

Judgement book

In the Supreme Court of Judicature of Jamaica

In the High Court Of Justice

Suit No. C.L. P076 of 1999

Between *Nickeisha Powell*
 (by her mother and next friend
 Valerie Wallace) *Claimant*

And *Grace Patricia Tomlinson*
 (for and on behalf of the Little
 London Primary School *1st Defendant*

And *The Board of Management*
 (for and on behalf of the Little
 London Primary School) *2nd Defendant*

And *The Ministry of Education* *3rd Defendant*

And *The Attorney General* *4th Defendant*

Pierre Rogers instructed by Gifford, Thompson and Bright for claimant

Miss J. Thompson and Miss Catherine Denbow instructed by the Director of State Proceedings for the defendants.

Heard: February 16, 17 and 26, 2004

Harris J,

The Claimant's Claim against the defendants is for damages for negligence and, or for breach of statutory duty, as a result of injuries she sustained to her left eye while she was attending school.

At the material time, the first named defendant was the principal of the Little London Primary School; the second defendant was the board of Management of the School and the third defendant was clothed with the general responsibility for management and operation of the school.

Thursday, February 27, 1997 was the school's annual sport's day. On that day, the student body, which had been divided into three House Camps, namely, Bogle, Gordon and Garvey, were on the playfield. The claimant, a 6 year old pupil at the school, was assigned to Bogle House Camp. She was injured by being struck in the left eye with a stone thrown by another student while she was in a classroom, being absent from her House camp.

The Claimant's case is that she sought and obtained permission from Miss Knotts, a teacher, to go to the classroom to get something to eat. She was given permission to leave the Camp. While she was in the classroom, a boy threw a stone hitting her in the left eye.

The defendant's case is that over 200 children including the Claimant were in the Bogle House Camp. Four teachers, Mrs. Yvonne Harris Brown, Miss Janet Andrews, Miss Knotts and Miss Christine Brown were assigned to supervise them.

Prior to the commencement of activities on sport's day, and several days leading up to the day, the students were informed by the principal that

they were required to remain in their house camps and could only leave on the grant of permission by a teacher within the camp. Before the incident occurred, Mrs. Harris Brown reminded the students in Bogle House that they should not leave the camp without permission. The Claimant left the camp without consent of any of the teachers and while she was away she received her injuries.

I will now address the claims. In addition to the claim for negligence the Claimant also seeks relief with respect to a breach of statutory duty by the defendants. However, no evidence was adduced by the Claimant to establish any breach by the defendants, of the Education Act and the relevant regulations thereunder. Consequently, the claim for breach of statutory duty is deemed to be abandoned. Consideration will only be given to the claim for negligence.

The fundamental question to be determined is whether the defendants had taken all reasonable steps to ensure the safety of the Claimant. It was sports day. It was admitted by the principal that the spirits of the children were very high. Did the defendants put into place adequate precautionary measures to guard against the claimant receiving that injury which she sustained?

It cannot be disputed that, at the material time, the defendants owed a duty of care to the Claimant. That is, a duty comparable to such as is exercised by a careful parent. In recognition of the duty owed by a schoolmaster to his pupils, *Lord Esher in Williams v Eady (1893) 10 TLR 41 at 42* declared :-

" As to the law on the subject, there could be no doubt; and it was correctly laid down by the learned judge that, the school master was bound to take such care of the boys as a careful father would take care of his boys, and there could not be a better definition of the duty of the schoolmaster."

The defendants are saddled with the responsibility of putting in place such safeguards to guarantee the safety of the Claimant. The question is whether they had done so, and by so doing discharged their duty of care.

The Claimant asserted that she had obtained permission from Miss Knotts to leave the House camp in order to get food. Nowhere in her claim is any there any averment that she had sought and obtained permission from Miss Knotts. To rely on the assertion that she had obtained permission to be absent from the House camp, it was necessary for this to have been grounded by her pleading. This having not been done, no account can be taken of her evidence that she had left the House Camp by permission.

It is the defendant's evidence that the Claimant was not granted permission to leave the camp. But did they have in place reasonable and proper arrangements to preserve her safety that day? It is an acknowledged principle of law that in considering whether reasonable care had been exercised, the age of the child must be taken into account. The degree of care to be expected must be proportionate with the age of the child. At the time of the incident, the Claimant was a mere 6 year old. A child of tender years. The defendants were obliged to ensure that proper and adequate supervision over the child was exercised.

However, a school is under no obligation to keep its pupils supervised every moment while they are at school See *Board of Education for the City of Toronto & J.C. Hunt v Higgs b.n.f. Lowings & Higgs 1960 SCR 174*. It follows that that there is no duty on the part of the defendants to have kept the Claimant under constant supervision that day. In light of the Claimant's age, the extent of the supervision accorded to her and the fact that it was sports day are highly relevant factors.

Over 200 children were in Bogle House Camp of which the Claimant was a member. Only four teachers were assigned to carry out supervisory duties despite the fact that there were very young children among the group of children in the camp. Young children have the tendency to stray. The

Claimant was among the youngest, the most vulnerable of the group. It was incumbent on the principal and the teachers to put distinctive measures in place to enhance their protection. Special care and attention must be devoted to their monitoring.

