

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. M544 OF 1984

BETWEEN ALGIE MOORE PLAINTIFFS
A N D HERVIS L. DAVIS RAHMAN DEFENDANT

Minsworth Campbell, Orrin Tensingh and Guy Jones for the Plaintiff

Defendant not appearing or represented

HEARD: JULY 13, and OCTOBER 4, 1993.

WALKER J.

This matter comes back before me for assessment of damages the Court of Appeal, on appeal from my judgment, having determined the issue of liability in favour of the plaintiff, Algie Moore. Mr. Moore, now 53 years of age, was seriously injured in a motor vehicle accident which occurred in the vicinity of White Hart along the Kingston to Spanish Town highway on November 6, 1984. What follows now are my findings as to the injuries and damage sustained by the plaintiff and the compensation which is, in my opinion, payable to the plaintiff in consequence thereof.

Prior to this accident the plaintiff was a higgler who bought and sold goods on a wholesale basis. As to his earnings from higgling he and his witness gave conflicting evidence. At one stage in giving evidence at the trial he put his weekly loss at a figure of \$1,000.00 and, later on, at a figure of \$2,000.00. When asked by counsel for the defendant to explain the great disparity between these two figures the plaintiff said:

"This amount of \$2,000.00 could be twice the amount I gave on last occasion on which I testified, as it could be triple. I hadn't remembered what I told you before so I just gave you a figure today and if you ask me again tomorrow I might give you another figure then".

According to his witness, Marvalyn McKenzie, who admitted to speaking purely from her memory, the plaintiff's gross weekly earnings from goods sold was "about \$1,200.00". The plaintiff was also pastor of the Redemption Church of God, a small rural church, the precise location of which was not revealed

by the evidence. In his capacity as a preacher the plaintiff did not receive a fixed salary and, as I find, suffered no financial loss in that regard.

On the same day of the accident the plaintiff was admitted as a patient to the Spanish Town Hospital in an unconscious state. Later that day he was transferred to the Kingston Public Hospital where he was seen and examined by Dr. Herard. According to Dr. Herard the plaintiff was at this time in a state of unconsciousness and dangerously ill. He was not responding to external stimuli. As between life and death the situation was "touch and go". He had multiple injuries to his head, chest and lower limbs. X-ray showed fractured ribs. He appeared to be in a state of shock. There was a wound to the right leg which measured 4 cm x 5 cm, and another wound to the left leg measuring 3 cm x 4 cm. Both wounds were deep. The plaintiff had suffered compound fractures of the tibia and fibula of both legs. He was assessed and it was found that his chest was not doing very well. This was due to fracture of ribs which had caused bleeding inside the lungs. One side of the chest was worse than the other. On that side there were fractures of the 7th, 8th, 9th and 10th ribs and haemothorax. He had a flail chest, which is a condition of the chest resulting from trauma causing severe respiratory problems. His neurological condition was not ideal. Because of all of this the neuro-surgeon and the general surgeon were summoned to manage the patient along with the orthopaedic team. It was diagnosed that the plaintiff had definitely suffered some brain damage. He had cerebral oedema which is inflammation of the brain tissue. He was also suffering from hypovolemic shock. A debridement of both legs of the plaintiff was done under local anaesthetic but because of the plaintiff's precarious condition no more could be done at that time. The plaintiff's condition would have occasioned a lot of pain. The plaintiff remained in hospital from November 6, 1964 to April 6, 1965 during which time he was totally disabled. He was discharged from hospital on April 6, 1965 in a condition in which he was partially disabled and obliged to use crutches. At this time he would have been able to hobble around his house, get in and out of bed and sit in a chair.

Dr. John Hall, a prominent neurologist with most impressive credentials first saw and examined the plaintiff on January 22, 1967.

