

106  
IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1997/J025

BETWEEN	JOSEPH JAIPAUL	PLAINTIFF
AND	GENE MANNING	1 <sup>ST</sup> DEFENDANT
AND	CRAIG BROWNING	2 <sup>ND</sup> DEFENDANT

Miss Saverna Chambers for the plaintiff.

Maurice Frankson instructed by Gaynair and Fraser for 1<sup>st</sup> and 2<sup>nd</sup> defendant

Heard on April 2001, 26<sup>th</sup> April 2002 and 28<sup>th</sup> August 2002.

**Campbell J.**

On the 3<sup>rd</sup> July 1995, Mr. Jaipaul, farmer, left his home in Willowfield District, in St Thomas to tend his cows. It was a journey of about half a mile, and one which he had been making for years. He testified that he was riding a motorcycle, registered 1195D, and travelling at about 15 – 20 m.p.h. It was about 6.50am, and there was no other vehicle on the road. The plaintiff contends that he was travelling “on a straight” when he saw the defendant’s Leyland truck coming from the opposite direction. It was about three chains away when he first saw the truck. He noticed that the truck swerved to avoid a coconut tree that protruded in the road from its left embankment. The plaintiff said the truck “was coming with a

speed, about 50-55 m.p.h. The driver of the truck was looking inside the truck whilst the truck continued across the road towards the plaintiff's motorcycle. The plaintiff, in an attempt to avoid a collision, went to his extreme left, "on the banking" where there was a bamboo fence. Nonetheless the front of the truck hit the motorcycle handle. The plaintiff fell and the truck's front wheel ran over his right leg. According to the plaintiff, the truck then drove a distance and stopped. His leg was crushed, he felt a lot of pain and there was blood all over. The 1<sup>st</sup> Defendant came to where the plaintiff was lying, the plaintiff testified that he held up his leg and said "Look how you do fi spite and mash mi up." He said the defendant turned and ran into a nearby yard, leaving the plaintiff on the ground. He was taken to Golden Groove Police Station and from there to Port Maria Hospital. He was admitted and remained in hospital for twenty-three days. He attended at the Mona Rehabilitation Hospital, where he was examined by Professor John Golding.

Dr. Cecil Batchelor, General Surgeon at Princess Margaret Hospital in Morant Bay testified that Dr. Persaud spoke to him and as a result he did certain things for the plaintiff. He had examined him on the day of his admission and noted he was suffering a haemorrhagic shock. His blood pressure was elevated, and vital organ functions were not performing. His tissues were not being oxygenated and were deprived of nutrients. The doctor testified that the right leg

had been completely crushed below the knee; there was a comminuted fracture of all the bones. Several pieces of bones were missing. The muscles were in complete disarray and he was bleeding profusely from several blood vessels in the leg. The bleeding was stopped. The blood was replaced. The plaintiff had an above-knee amputation. He was assessed at 90% impairment of the lower extremity or 36% of the whole man. He was referred to the Mona Rehabilitation Hospital. Dr. Batchelor stated that an above-knee amputation was much more restrictive of the patient's lifestyle. He should experience difficulties with simple things e.g., turning in bed, and sitting on the water closet. His prostheses will be longer, heavier and will require a lot more energy to wear.

The defendant, Craig Browning, testified that he was driving a Leyland truck owned by the second defendant. He had two passengers in his vehicle. He was on his way to Wheelers Field Crossing, from which point he would proceed to Apple Farm, one of the farms on Eastern Banana Estate. He knew the plaintiff whom he would sometimes see on the road looking after his cows. The defendant says when he first saw the plaintiff on the morning of the accident, "bike was on my side, so I drew closer to the left and come to a complete stop. When the motorcycle came and hit in the right hand front wheel of the truck, I was on the left side of the road." The defendant claims to have been travelling at about 20 m.p.h. and states that he did not encroach on the plaintiff's side of the road.

He said that the truck he was driving was 23 feet long (witness indicated a distance agreed at 30 feet) and about 8 feet wide. The width of the road in the area of the accident is about 16 feet, (agreed that it might be 20 feet). He said as soon as he stepped on the brake the truck stopped immediately. He said he did not speak to the plaintiff after the accident. He said the motorcycle was about 7 feet from where the plaintiff was lying in the middle of the Road. He said he would have known if the truck had run over the feet of the plaintiff or over his motorcycle or over his motorcycle and his feet. The defendant said he did not know that the plaintiff was hurt, he heard a bump and he ran to the police station. He gave a statement to the police three days later. At the time of the accident he had been driving trucks for about one year. He was then aged 20 years.

Gene Manning, the 2<sup>nd</sup> defendant, said he received a report and as a result he proceeded to Willowfield District, where he saw a truck and a motorcycle beside the truck. The truck was parked close to the left embankment. The "bike was on the right side of the truck", in the middle of the road, about 3 – 4 feet behind the front door of the truck.

Sgt. Balmore McCalla of Golden Grove Police station testified that on arrival on the scene, he observed a motorcycle lying in the middle of the road. He had received information about 6:15 am and had arrived at the scene some fifteen minutes later. He did not take measurements, and did not draw diagrams.

