

down by a Nissan Bluebird motor car owned and driven by Mr. Malcolm Campbell (the defendant).

The Mandela Highway is a dual carriage way. She had safely negotiated the Kingston-bound side of the highway and the right lane of the Spanish Town-bound side of the highway. She carefully checked to see that no vehicles were approaching. She continued crossing. As she was crossing the left lane of the Spanish Town-bound side of the highway Mr. Malcolm crashed into her.

Mr. Malcolm has accepted liability. The only outstanding matter is the amount to be awarded as general damages for pain, suffering and loss of amenity. There is no claim for other items of general damages. Special damages were agreed at \$41,296.40.

The assessment

(a) The nature and injuries sustained

Miss Page lost consciousness. She revived while traveling in the rear of a van to the Spanish Town Hospital where she was admitted. During the journey to the hospital, she lost consciousness again. She woke up in the casualty department.

Her left arm was broken. She had bruises and cuts to her face, neck, left leg, right hand, left hip, and left shoulder. Her left ankle was swollen and sprained. She spent one week in hospital.

(b) The nature and gravity of resultant physical disability

She is now permanently scarred on the back of her left shoulder. The scars run down the triceps of her left hand and unto the back of the left forearm. There are multiple scars on the left forearm. Scarring also appears on the right side of her neck, her left knee and left hip. Two medical reports were produced to support her claim for damages.

The first is from Dr. Mark Minott, Consultant Orthopaedic Surgeon, at the Spanish Town Hospital. His report is dated January 11, 2002. He noted that Miss Page had:

- i. numerous soft tissue injuries;
- ii. no neurological deficits;
- iii. laceration on right side of face and neck;
- iv. neck movement limited by pain;
- v. upper left limb had numerous abrasions and lacerations on extensor aspect;
- vi. left knee has a three centimetre by two centimetre laceration over the patella;
- vii. left ankle had pain and tenderness with movement; and
- viii. left humerus had a displaced fracture of the neck of humerus.

The second report by Dr. Rajeev Venugopal, Consultant Plastic Surgeon, at the University Hospital of the West Indies, declared that the soft tissue injuries (the scars) suffered by Miss Page have not produced, in her, any functional deficits.

Miss Page says that she is unable to lift heavy weights with her left arm and even when she is washing clothes she feels pain around the area that had been fractured. The medical reports do not address this issue.

This led Mr. Campbell to submit that the lack of supporting medical evidence meant that I should not accept her evidence on this point. I think, however, that Mr. Campbell is over stating the case. The fact that there is no medical evidence supporting her on this point cannot, without more, translate into a rejection of her testimony. Bearing in mind the silence of the medical report, the true test is, whether there is any evidence, within or outside the reports, that

contradicts or undermines her account? When looked at in this way the issue is much sharper and clearer. There is nothing in the evidence that undermines her credibility on this issue. There is nothing to suggest that she is a lying, untruthful person who is simply salivating at the prospect of emptying the pockets of the defendant. I cannot think of any good reason why I should not accept her testimony regarding her inability to carry heavy weights in her left arm and discomfort during washing. What I cannot do is to project into the future to say whether the pain is likely to or will continue.

(c) Pain, suffering and loss of amenity

After she was discharged she suffered severe pain in her ankle. Her entire foot would “sting” her. So great was her discomfort that sleep fled from her. She could not turn on her left side because of her injured left arm which itself was painful. The cast on her left arm was hot and itchy.

She says that her neck still pains her, especially when she has to lift objects. Her neck-pains prevent her from sleeping on her left side.

When the time is hot the scars “swell and hurt me.”

She still suffers from pain in her left ankle. She cannot wear any shoe that rubs her ankle and occasionally she feels pain in her knee.

She now feels disfigured. As she goes about her daily life, her scars arouse more curiosity than sympathy. Here are two comments that reflect what she now has to endure:

“Gal, yu man burn yu up!” or “A skiatta shat hit yu roun’ yu neck?”

Her scars are made the worse, in appearance, because of keloids.

(d) General damages

Mr. Campbell submitted that the damages should be moderate because there is no resulting disability. While accepting that the claimant has lost something of intrinsic worth, namely, her body without scars and recurring pain in her left arm, according to Mr. Campbell, this could not translate into a very high

figure. For Mr. Campbell this meant an award in the vicinity of JA\$500,000.00. I cannot accept Mr. Campbell's submission completely because they do not give full effect to the principles in the next two paragraphs. Mr. Campbell has concentrated too much on the objective side of the assessment thereby neglecting or not giving sufficient weight to the subjective part.

