IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. G-105 OF 1998

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| BETWEEN | TREVOR GRANT | PLAINTIFF |
| A N D | CALEDONIA ENTERPRISES LIMITED | DEFENDANT |

**Mr. Ainsworth Campbell, Attorney-at-Law for the Plaintiff.**

**Mr. David Batts, Attorney-at-Law, for the Defendant instructed by Alfred McPherson and Company.**

**HEARD: September 23, 1999; May 15, 26, 2000, July 14, 2000 and November 24, 2000**

RECKORD, J.

An interlocutory judgment having been entered against the defendant, this action came before me for assessment of damages on the 23rd of September, 1999, one week after the opening of the term. After the first days hearing, it was adjourned for the plaintiff to support his claim by medical evidence. The parties never returned to court until the 15th of May, 2000. On the 26th of May legal submissions began and ended on the 14th of July, 2000, just two weeks before the end of term when judgment was reserved.

The evidence in this action had taken almost one full year to be presented. Thanks to the plaintiff's attorney.

The plaintiff was employed as a casual labourer to the defendant company. On the 17th of October, 1997 he was given a job to do some painting of pipes on its building. It necessitated him using a ladder. A metal ladder, which subsequently proved to be defective, was given to him. While he was on the ladder painting, the ladder slipped and came into contact with an electric wire. He received severe electrical burns and fell to the ground. He lost consciousness. He next realized he was in the Kingston Public Hospital.

The plaintiff could not move his right leg. It was xrayed (witness shows marks on his leg from the ankle to the knee). "The leg was swollen big – paining me – it looked black." He also got burns to his right chest, right groin, and near scrotum. (Medical certificates from Dr. Amir and Dr. Taylor were admitted by consent).

Due to the inflamation the leg was cut to let out fluid that was festering (the witness showed a long scar on his leg which resulted from that cut). He spent one month in the hospital. Even at the date of trial he still had pains arising from that incident. The right leg is slimmer than the left. He can't flex the right foot. It can't fall flat on the ground. He now walks with a limp. He can't now play football.

Upon discharge from the hospital on crutches he was referred to the fracture clinic. He took taxi to his house in Glengoffe, in St. Catherine and paid $2,000.00 for this trip. He made four visits to the clinic paying $1,000.00 on each of the first and second visits and $1,500.00 on the third and fourth visit. He was

referred from Kingston Public Hospital to the Chest Hospital. He went there twice by taxi paying $1,000.00 for each trip.

Before this incident the plaintiff lived with Miss Marjorie Creary, his baby mother. She assisted him at home, bathing him and treating his injuries until about April, 1998. He was earning $2,200 per week. Since the incident he has not worked. His mother in the U.S.A. sends money to him regularly. In March, 1999, he tried to do some masonry work but fellow workers found that he could not manage. The foot was weak. Since then he has not tried as he felt no one would take him with his foot in that condition. He would like to have plastic surgery.

Under cross-examination, the plaintiff said he did not know for how long he was unconscious. He never returned to the defendant's place and reported for work. He stopped using crutches in November, 1998. He had worked at other places before working for the defendant. He worked at Nail Factory, Yam Factory, Coffee bush.

Marjorie Creary, the common law wife of the defendant, was now a basic school teacher. She visited plaintiff in the hospital every evening. She bathed him. She took care of him when he came home, dressing his foot, gave him exercises. She had to stop her hair dressing business because of his illness. His mother would give $2000 every other week until December. She testified as to number of visits he made to clinic and chest hospital and to Dr. Mena in Bog Walk, and to the sums he had to pay. He was sick, could not manage. His mother sent U.S.$20.00 every two weeks.

On the application of attorney for the plaintiff, the special damages in the statement of claim was amended, in terms of the Amended Statement of Claim file dated the 9th of May, 2000.

After a long break, the hearing continued on the 15th of May, 2000 with Dr. Adolph Mena testifying. He examined the plaintiff at his Bog Walk office on the 2nd of February, 1999 for the purpose of presenting a report on him. He prepared a report dated 13th of January, 2000 – admitted in evidence as exhibit 3.

