

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1988/S.241

BETWEEN	BERTRAM SHARP	PLAINTIFF
A N D	IMOGENE COOPER	DEFENDANT

A. W. Campbell, Miss J. Nosworthy and O. K. Tonsingh for the Plaintiff.

D. Henry instructed by Nunes, Scholefield, DeLeon and Company for Defendant.

FEBRUARY 19, 20, 21, 1991 AND MARCH 22, 1991

ELLIS, J:

The plaintiff's case is in negligence. He alleges that on the 30th September, 1988, at about 4 - 5 p.m. he was a pillion passenger on a motorcycle driven by one Steve Wallace. They were proceeding up Shortwood Road towards Grants Pen Road.

He says that on reaching the intersection of Shortwood Road and Upper Waterloo Road he felt a hit to his left leg and he fell unconscious. He did not see the car neither did he see where it came from until he felt a hit to his left foot. He became unconscious and recovered consciousness in hospital. He said the motorcycle was not in the act of overtaking any vehicle at the time of collision.

His injuries were a broken leg, cut to his upper lip below the nose, a cut to the back of his head and some trauma to his right kidney with a consequential passing of blood from his penis.

His left leg is now shorter than his right leg and this has resulted in a 10% permanent disability in that limb.

He says as a result of his injuries, he lost wages and clothing to an amount of \$4,110.00. He claims that amount as special damages.

In answer to questions put to him in cross-examination he maintains inter alia -

- (a) That the motorcycle on which he was a passenger was travelling 2 ft. from the left side of the road as one proceeded up Shortwood Road;

- (b) That the motorcycle was not overtaking any line of vehicles;
- (c) The defendant's vehicle was moving when it hit him;
- (d) The collision was on the left side as one goes up Shortwood Road;
- (e) No red Datsun motor car was at the vicinity of the collision.

The rider of the motorcycle Steve Wallace was called as a witness as to the fact of the collision. He says he was riding up Shortwood Road on the relevant date. On reaching C'N'C Supermarket the defendant's vehicle came suddenly on at a fast speed from the car park and hit into the left side of his motorcycle. He says at the time of the collision none of the vehicle going up Shortwood Road was stationary. He denies that his motorcycle hit into the defendant's stationary car and then hit into a red Datsun car. He also says the accident was between 12 - 1 p.m.

The doctors who were called gave evidence as to plaintiff's injuries.

The defendant gave evidence and called two witnesses, the driver of her car and the policeman who investigated the accident.

The first witness called was the driver Audley Facey. He said on the relevant date at about 1:40 p.m. he drove from the parking lot of the defendant's Supermarket. He drove slowly and stopped at the entrance to Shortwood Road. He intended to go right down Shortwood Road and his right indicator was activated.

He said that whilst he was waiting, traffic lights at Shortwood Road and Waterloo Road changed to red and traffic stopped. A driver of a car allowed him to proceed and he drove across and stopped at the white line. A red Datsun car which was proceeding down Shortwood Road stopped. While his car and the Datsun car were stationary, the motorcycle tried to overtake his car and the back of the cycle hit into the fender of the car. Having hit his car it went forward and hit into the stationary Datsun. He said both cars remained as they were before the collision until the police came.

The policeman confirmed in his testimony the positions of the vehicles involved in the accident and he also said he went to the scene of the accident at 1:50 p.m.

LIABILITY:

On a consideration of the evidence I am in no doubt that the collision took place on the right of the road at 1:40 p.m. and in the circumstances stated by Audley Facey.

It is not the defendant's driver who is responsible for the collision in any degree and I so find.

There will therefore be judgment for the defendant with costs to be agreed or taxed.

DAMAGES:

If I am wrong on the question of liability damages would be assessable.

The plaintiff in his claim for special damages proved only a loss of \$260. He was extremely weak in evidencing loss of earnings as claimed. I would have awarded him \$260 special damages with interest at 3% as of 30th September, 1938.

General damages would in this case involve a consideration of pain and suffering and loss of amenities.

Based on the medical evidence and on a consideration of all the circumstances, I am of opinion that an award of \$85,000 with interest at 3% as of date of service of the Writ would have been adequate compensation.