Three of the defense witnesses have said that they saw the motorcycle in the middle of the road. I find that after the collision, the plaintiff was lying on the ground in the middle of the road. I accept that the left embankment, in the direction that the truck was travelling, consisted of a steep embankment which rose almost perpendicular to the road. I find that there was a level surface, about nine feet wide to the left of the road as one travels in the direction of the motorcycle. I find that the truck encroached on the plaintiff's side of the road. That the truck struck the plaintiff's motorcycle, dislodging him and crushing his leg. That the truck then reverted to its correct side.

I was impressed with the testimony of the plaintiff and found him frank and credible. I find that the truck struck its left bank, causing damage to the left fender and puncturing its left tyre. That the truck could not have come to a stop immediately after the brake was applied as contended by the 1<sup>st</sup> defendant.

The injuries sustained by the plaintiff is more consistent with the plaintiff's case that the truck struck the handle of his bike and ran over his leg, crushing it, than with those injuries being caused by the plaintiff's motorcycle hitting the truck tyre and the plaintiff sustaining his injuries in that manner. It is unlikely that a collision with the tyre of a truck that had come to a complete stop would have resulted in a "completely crushed leg" with muscles in disarray. I accept the

evidence of the plaintiff that the truck encroached on his side of the street, struck him and proceeded before stopping.

### **Special Damage**

The following were agreed:

Doctor's fees, medication, medical certificate, cost of prosthesis, crutches	\$24,000
Loss of Earnings	65,000
Travelling Expenses	11,600

I find the following heads proven:

Plaintiff's Assistant (cost of cow)	6,000
Cash lost at time of accident	12,000
Damage to motorcycle	65,000
Current cost of prosthesis	27,000
Future medical expenses, provision of four (4) prosthesis for the life of the plaintiff	<u>130,000</u>
TOTAL	<u>\$340,600</u>

### **General Damages**

The Court was referred to the authorities of Oswald Espeut v K. Sons Transport Limited, Woolwort Miller, et al (Khan Vol. IV. page 39), where the plaintiff had suffered injuries particularised as follows:

1. Compound comminuted fracture of the right leg.
2. Amputation of the right leg above knee
3. Phantom leg symptoms
4. Permanent Partial Disability of right leg 80%

Pain and suffering and loss of amenities were assessed on the 6<sup>th</sup> June, 1997 at \$1,501,360.20 with interest at 6%, updated to March 2001, \$2,113,041.30.

Dr. Batchelor has opined that the plaintiff had suffered a 90% impairment of the lower extremity. The collapse of the vital organs of the plaintiff and the reduced blood pressure makes Jaipaul injuries more severe.

Another case to which we were referred by Mr. Frankson was the case of Lealan Shaw v Coolit Limited and Glenford Coleman, (Khan Vol. IV – page 41), Trial before Mr. Justice Theobalds on the 26<sup>th</sup> July 1995, where the plaintiff, a truck driver, 41, suffered head injuries, laceration to proximal third and to middle and distal third to the right knee. In addition to a compound fracture of right femur, and compound fracture of right knee, fracture of the right fibula. He was diagnosed with gas gangrene and had his right leg amputated above the knee. His impairment was assessed at 70% of his right lower limb.

Damages for pain and suffering and loss of amenities were assessed at \$1,500,000.00 with interest at 3%, updated \$3,030,547. Shaw is a more serious case.

We were also referred to the case of Patrick Noble vs Gerald Williams & Conroy Hibbert, on an assessment of damages, where the plaintiff suffered a 90% permanent partial disability, the Court in 1991 awarded \$300,000. This award updated is \$2,622,321.40.

An award of \$2,500,000 is made for pain and suffering and loss of amenities.

### Handicap on the labour market

Evidence was lead that the plaintiff, a farmer, had for years raised cows. The defendant has said that he would see him in his cow-bush. The plaintiff has said that the terrain on which he farmed would not now allow him to do so, and his herd was decimated because of his inability to tend them as a result of his accident. There is evidence that an above knee amputation would require some 70% more energy from the plaintiff which would restrict his ability to operate his grocery at the same standard he did. He claims that business has fallen, as he earned \$2,500 per week in 1995. The shop presently earns \$15 – 18,000 per month. This does not to my mind indicate a loss to the plaintiff.

In Gravesandy vs Moore (1986) 40 W.I.R. 222, Carey JA, in commenting on a claim for loss of earning capacity on self-employed persons said,

"...The principles there stated, apply equally to a plaintiff who is self-employed as was the respondent in the present case. Plainly, if the possibility or risk exists that

the plaintiff will be unable to perform and so have to close his business, he is in precisely the same situation as an employee who loses his present job.

In considering this head, Browne LJ suggested that there are two stages, viz;

- (1) 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?
- (2) 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 risk of the plaintiff losing his job as farmer and cow-herder as we have seen, has become reality. His ability to ride his bike and get groceries for his shop has been diminished. The plaintiff's injury, i.e. above-knee amputation, is permanent. In these circumstances I would make an award of \$250,000 for handicap on the labour market.

The award for General Damages is \$2,750,000.

Interest on General Damages at 6%, from date of service of the writ.

Interest on Special Damages at 3% from the 26<sup>th</sup> August 2001. Cost to the plaintiff to be agreed or taxed.

Interest on sum of \$30,000 at 20% for a period of six (6) years.

