

Seals

Judgement Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CL 2001/M037

BETWEEN COURTNEY MORGAN CLAIMANT
AND RAFFIQUE GOULAUB DEFENDANT

Ms. Debra Dowding instructed by Arthur Williams & Co. for the claimant.

Ms. Suzette Campbell instructed by Campbell & Campbell for the defendant.

Heard 11th and 23rd November 2005

Campbell, J

The claimant, Courtney Morgan, was in a line of traffic “jammed” bumper to bumper on route to Spanish Town. On approaching the “t” junction at Featherbed Lane, he was aware of a vehicle, he first thought was a motorcar, traveling slowly heading towards Old Harbour. That vehicle, a van, was then about 60 feet away. He said he executed a turn and was on the other side of the road for about two minutes when his bicycle was struck from behind.

The defendant says he “crawling along at 10 kilometers per hour,” having slowed to accommodate a vehicle some four car lengths ahead. After

accelerating, a cyclist suddenly appeared before him. His van hit the cyclist's broadside.

Which version is correct? The defendant says at the speed he was traveling, the vehicle would have come to a stop within two feet. He said his vehicle was in the middle of the road. He can't recall where the cycle fell or what became of it. Hit on its broad side, would the cycle be in front of the van? The claimant fell, on his admission, to the left of the road. It was not disputed that a part of his body was resting on the soft shoulder. It was clear from his testimony that he did not see the cyclist until his van was "immediately" on him. Why was this when he was operating in the middle of the road and there would be some two feet separating the two lines of traffic? The allegation was he was failing to keep a proper look-out. He should have seen the claimant's bicycle before it appeared immediately before him.

The damage to the van would indicate it was going somewhat faster than the defendant alleged. The injuries to the claimant is more likely to have occurred in the manner contended by the claimant. He testified that he was not struck by the van. If the van had struck his bicycle's broadside, it is most likely that he would have been impacted. I would also expect that he

would have fallen before the car, considering the contention that the van was crawling. I find that the defendant was wholly liable for the accident.

The claimant had abrasions to his forehead, right side of his nose, shoulders, chest wall and both knees. There was a small .5cm laceration to his lower lip, and he had a deformity of his left great toe. X-rays revealed a subluxation of his left great toe and this was therefore reduced and splinted. Further examination revealed broken first and second lower incisor teeth. The claimant was admitted overnight. He was seen in surgical out-patient and discharged from the hospital's care on January 22, 1998.

The claimant relied on several authorities of which the authority of Garfield McLeod was cited by both sides - Gilbert McLeod v Keith Lemard (ass. Date March 1996). The plaintiff had suffered pain and tenderness to chest - multiple scattered abrasions - lacerations - Loss of consciousness. I thought that the instant case was more aggravated by the fact that the claimant had lost two teeth. Updated value of the \$100,000.00 is \$300,000.00.

In Nelson Walters Engineers Ltd. & Ors. v David Noel (Ass. Date Feb 1992), where there was damage to teeth - Multiple facial lacerations and abrasions and an abrasion to cornea. I thought the instant claimant's injuries

were more aggravated in that he had suffered a loss of consciousness.

Updated the value of the \$40,000.00 is \$280,000.00.

I therefore make an award for \$330,000.00 for General Damages.

I am constrained to make awards for Special Damages despite the absence of documentary support. The claimant's stay in the hospital has not been denied, and the total destruction of his bicycle. Also of importance is that he was being treated by the doctors up until 22nd January 1999, when he was discharged. There would therefore be expected to be some impact on his work. An award of \$23,405.00 for Special damages. Cost to the claimant to be agreed or taxed.