d)	Costs of medical report	\$ 6,750.00
(e)	Medication	\$ 2,000.00

She said that she worked as a bartender earning \$2,500.00 per week. Her testimony was that she was not working for sixteen weeks and she was not paid by her employer during that period. She is now working but with another employer. I accept her evidence that she was not working for the period of sixteen weeks and that she was not paid during the said period. This is not unusual in Jamaica. I accept the evidence of her weekly earnings. This is consistent with wage rates for persons in her line of work.

She made three trips to Kingston from her home in Rocky Point, Clarendon to see Dr. Taylor, once at the National Chest Hospital and the other times at his surgery. Each trip cost her \$2,500.00. She hired a taxi. She did this because her left knee did not permit her to walk. I accept her evidence and I find that it was reasonable for her to incur that expense and hence it is recoverable.

The medical report of Dr. Taylor speaks to small scars on right knee. The report from the Spanish Town Hospital speaks to superficial lacerations on left leg. There is a

discrepancy. The plaintiff is the one who was in the accident and she is still experiencing discomfort in the left knee. The doctor at Spanish Town Hospital saw injuries to the left leg on the day of the accident. I accept that it is her left leg that has the scars and not the right knee.

The clothing she says was soaked in blood and could not be used again. The sum of \$2,500.00 is accepted as the cost of her clothes but the sum pleaded was \$2000.00 and only that sum is recoverable.

I did not allow the recovery of the cost of obtaining the medical report since that seems to me to have been procured for the purpose of litigation. This is not part of the cost of medical care and so is not recoverable as a part of special damages.

Her medication and visits to Dr. Rao cost her a total of \$2,500.00 again only \$2000.00 was pleaded. The \$2000.00 is recoverable. Although it was not supported by receipts I find that the expenditure was incurred and is reasonable.

The special damages recoverable are \$51,500.00. The interest awarded is 6% from July 13, 1999 to July 15, 2002.

GENERAL DAMAGES

On the question of general damages counsel for the plaintiff cited the case of *Florence Samuels v Michael Davis* [Suit No. C.L. 1990/S268], Khans, *Recent Personal Injury Awards Made In the Supreme Court of Judicature of Jamaica*, Vol. 4, at page 151. In that case the plaintiff was five months pregnant when she was injured in a motor vehicle accident. She was unconscious, received cuts on

right knee, multiple lacerations to her face and suffered pain in head, chest and back.

She also had numerous superficial and deep healing lacerations varying from 1 1/4 inch to 2 inches long to the forehead and nose. There were two lacerations, each four inches long and stretching from forehead to below the left eye and left side of the nose. The assessment was done on March 28, 1996. She was awarded the sum of \$380,000.00. The consumer price index for May 2002 was 1480. The consumer price index at the time of the award was 936.3. The current value of this award is \$600,662.18.

I am of the view that this case provides a useful guide. The plaintiff in the instant case was not pregnant. She was not unconscious. The plaintiff does not have the scars that the plaintiff had in the case cited but she does have 1cm large vertical scar on forehead, a 2cm long x 0.5cm wide scar on right cheek. There is also the loss of lateral third of right upper eyelid. She has an increased sensitivity to light. Her life has become more miserable because she is constantly being asked about the source of her injuries

I think that for pain and suffering and loss of amenities she should be awarded the sum of \$500,000.00. The cost of surgery and medical care of \$100,000.00 is also awarded. This is in addition to and is not a part of the \$500,000.00 for pain and suffering and loss of amenities.

INTEREST

I have examined *Jefford v Gee* [1970] 2 Q.B.130 and subsequent cases on the question of interest. Lord Denning M.R. said at page 146 that

Medical expenses: In principle interest should run from the date on which they are paid. But they are not usually so large as to warrant separate calculation.

And at pages 147-148

Overall result: Taking all these things into account, we think that the special damages should be dealt with on broad lines. The amounts of interest at stake are not large enough to warrant minute attention to detail. Losses, expenditure and receipts should all go into one pool. In all ordinary cases we should have thought it would be fair to award interest on the total sum of special damages from the date of the accident until the date of trial at half the rate allowed on the other damages. In Mr. Jefford's case this is interest on £2,131 11s. 6d. for two and a half years at a rate which we will later consider.