At this time Dr. Hall found the plaintiff to be suffering from a deformity and from bowing of both shins clearly related to fractures that the plaintiff had sustained. On the right shin there was a large ulcer under surgical dressing that had not healed since his discharge from the Kingston Public Hospital. Neurologically significant things were his memory deficits. He did not know the names of the national heroes. There was also retrograde amnesia, that is he could not recall events prior to this accident. In addition there was post-traumatic amnesia, that is he was quite uncertain and unclear in mind as to when he became awake and alert at the Kingston Public Hospital and as to what transpired immediately afterwards. An ultra sound echo scan of the brain was done which showed some abnormality. A cat scan of the brain was subsequently done in July, 1987 and this provided corroboration of Dr. Hall's opinion which was that the features exhibited by the plaintiff were characteristic of the post-traumatic head injury syndrome. The plaintiff had a severe head injury. It was Dr. Hall's opinion that intolerance of sounds related to personality change and was a consequence of this type of head injury which involved the left hemisphere of the brain of a right handed man such as the plaintiff was. The cerebral section of the brain showed memory deficit. His performance on the serial 7 test was poor. His reproduction of complex geometrical drawings was poor although he was able to produce simple line drawings. The Cat Scan showed diffuse cerebral atrophy, irretrievable damage which was not consistent with a man of 47 years of age such as the plaintiff was at the time of examination. Less critical areas of the plaintiff's brain showed a capacity to survive and function. Dr. Hall said that diseases which may occur as a result of the plaintiff's head injury are post-traumatic epilepsy, Parkinson's disease, and Alzheimer's disease. In the case of epilepsy this occurs in some 5% - 10% of cases of head injury. The other two diseases occupy a smaller percentage than 5% - 10%. A person suffering from epilepsy would require ongoing medical monitoring. Without this the patient would deteriorate. Dr. Hall further said that he would need to see an epilepsy patient once every three months. As regards the probability of the plaintiff being affected by Alzheimer's disease, once he survives, the inexorable march of events would eventually overtake him and result in a pathetic state of mindlessness.

The chronic ulcer seen on the right shin was a direct result of the compound comminuted fracture of the tibial bone. This indicated a condition of osteo-myelitis, that is a chronic infection of the bone. Amyloidosis was a well known consequence of osteo-myelitis with which plaintiff would be threatened in the future. From a neurological point of view this condition could affect the brain function, the spinal cord and certainly the peripheral nervous system. It was a very insidious condition, that is the plaintiff may have had it but the manifestations were so subtle that one may not suspect its presence. Positive confirmation would need a biopsy of nerve tissue. This condition of amyloidosis was known to affect the heart, liver and kidneys. There was a high probability that the plaintiff would develop amyloidosis. In Dr. Hall's view the plaintiff was a person who would be unable to pursue the life style of a salesman. His neurological deficits and orthopaedic functions when combined would make the plaintiff dysfunctional. He was now dysfunctional and would be so for the future. He would not be able to drive a van, nor would he be able to pursue his function as a pastor. Dr. Hall expressed the view that the plaintiff was finished where his ability to manage his affairs was concerned. He would, for the future, need someone to assist him domestically and in the general routine of living. Regarding the likelihood of the plaintiff contracting Alzheimer's disease at some future date, it was Dr. Hall's firm opinion that the plaintiff would necessarily have suffered mild diffuse cerebral atrophy as a result of his head injury in which event Alzheimer's disease would inevitably follow.

Dr. Adolfo Mena saw and examined the plaintiff on October 30, 1989. The plaintiff complained then of swelling of the right lower limb, dizziness in walking, pain in both legs, and he also said that he tended to forget things very easily. On examination Dr. Mena found that the plaintiff's right leg was swollen from the knee to the ankle with deformity at the junction of the mid shaft with a 4 cm v 3 cm lump over the same area and scarring at the same level. His left leg also had a deformity at the junction of the mid shaft with a lump measuring 4 cm v 3 cm over the same area. His right lower limb measured 37" and his left lower limb measured 36½". He had a severe limitation in walking accompanied by pain and a severe limp. He used a stick to assist him in walking. In Dr. Mena's opinion the plaintiff suffered a permanent functional

impairment of 40% of both lower limbs, that is 20% disability of each lower limb.

Dr. Ruth Doorbar examined the plaintiff on 3 occasions, namely October 13, 1988, November 3, 1988 and November 10, 1988. She also spoke to him at Court on March 2, 1989. She diagnosed the plaintiff as suffering from retrograde and post-traumatic amnesia. He had a very serious memory problem. He was a man of basic average intelligence but he was functioning now as a borderline mental defective with a measured I.Q. of 74. On performance material (non-verbal) he had an impairment of 29% and on verbal material he had an impairment of 16%. His tests revealed that prior to his traumatic experience the plaintiff possessed at least a low average I.Q. of 95. In Dr. Doorbar's opinion the plaintiff's brain was in a state of atrophy and getting worse rather than better. Certain brain cells were no longer functioning and the plaintiff had a psycho-neurosis, in this case profound anxiety and depression. She did not think that in this condition the plaintiff would ever again be able to engage in higglering or function as a preacher. She could not envisage any improvement in the plaintiff's condition so profound it then was. It would likely persist until death and so for the future the plaintiff would need someone to care for him.

