

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. R162 of 1990

BETWEEN

BRIAN RIGG
(Inf. EVERALD RIGG)

PLAINTIFF

A N D

ICYBELL BOSWELL

DEFENDANT

R.S. Persadsingh for the Plaintiff.

Jeffrey Mordecai instructed by Nunes, Scholefield, Daleon and Co. for the Defendant.

Heard October 7, 8, and 9, 1992

PITTER, J

Brian Rigg a twelve year old school boy was injured when the bus in which he was travelling overturned on the Prospect Main Road in the parish of St. Ann on the 23rd February, 1988. The defendant is the owner of that bus. As a result of the accident, the plaintiff sustained head and other injuries and was hospitalised for seven days. His evidence is that he had numerous cuts to the face which left him with ugly scarring. He said that because of this, he earned the nickname "Scarface", which eloquently describes his facial appearance. At school his classmates tease him incessantly about his disfigurement and this led to his being transferred to other schools. The taunting and teasing continued and his schoolmates would shun him, not many wanted to play with him. People in the district would mock and tease him and he found himself unable to cope with this. Before this he was very active in sports. He said he was very bright in school getting outstanding marks. This is no longer so. He said that after the accident he could not concentrate and he would suffer severe headaches and dizziness, and when he reads he would often skip the lines and become forgetful. In 7th grade he came 27 out of a class of 52. He cannot now play strenuous games and was advised by his doctor not to do so. His ambition he said was to become an engineer, but he did not think he would make it although he was still trying. He takes pills every day to relieve him of his headaches.

Miss Angella Williams, the plaintiff's mother, who has had the benefit of training at Canewood Teacher's College and Shortwood Training College, gave evidence to the effect that the plaintiff was very bright in school prior to the accident. Since then however, his work has become very poor. She testified that even now at Secondary School level, his work remains poor inspite of special classes

arranged for him. She said that he has become forgetful, depressed, clumsy, unhappy and miserable, and that he is very conscious of the scarring to his face as his schoolmates tease and laugh at him. She encourages him a lot and in a recent test at school he got 65%. She thinks he has made some improvement since 1989 and has consented for him to have corrective surgery to his face.

Doctor Ruth Doorbar, a clinical psychologist, in her evidence said that during the period 28th April 1989 to the 22nd June, 1989, she did a psycho-analytical assessment of the plaintiff. She subjected him to a series of intellectual and personality tests which include the Welcher Intelligence scale for children, the Rorschach personality test, the Thematic appreciation test, the House-Tree drawing test and the Bender Gesalt test for brain damage. From these tests she concluded that the plaintiff has a 20% disfunction or impairment of his intellectual capacity. She found him to be very depressed, nervous, and anxious. She said he tends to take a brave stand to cover up these feelings which only makes his emotional stress more profound. In terms of his self-concept, particularly his body image, he has developed psychoneurosis i.e. seeing himself as damaged, chipped up and scar-faced. In interpersonal relationships, he feels rejected by others, especially his peers. Doctor Doorbar is of the opinion that the plaintiff suffered brain damage with post-traumatic psychoneurosis severe. Cross-examined by Mr. Mordecai, she claimed competence to diagnose medically organic brain damage even though she is not a neuro-surgeon or even a medical doctor. She is of the opinion that there is a possibility of improvement to the 20% disfunction of his intellectual capacity.

Mr. Ramahale Ramharrach testified that as an engineer and a mechanic, he earns over \$1,000 per day and persons working under his supervision earns up to \$250 per day. Cross-examined, he admitted that he is not a certified engineer and that his earnings involve the operations of D8 and D6 tractors. His evidence does not assist the Court in the computation of the plaintiff's loss of future earnings or disability on the labour market.