(ii) Loss of future earnings

Where the loss or damage to the plaintiff is future pecuniary loss, e.g. loss of future earnings, there should in principle be no interest. The judges always give the present value at the date of trial, i.e., the sum which, invested at interest, would be sufficient to compensate the plaintiff for his future loss, having regard to all contingencies. There should be no interest awarded on this: because the plaintiff will not have been kept out of any money. On the contrary, he will have received it in advance.

In Mr. Jefford's case the judge awarded £3,500 general damages, but did not divide it up. It was suggested before us that £1,000 was for future loss of earnings and £2,500 for pain and suffering and loss of amenities. In accordance with the above principle, interest should not be awarded on the £1,000 for future loss of earnings. (my emphasis)

(iii) Pain and suffering and loss of amenities

When the compensation payable to a plaintiff is not for actual pecuniary loss but for continuing

intangible misfortune, such as pain and suffering and loss of amenities (which cannot fairly be measured in terms of money) then he should be awarded interest on the compensation payable. But such interest should not run from the date of the accident: for the simple reason that these misfortunes do not occur at that moment, but are spread indefinitely into the future: and they cannot possibly be quantified at that moment, but must of necessity be quantified later. It is not possible to split those misfortunes into two parts; those occurring before the trial and those after it. The court always awards compensation for them in one lump sum which is by its nature indivisible. Interest should be awarded on this lump sum as from the time when the defendant ought to have paid it, but did not: for it is only from that time that the plaintiff can be said to have been kept out of the money. This time might in some cases be taken to be the date of letter before action, but at the latest it should be the date when the writ was served. In the words of Lord Herschell ([1893] A.C. 429, 437), interest should be awarded "from the time of action brought at all events." From that time onwards it can properly be said that the plaintiff has been out of the whole sum and the defendant has had the benefit of it. Speaking generally, therefore, we think that interest on this item (pain and suffering and loss of amenities) should run from the date of service of the writ to the date of trial. This should stimulate the plaintiff's advisers to issue and serve the writ without delay - which is much to be desired. Delay only too often amounts to a denial of justice. In Mr. Jefford's case, the figure on this head was £2,500. We think that interest should be awarded on this sum from the date of service of the writ until the date of trial. The writ was issued on July 25, 1967: but we have not the date of service of it.

Lord Denning M.R. in **Birkett v Hayes** [1982] 1 W.L.R. 816, 819 said

Looking back at it now, I feel that guideline was an error. It treats the item (for pain, suffering and loss of amenities) as accruing due at the date of

service of the writ: whereas it does not. **It is more like the item for cost of future care or for loss of future earnings in which interest only runs from the date of trial.** But still the guideline has stood since 1971, and, as I will show, it is now too late to alter it. (my emphasis)

Birkett v Hayes (supra) was approved in **Wright v British Railways Board** [1983] 2 A.C. 773. All these cases were reviewed by the Court of Appeal of Jamaica in **Central Soya v Freeman** (1985) 22 J.L.R. 152.

What these cases show is that there is a difference between pecuniary and non-pecuniary losses. If the former are incurred before the date of trial or assessment then they are recoverable as special damages with the rate of interest applying from the date of the accident to the date of judgment. Non-pecuniary losses attract interest from the date of service of the writ. Pecuniary losses such as cost of future care or loss of future earnings that are not incurred at the time of trial do not attract any interest from a time before the date of trial. Interest on post-trial or assessment pecuniary losses begins from the date of trial. The reason was stated by Lord Denning M.R. in the passage quoted from **Jefford's case** (supra).

The cost of surgery in this case is a future pecuniary expense and cannot therefore be recovered as special damages because the plaintiff has not yet incurred the expenditure and is therefore not being kept out of money. Though it is being awarded as general damages no interest will be awarded on it because it is a pecuniary loss which is being paid now before it has actually been incurred.

No interest is awarded on the \$100,000.00 for future medical care.

Interest is awarded on the sum of \$450,000.00 at the rate of 6% from July 25, 2001 to July 15, 2002.

In both instances the rate of six percent was chosen because of the guidelines set by the Court of Appeal in **Central Soya** (supra). Rowe P indicated that the rates of interest on special and general damages should not generally exceed half the rate of interest on judgment debts. The rate of interest on judgment debts is now 12%.

Costs in accordance with Schedule A of the Supreme Court (Attorney at Law Costs) Rules 2000.