His examination revealed injuries to right leg, right upper chest, right side of abdomen, right side of pelvic. There were scars consistent with electrical burns covering extensive areas. In the right leg was an old scar measuring 28 c.m. along the lateral aspect extending from the proximal third to the distal two third with a punctured wound oozing a yellowish liquid. There was inflamation in the wound that makes the oozing from time to time. There was marked muscle wasting of the leg because the peroneal nerve was damaged. There was no nerve to carry the stimulus to exercise. The peroneal nerve is responsible for the dorsey flexion of the foot. This damage is called 'foot drop'. Doctor Mena said that as a result of these injuries the plaintiff walked with a marked limp. He had difficulty in walking on an incline. He took measurement of both legs and compared them, there was a difference. In January, 2000, when he last saw the plaintiff he was still complaining of pains and cramps along his right leg and there was a minimal oozing over the proximal end of the scar. He treated him with anti-biotics. It is unlikely that it will heal completely. He would

not be able to play cricket and football; he cannot run; he would have difficulty in climbing trees.

The disability to his right lower limb was 25%. He would also suffer pain and discomfort for other injuries to his body. He did not examine him for damage to the cruciate ligament of the right knee. Dr. Mena said he had seen a copy of a report by Dr. Christopher Rose dated 2nd May, 2000.

Under cross-examination Dr. Mena said that plastic surgery would have no effect on the oozing. It had no curative effect. The plaintiff could work as a security guard, watchman, messenger riding bicycle, motor cycle or motor car. The damage to the cruciate ligament was not a result of the burns. He had over looked this damage as he was concentrating on the burns. It could have happened subsequent to his examination. It could be as a result of a fall.

On the 26th of May, 2000, the medical report of Dr. R.C. Rose dated 2nd May, 2000, was admitted in evidence by consent (Exhibit 4).

It was also agreed by the attorneys that the costs of Dr. Mena's attendance at court on the 15th of May, 2000, be not attached to the defendant.

This was the end of the plaintiff's case.

Mr. Robert McCook, the managing director of the defendant company testified. The plaintiff was employed by the company on the 18th of September, 1997. He has not worked with the company since the date of the incident. Neither he nor anyone in his company told the plaintiff not to return to work. In his organization there were different areas which the plaintiff could fit in had he returned to work. He could be in charge of the store room; he could be the

person holding the gate; do minor errands; painting of pipes where no climbing was necessary. The plaintiff was earning $2,860.00 per fortnight. He could earn overtime when they had rush work.

When cross-examined, Mr. McCook said his company was a service company doing outdoor advertising. The company employed welders, masons and electricians. He interviewed the plaintiff for the job as a casual worker to do for example – digging, holes for plumbing signs, painting of posts, loading materials on trucks.

Mr. McCook saw the plaintiff in the hospital. After his discharge the plaintiff came to the office on more than one occasions, but not to work. The plaintiff was paid for a 40 hour week. He never offered him a job as he left it to the plaintiff to ask if he needed a job.

This was the case for the defendant.

## SUBMISSIONS

Mr. Batts pointed out that plaintiff never returned to work. There were openings for him.

His girl friend received $2,000.00 every two weeks from the plaintiff's mother. She is not asking for any compensation. There were conflicts in the evidence of the plaintiff and his girl friend as to when the plaintiff stopped using crutches. On Dr. Mena's evidence the injury did not prevent him from being gainfully employed. There was discrepancy in the evidence of Dr. Mena and Dr.

Rose as to the permanent partial disability – 25% of the limb as against 23% of the whole person.

For pain and suffering, Mr. Batts referred to the case of ***Thomas v. Salmon*** *(unreported) in Khans Vol. 4 p. 83* heard 16/6/94. An award of $250,000.00 as made which is now equivalent to $500,000.00. Also ***Turner v. Cigarette Company of Jamaica*** - heard 26/9/91 Khans Vol. 4, page 7B. A much more serious case – now equivalent to $1.3m.

Counsel submitted that in the instant case an appropriate award for pain and suffering would be $600,000.00.

Future Earnings:- Counsel submitted that on the evidence, no award should be made under this heading as the plaintiff never reported back for work although he started walking without crutches in April, 1998. The doctors said he could work and Mr. McCook said work was available and he gave no reasons for not returning. See ***Central Soya Jamaica. Limited v. Junior Freeman*** (1985) 22 J.L.R. p.158 (I).

The plaintiff claims for travelling and other expenses differ from his girl friend. His claims appear to be inflated.