By consent of both attorneys, medical reports from doctor John Hall, Consultant Neurologist, doctor Ivor Crandon, Consultant Neurosurgeon, doctor R.E. Cheeks Consultant Neurosurgeon and doctor Geoffrey Williams, Consultant Plastic Surgeon, were all tendered and admitted in evidence. These reports confirm

that the plaintiff suffered head injury, significant facial scarring, and deformity of the left cheekbone and the lower border of the eye socket. Doctor Williams is of the view that the plaintiff can benefit from reconstructive plastic surgery to improve his appearance, however he will be left with tell-tale signs of the accident. Special damages in relation to this aspect of the claim was agreed at \$60,000.

Doctor Hall's opinion differs from those of doctor Crandon and Cheeks, his colleagues, in that he assesses the plaintiff's injuries to be far more severe. He finds the plaintiff to be suffering from post-traumatic epilepsy (sensory seizures) indicating severe brain damage with disabling threatening overtures. He concludes that there is a likelihood of early onset of Alzheimer's dementia and premature Parkinson's disease (shaking palsy) both of which are disabling and life threatening disorders of the nervous system.

Doctor Crandon's opinion is that the plaintiff suffered head injury with mild brain damage with significant disability.

Doctor Cheeks' opinion is that the plaintiff has problem in those areas of higher mental functioning which involve the processing of new information and appears to have a 10% to 15% impairment of his recent memory function. I take this to indicate that the plaintiff suffered mild brain damage.

All consultants agree that the plaintiff in addition to brain damage, suffered severe facial injuries resulting in considerable disfigurement.

Having observed the demeanour of the plaintiff in the witness stand, the way he responded to questions put to him, particularly in cross examination, my own view coincides with the opinion of Drs. Crandon and Cheeks. The evidence of the plaintiff and his mother in particular, do not support the severity of the injuries as described by doctor Hall. I find therefore on a balance of probabilities that the plaintiff suffered significant cranio-facial injuries resulting in mild brain damage as alluded to by doctor Doorbar. I also find that there is considerable disfigurement, the result of unsightly scars, as well as facial assymetry from an uncorrected displaced fracture left of the cheekbone.

Liability in this action is admitted and my attention is now focussed on the quantum of general damages as it relates to pain and suffering and loss of amenities. Mr. Persadsingh in support of his claim under this head

relied on the following cases, as reported in Khans' Recent Personal Injury awards.

1. Devon Bertram Kelly (b.n.f) Fay Linton
v. Sevens Ltd. et al Volume 111 at page
215 where an award of \$140,000 for pain
and suffering was made (adjusted to
approximately \$420,000).
2. Elaine Russell (b.n.f) Ilene Griffiths
v. Brancroft Broomfield Volume 11 at page
206 where an award of \$25,000 for pain
and suffering and loss of amenities was
made (adjusted to approximately \$200,000).
3. Tanisha Henderson (b.n.f) Elease Trench
v. Gerald Ledford Volume 11 at page 223
where a global award of \$195,000 was made
- updated \$952,000.
4. Anthony Rose (b.n.f) Yvonne Walker v.
Thomas Smith Volume 11 at page 210 where
the Court of Appeal awarded the sum of
\$80,000 updated \$703,000.

It is of interest to note that all these cases cited refer to young persons suffering brain damage as in the instant case.

Mr. Mordecai asked the Court to reject the report of doctor Hall as it relates to post-traumatic epilepsy as that condition does not exist. I am inclined to adopt that view as there is no evidence in support of this. He suggested that the Court use as its guide in determining the question of general damages, the case of Purchers v. Burchers et al reported at page 190 of Khans Recent Injury awards, Volume 11.

I have considered all these cases referred to and have come to the conclusion that having regard to the seriousness of the injuries and the resulting consequences of the scarring and disfigurements, a global award of \$750,000 is appropriate. Special damages are already agreed at \$11,500 and in addition \$60,000 for corrective surgery.

In fine damages are assessed as follows:

General damages in the sum of \$750,000 with interest at 3% per annum from the date of service of the writ to the 29th January, 1993.

Special damages in the sum of \$71,500 with interest at 3% per annum from the 23rd February, 1988 to the 29th January, 1993.

Costs to be agreed or taxed.