Here let me say that I accept entirely and without reservation the findings and opinions of these expert witnesses to whom I have referred and also the conclusions at which they arrived.

I must now assess and determine the quantum of damages that should be paid to the plaintiff as compensation for the loss and damage he suffered. On his claim for special damages the amounts claimed for loss of earnings, for loss of a quantity of cheese trix and for special care and help were disputed. The claims for medical bill and for travel costs were agreed at the trial of this action, and at this time counsel for the defendant also stated specifically that he was making no submission as regards the remaining items claimed for under this head of damages. On the claim for loss of earnings I award a sum of \$88,200.00 on a basis of weekly earnings of \$300.00 for a period of 294 weeks from November 6, 1984 to June 25, 1990, the latter date being the date on which I reserved judgment at the trial. In this regard I found counsel's submission that

the plaintiff's loss should be computed on a basis of a weekly loss of \$1,000.00 to be unacceptable. That submission was contradicted by the evidence of the plaintiff himself, who testified at the trial that 75% of his weekly profit was related to the sale of cheese trix which on the evidence yielded a total profit of approximately \$220.00 weekly. On such a basis his total weekly profit from all goods bought and sold would have been approximately \$293.00 which I have rounded off to a figure of \$300.00. On the claim for loss of cheese trix I award the sum of \$700.00 which was, on the plaintiff's own evidence, all the money that he had at his disposal for the purchase of this commodity on the day of his misfortune. With respect to the plaintiff's claim to be paid compensation for special care and help, I find that this claim is a reasonable one and I accept the submission of counsel for the plaintiff that the Court may properly make an award in this regard. Accordingly, I award a sum of \$18,300.00 as claimed representing compensation for a period of 183 weeks from November 6, 1984 at a figure of \$100.00 weekly. The total award for special damages is, therefore, \$116,116.00 detailed as under -

Loss of earnings at \$300.00 per week from 6th November 1984 to 28th June 1990	\$38,200.00
Loss of cheese trix	700.00
Loss of shoes	80.00
Loss of shirt	30.00
Loss of watch	200.00
Loss of pants	70.00
Medical Bill	4,536.00
Travel costs	4,000.00
Special care and help for 183 weeks at \$100.00 per week	<u>18,300.00</u>
	\$116,116.00

Now to compensation payable to the plaintiff by way of general Damages. The plaintiff is entitled to an award for pain and suffering and loss of amenities of life. I was invited by Mr. Tensingh, counsel for the plaintiff, to make separate awards under this single head in the categories

of damages for -

- (a) head injury and resultant brain damage,
- (b) injuries to both legs and resultant disabilities and,
- (c) other damages.

I decline to approach the matter in this way as I think that to do so would lead to an unjust result. Instead I propose to make a global award. Having considered all the cases cited to me by counsel, none of which I venture to say may be said to be "on all fours" with the instant case, and this is by no means surprising as in cases of this nature one never expects to find an exact precedent as opposed to a precedent that may be used as a guide, I am of the opinion that an award in the sum of \$1,200,000.00 would meet the justice of this case, taking into account the current rate of inflation and the Consumer Price Index as it stood at a figure of 442.8 in May, 1993.

The plaintiff is also entitled to an award for loss of future earnings. For this purpose, and having regard to the age of the plaintiff (who is now 53 years of age), I propose to use a multiplier of 11 and a weekly sum of \$300.00 which is the current minimum wage rate. The award for loss of future earnings will, therefore, be \$171,600.00.

The evidence in this case which I accept establishes that the plaintiff will most certainly require nursing care for the future. I am prepared to make an award under this head. I accept the submission of Mr. Tensingh that I should here make an award based on a time frame of 15 years (having regard to the age of the plaintiff) and computed on earnings of \$300.00 per week, the said sum of \$300.00 weekly being the current minimum wage rate. Accordingly, I award the plaintiff a sum of \$234,000.00 for this cause.

Lastly, counsel on both sides agreed at the trial of this action that a sum of \$191.00 monthly representing the cost of future medication should be awarded to the plaintiff. Using a similar time frame of 15 years I, therefore, award a sum of \$34,380.00 under this head of damages.

In fine damages herein are assessed in a sum of \$1,756,096.00.

Interest is awarded on the sum of \$116,116.00 at a rate of 3% per annum from November 6, 1984 to the date of judgment.

Interest is awarded on the sum of \$1,200,000.00 at a rate of 3% per annum from the date of service of the Writ of Summons to the date of judgment.

Costs to the plaintiff to be agreed or taxed.