**Claim for extra help**

Counsel submitted that thisclaim is unsupported and should be rejected. The girl friend had put her work aside and the plaintiff's mother paid her $2,000.00 per week. In her cross-examination she said she did not need compensation.

On behalf of the plaintiff Mr. Campbell submitted that the plaintiff did seek employment but could not do the work.. Reports from Dr, Amir and Dr. Taylor supported the plaintiff's evidence. See ***Ellis v. J.P.S.*** Khans Vol. 4 p.105 heard 18/3/95. Much more serious than the instant case. Award of $988,920.00 made for pain and suffering. This equivalent today to $1.9m.

In ***Sherrene Rose v. Irvin Satchwell*** Khans Vol. 4 p. 70 – heard 20th March, 1997 – permanent partial disability 28% whole person. Award of $2.5m made for pain and suffering; now equivalent to $3.08m.

In light of the cases this award should not be less than $3m.

**Special Damages**

Counsel submitted that it is well established law that where a relative takes time out to look after a relative or friend, that person is entitled to compensation for his or her time and services, she would be entitled for 18 weeks @ $2,000 per week = $36,000.00. See ***Thomas v. Arscott*** SCCA No. 74/84.

The medical reports support the need for assistance by girl friend.

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| Medical bills | $4,000.00 |
| Medication | $1,300.00 |
| Travelling | $8,500.00 |

**Claim for future loss of Earnings**

Mr. Campbell submitted that with injuries like those suffered by the plaintiff he ought to be awarded a sum for handicap on the labour market or future loss of earnings. Plaintiff was 28 years old. Years of purchase should be 15.

Future Surgery - Costs under this heading estimated at $80,000.00.

Loss of Earnings: 143 weeks @$2,200 per week = $314,600.00.

## CONCLUSIONS

Undoubtedly, this plaintiff received serious electrical burns. Dr. Christopher Rose, one of the leading Orthopedic Surgeons in the island, estimated that he had a 23% permanent partial disability of the whole person which I will accept over that of Dr. Mena who found a disability of 25% of the limb itself. He gave no whole person disability.

On the question of loss of earnings, it is observed that the plaintiff is claiming loss up to the date of trial, nearly three years. On his evidence in March 1999, he tried to do some masonry work but had to abandon it because he would not manage. However, the managing director of the defendant's company was willing to offer him alternative occupation if he asked. It is obvious he was not interested. The plaintiff must mitigate his loss. He cannot expect the defendant to maintain him for the rest of his working life. From the evidence he ceased using crutches in April, 1998. From the month of May, 1998, he was able to do light work as that open at his former work place. I am therefore prepared to make an award for loss under this heading up to the end of April, 1998 – 33 weeks.

Miss Creary was not hired as a helper to the plaintiff when he suffered his injuries. She was living with him as his common law wife. His injuries brought on

additional household chores for her and she is entitled to a reasonable compensation for the period as claimed but at the rate of $1000 per week.

From the very serious nature of his injuries the plaintiff will always be handicapped on the labour market. He will not be able to compete with fellows workers doing similar work. It is my opinion that he is entitled to an award under this heading.

There is unchallenged evidence that the plaintiff can benefit from plastic surgery. Although this will be a cosmetic effect only, it is a justifiable claim.

Accordingly, damages is assessed as folows:

**Special Damages**

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| Loss of earnings – 33 weeks @ $ 2,200.00 per week = | **$72, 600.00** |
| Travel Costs | $8,500.00 |
| Medication | $1,300.00 |
| Extra help 18 weeks @ $1000 per week | $18,000.00 |
| Medical bill | $ 5,000.00 |
| | $105,400.00 |

There will be interest at 6% per annum from the 17th of October, 1997 to today.

**GENERAL DAMAGES**

In Ellis vs. J.P.S (Supra) there was permanent partial disability of 25% - 28% of the whole person. He was awarded $988.920,00 for pain and suffering and loss of amenities which is today equivalent to $1.9m. He was 49 years old at trial.

In the instant case the plaintiff was 27 years at trial and with a 23% disability. He is going to bear the results of his injuries for the greater part of his life.

In my opinion an award of $2m is appropriate; $500,000.00 for handicap on the labour market and $80,000.00 for plastic surgery.

There will be interest at the rate of 6% per annum from the date of the service of the writ to today.

Costs to the plaintiff to be agreed and taxed.