

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1989/S.157

BETWEEN	CURTIS SCARLETT (By his next friend JOYCE GRANT)	PLAINTIFF
A N D	HENRY WILSON	FIRST DEFENDANT
A N D	ALLEN HORACE FLETCHER	SECOND DEFENDANT

Crafton Miller and Miss Nancy Anderson instructed by Crafton S. Miller and Company for Plaintiff.

L. Gordon instructed by Messrs. Frater, Ennis and Gordon for Defendants.

December 19, 1990; & January 30, 1991.

ELLIS, J:

Liability is not in contest in this case and the matter is before me for assessment of damages.

The plaintiff on the 17th December, 1987, was a labourer on a delivery truck C.C.1308. In the evening of that day he was on the truck returning to St. Ann, having made deliveries in St. Mary. At a point along the Port Maria to Ocho Rios main road, the truck left front wheel developed a puncture. The driver stopped the truck, parked it properly on the soft shoulder, switched on the parking lights and he and the plaintiff proceeded to place the truck on its jack to facilitate the changing of the punctured tyre.

Whilst the truck was on its jack and with the plaintiff standing beside it, truck C.C.6755 driven by the second defendant negligently knocked it off the jack and caused severe injuries to the plaintiff's left leg.

The injury to the leg was so severe that it necessitated a below the knee amputation. In addition the plaintiff suffered great shock from loss of blood.

As a consequence of his injuries, the plaintiff alleges that he incurred expenses and lost earnings which he should recover as special damages.

The plaintiff also claims General Damages under the following heads:

- (a) Pain and suffering and loss of amenities;
- (b) Loss of future earnings;
- (c) Handicap on the labour market.

ASSESSMENT OF SPECIAL DAMAGES

The plaintiff was granted leave to add two items to Special Damages claimed namely:

Two wooden crutches @ \$80.00 each = \$ 160.00

One prosthesis @ \$1500.00 each = \$1500.00

The addition of these items would make his total for special damages to be \$21,590.00 with loss of earnings at \$120.00 per week from 7th November, 1987 - 19th December, 1990, being a substantial portion thereof.

There was no contest of the items other than that of loss of earnings.

The plaintiff on being cross-examined by Mr. Gordon admitted that in any event, he would have stopped working to go to school as of January, 1988. In the circumstance, Mr. Gordon submitted that the evidence reflects loss of earnings for only eight weeks at most.

I am of opinion that Mr. Gordon is correct in his submission and I hold that the plaintiff cannot be awarded any more than eight weeks loss of earnings.

The plaintiff is awarded Special Damages as follows:

Prosthesis	--	\$1,500.00
Repairs to prosthesis	-	60.00
Crutches	--	590.00
Medical Report	-	50.00
Transportation	-	750.00
Clothing lost	-	260.00
Loss of earnings 8 weeks at \$120.00 per week	--	960.00
TOTAL		<u>\$4,170.00</u>

The above amount is to bear interest at 3% as of 7th November, 1987.

Counsel on both sides are agreed that the plaintiff's injuries must have caused great pain and suffering. A below knee amputation of necessity results in loss of amenities. As a consequence, any award for general damages must include damages under those heads.

In addition, arguments were addressed to me on the inclusion of the cost of changing the prosthesis and the repairs thereto. Mr. Miller also addressed the court in support of a head of damages for handicap on the labour market.

The plaintiff has impressed me with his apparent fortitude. There is no doubt that he is a very intelligent young man. He is well aware of his injury and consequent disability but he is not despondent.

Those exceptionally good qualities are peculiarly for the plaintiff. They cannot or ought not to enure to the benefit of the defendants.

The principle adumbrated by Lord Diplock in Browning v. War Office [1963] 1 Q.B.750 that damages for negligence are compensatory and not punitive is still valid today.

Bearing the principle in mind, I now award damages as follows:

Pain and suffering and loss of amenities - \$185,000.00

The plaintiff is one legged young man and if and when he comes onto the labour market he will be at a disadvantage. Such a circumstance attracts compensation and in this case I make an award of \$15,000.00 for disadvantage on the labour market.

The plaintiff will of necessity need to change and repair the prosthesis from time to time. I hold that he would need six such changes. I would say that the cost of a prosthesis and its necessary repair will increase to about \$5,000.00. He would therefore need a figure of \$30,000.00 to cover that cost.

In summary the general damages are:

(i) Pain and suffering and loss of amenities	-	\$185,000.00
(ii) Handicap on the labour market	-	15,000.00
(iii) Six changes and repair of prosthesis	-	30,000.00
TOTAL		\$230,000.00

There will be interest on \$200,000.00 at 3% as of the date of service of the writ which is 28th October, 1989.

Costs to the plaintiff to be agreed or taxed.