Lord Roche in *Rose v Ford*[1937] 3 All ER 359 stated at page 379E:

I regard impaired health and vitality, not merely as a cause of pain and suffering, but as a loss of a good thing in itself.

In a similar vane Lord Pearce, one of the majority, in *H. West & Sons Ltd. v Shephard* [1963] 2 All ER 625 spoke of the desirability, in making an assessment in cases of personal injury, of keeping in mind the subjective and objective elements (see page 643E). The combination of these elements may have the effect of either increasing or reducing the amount awarded. Lord Morris, also in the majority, stated that it is appropriate to take account of not only the physical loss and the actual suffering caused by the loss of limb, but also, where it exists, "consequential worry and anxiety".

These principles along with the facts of this case compel me to exceed Mr. Campbell's idea of a moderate figure. I conclude that Miss Page has lost something of worth. This is the objective part of the assessment. She has lost a scar-free body for ever. She is now burdened with keloids. The scarring may improve by as little as 30% if the proposed medical procedure is successful. She was impaired for some time by the broken arm. She continues to endure the pain in her left hand. She has been unable to carry weighty objects in her left arm since that time.. The subjective parts comprise the following: she complains of persons seeing the scars before they see her and the remarks to which she as been subjected. This has undoubtedly produced worry and anxiety.

Mr. Campbell buttressed his point by relying on two cases: *Pauline Willis v Fitzroy Hamilton* [Suit No. C.L. 1987/W244. Damages assessed on June 20, 1990] found at page 254 of Harrison's and *Headley Samuels v National Housing Trust* [Suit No. C. L. 1993/S368. Damages assessed in November 1996]. No reference was given for the latter case.

I do not accept the *Headley* case (supra) as helpful. In that case there was evidence of whole person disability and significant impairment of the arm of the plaintiff. Other than persistent pain, there is no evidence in this case of significant impairment of the arm. Also, the damages were reduced because the plaintiff failed to take corrective measures that were recommended to him.

Pauline Willis (supra) is closer to the point but there, the plaintiff was fully recovered by the time of the trial but for the pains in her arm when she lifted heavy objects. She had a fracture of the right humerus but there was no evidence of permanent scarring or keloids. Neither was there evidence of anxiety caused by persistent reference to her appearance.

I rely on the case of *Jamaica Telephone Co. Ltd. v Barrymore Hill & Tisha Ann Daley* [SCCA 126/96. Judgment delivered on July 31, 1998] found at page 239 of Volume 5 of Khan's, that was cited by Mr. Williams. In that case there was mainly permanent scarring and a fracture of the right superior ramus. The Court of Appeal upheld the award of JA\$850,000. The current value of the award in the *Jamaica Telephone Co. Ltd.* case (supra) is JA\$1,549,229.23. In that case the orthopaedic consultant stated quite clearly that there was no underlying pathology that should create any future problems for the plaintiff. The medical evidence went further to say that the plaintiff was expected to reach maximum medical improvement with no significant impairment other than cosmetic appearance. The scarred areas were the face, hand and thigh. There was evidence that she would experience intermittent itching and tenderness over the scarred areas for approximately two years. When she was seen three years later the doctor

stated that her scars were permanent and unsightly. The scars on the cheek would not improve significantly with surgery. Surgery would only permit a 60% improvement.

By comparison and contrast, in the instant case, there is only a 30% chance of improvement in the scarring after treatment (see report of Dr. Venugopal). Also there was no evidence in the *Jamaica Telephone Company* case, as there was here, that the plaintiff was experiencing pain continuously since the accident and any inability to carry heavy objects. Neither was there evidence of the plaintiff suffering any emotional anxiety caused by her appearance. I recognise that in the instant case and the *Jamaica Telephone Company* case different parts of the body were fractured but the persistence of pain in the case of this plaintiff makes the difference.

Conclusion

Special damages

Special damages are \$41,296.40 at 6% interest from February 21, 2001 to June 29, 2004.

General damages

I take into account the injuries outlined above, the pain, suffering, her embarrassment caused by her injuries and the pain she says she still suffers when lifting objects. Her quality of life has deteriorated. She experienced pain since the accident up to this year – this is three years of constant pain and discomfort. In addition to the injuries she has permanently lost something of real value – she will never ever be scar free and without keloids. The scars are permanent and even with medical intervention there may be just a 30% improvement.

General damages awarded are JA\$1,700,000 at 6% from April 8, 2002 (date of service of writ) to June 29, 2004. This is for pain, suffering and loss of amenity. Costs to the plaintiff in the sum of \$52,000.