About 11 o'clock on the morning of the incident, Miss Andrews had left the camp to collect oranges. On her way back she saw the Claimant in corridor of the school building close to the classroom in which she was injured. After making inquiry of her for the reason for her being there, and she replied was "Nothing teacher", Miss Andrews thereafter took her a part of the way and instructed her to return to the House camp.

This act of Miss Andrews in taking the Claimant a part of the way and directing her to return to the camp is wholly unsatisfactory. Miss Andrew's conduct can only be described as careless. It was sports day. The spirits of the children were high. Miss Andrews sees the Claimant, a mere six year old, some distance away from her designated location, she ought to have foreseen that if the child had not been taken back to the camp she could run the risk of being harmed. Instead of escorting her back to the camp and depositing her in the custody of one of the other teachers, Miss Andrews simply accompanied her to a point and ordered her to return to the camp.

The admonition issued by the principal and the reminder by Mrs. Harris Brown that the children should not leave the camp without permission is insufficient. The Claimant was among the youngest of the children in the camp. It ought to have been foreseen that she, a six year old, might have strayed and some mischief might be encountered by her. In all the circumstances, the 1st defendant ought to have made arrangements for the assignment of a teacher specifically to attend and monitor the youngest children. She in fact admitted that it would have been prudent for someone to have been specially assigned to them.

It is interesting to note that incident occurred on February 27, 1997 but the matter was never reported to the principal until March 3, 1997, some three days after. This, in my opinion, points to the fact that the teachers who were in charge of the camp recognized that they had failed in their responsibility and had been reluctant to bring the matter to the attention of the principal immediately upon the Claimant's receipt of her injury.

There is also another feature of this case which I find disturbing and that is, that after the Claimant was injured, Miss Andrews took her to the water fountain and washed her eye, took her to the Health Aide on duty then took her back to the classroom and left her with a parent. It was not until after the Claimant's mother's arrival at the school half an hour later that she

was she taken to the doctor. The Claimant had received a blow to the eye. Her mother, Miss Valerie Wallace disclosed that when she saw her, the left eye was completely closed and she was crying. It is obvious that her injury was serious but clearly Miss Andrews did not treat it as such. The manner in which she chose to deal with the injury is highly unacceptable.

There was not in place adequate supervision for the Claimant on the day when she received her injury. The lack of supervision on the part of the teachers in whose care the Claimant's custody had been entrusted in addition to the failure on the part of the principal to assign teachers supervise the youngest children led to the Claimant's wandering from the House camp and subsequently being injured. No reasonable or proper arrangements were made to prevent the Claimant from straying into danger although it would have been foreseen that she might be injured. The defendants have therefore not discharged their duty of care and are liable to the Claimant.

I now turn to the matter of the assessment of damages in respect of the Claimant's injuries. Miss Wallace stated that the claimant had been seen by Dr. Longmore on February, 27 and February 28, 1997 by Dr. Aye Tun on March 8, 1997. She was also examined by Dr. Donovan Calder on October 21, 1997 and October 18, 2003 and Dr. Winsome Hastings on November 12, 2003. Reliance was placed only Dr Calder's and Dr Hastings' Reports.

On October 21, 1997 Dr. Calder found the Claimant's visual acuities in the right eye were 20/20 while it was 20/25 in the left. His findings also revealed a rupture of the sphincter muscle of the iris and retinal scars on the left eye. On October 18, 2003, her visual acuities were then 20/20 in each eye. Signs of trauma to the left eye and small rupture of the sphincter and chorioretinal scars were noted. In Dr. Calder's opinion, the injury to the eye leaves her with the increased risk of developing early glaucoma.

When Dr. Hastings saw her, like Dr. Calder, she saw no impairment of visual acuity in the Claimant's left eye. She however saw some degree of photophobia due to permanent enlargement of the left pupil as a result of injury. There was scarring of the retina due to injury. This resulted in scotoma in the left visual field. There is no likelihood of her recovery from this and it cannot be corrected by surgery. She opined that she is at risk of developing glaucoma and cataract.

It cannot be denied that the Claimant suffered great pain consequent on her injury. There is evidence that she complained of pain and that the eye was swollen. She therefore ought to be compensated for pain and suffering.

There is a dearth of cases from which assistance can be procured with respect to an award. Some guidance as to the sum, which ought to be awarded to her, can be obtained from the case of *Tulloch v Henry*

Harrison's' Assessment of Damages for Personal Injuries page 239, cited by Miss Thompson. In that case, the Plaintiff suffered a 3-inch laceration below the right eye, approximately a 5 inch wound over the eye with the resultant disability of loss of vision in the eye. In October, 1990 an award of \$65,000.00 was made to him. That sum currently translates into an award of \$699,229.37.

The Claimant in the present case has suffered no major deficit to the eye. The Plaintiff in the case cited had lost sight in the injured eye. However, in the case under review, there are retinal scars, which predisposes to an increased risk of the Claimant developing cataract and early glaucoma, and this risk must be taken into account. In assessing an appropriate award, the sum of \$699,229.37, will have be discounted but in my judgment it should be reduced by 50 percent. The sum of \$350,000.00 would therefore be adequate compensation for the Claimant's pain and suffering.

Special damages have been agreed at \$15,639.00.

Judgment for the Claimant in the sum of \$365,639.00, being general damages of \$350,000.00 with interest thereon at the rate of 6% per annum from the date of the service of the Claim Form and special damages of \$15,639.00 with interest thereon from February 27, 1997. Costs to the Claimant to be agreed or taxed.