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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L. 1989/W134

BETWEEN	MICHAEL WATSON	PLAINTIFF
A N D	ALCAN JAMAICA LIMITED	1ST DEFENDANT
A N D	GEORGE GRINDLEY	2ND DEFENDANT
	A N D	

SUIT NO. C.L. 1992/W010

BETWEEN	WILLIAM WATSON (near dependent of Dave William Watson - deceased)	PLAINTIFF
A N D	ALCAN JAMAICA LIMITED	1ST DEFENDANT
A N D	GEORGE GRINDLEY	2ND DEFENDANT
A N D	MICHAEL WATSON	3RD PARTY

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

Mr. Maurice Frankson and Miss A. Frankson for
the defendants instructed by Gaynair and Fraser.

Heard: May 22, 24, 25, 31, 1995
June 1, 2, 5, 6, 1995
January 26, 1996.

Reckord J.

Both of these actions are claims in negligence and they arose out of a motor vehicle accident which took place on the 26th of January, 1989, near the Peck-a-Pepper Factory along the Shooters Hill Road in the parish of Manchester. The actions were consolidated. In the first named action the plaintiff was driving his own motor-car, a Toyota Celica registered G314 AG, from Shooters Hill going towards Alcan when it collided with a pickup travelling in the opposite direction owned by Alcan Jamaica Limited the first defendant and driven by the 2nd defendant. The plaintiff received serious injuries for which he was hospitalised and his brother Dave William Watson who was seated beside him in the passenger's seat succumbed that same afternoon from injuries he suffered in the said accident.

The second-named action was brought by William Watson, the father of the deceased Dave William Watson on behalf of the near relatives against the same two defendants.

The second defendant who also was injured counter-claimed against the plaintiff in the first action and issued Third Party proceedings against him in the second action.

Before the evidence began the attorneys on both sides agreed upon the claim sum for special damages. A certified copy of the Birth Registration Form for the daughter of deceased Zulakha N. 1A 1910 - exhibit I, letter dated 5th May, 1993 from Inland Revenue Department to Mr. William Watson regarding the employment of Dave Watson as exhibit 2. Six photographs of the scene of the accident as exhibit 3.

The Plaintiff's case

The plaintiff testified that at about 1:30 p.m. he was driving his left hand driven car about 40 miles per hour on the left hand side of the road. His brother Dave was seated on his right. The road surface was asphalted and dry and his car was travelling down a slant on the road where there was a slight right hand corner. Just as he about quarter chain from the bend the pickup which was travelling about 50 - 55 miles per hour crashed head on into his car on his, the plaintiff's left hand side of the road. The pickup had taken this corner wide. Although no white line was in the road at that time he claims his left was about one foot from the left hand bank when he was hit. His evidence continued and I quote "The defendant was driving the bigger vehicle. On collision defendant's vehicle swung to its left. The power of his vehicle bring my vehicle with him - he brought my car to his left spinning my vehicle around so that it faced the direction it was coming from. His vehicle mounted my vehicle and his vehicle turned over. My vehicle ended up in the middle of the road near to my side".

The plaintiff said he lost consciousness after that and regained consciousness about 7:00 p.m. on the following day in the Mandeville Hospital. The impact had pushed the bonnet of his car through his windscreen glass and cut his brother's throat. He died right there. He personally received injuries to his hands, head and chest, his right foot was broken in more than one place. It was put in plaster of paris.

He was transferred to the University of the West Indies Hospital by helicopter.

At the Mandeville Hospital he was attended by Dr. Wellington while Dr. Dujon and two other doctors attended to him at the University of the West Indies Hospital in the intensive care unit where he spent 7 - 10 days. Dr. Christopher Rose also attended to him. He spent about two months at this hospital. His foot was bored in two places and pinned. They operated on his right hand twice and pinned it. He is right handed. They also operated on his stomach which left scars he now has. The scar at his neck was as a result of a tube being inserted there. Even as he gave evidence he was feeling pains to his foot and elbow and stomach. The fingers on his right hand can't operate as before. His right hand can't go to his mouth nor comb his hair, nor wash his body. He can't handle games like table tennis which he used to play. He can't play football as he gets cramps and severe pains when the ball touches his foot. There were scars on his foot and bones at the fractured areas were pushing out. He can no longer make a good fist with the right hand. He suffers numbness in that hand and things tend to fall from it. Because of injury to the elbow his right hand can't straighten out. "I walk hip shot like one foot shorter than the other". His foot was placed in above knee cast after the pins were taken out.

The plaintiff had on cast for about six weeks. He returned as out-patient to the University Hospital where he made about five to six visits. In 1994 Dr. Rose operated on his right hand at the St. Joseph's Hospital where he spent two days. His hand was put in a sling for about one month. He had two sessions of physiotherapy.

The plaintiff paid \$17,000.00 to Dr. Rose for this operation and \$10,000.00 to St. Joseph's Hospital and \$3,000.00 for the physiotherapy.

He never returned to work until December 1991. At the time of the accident he had a contract with Alcan to transport workers. During his incapacity his bus was still being operated. He had to pay a driver \$2,000.00 per week. He employed a helper to assist him at home as he could not cope by himself. He paid her \$250.00 per week. She remained as such until he returned to work in December 1991.

On leaving hospital he got a pair of crutches to assist him in moving around.

The width of the road at the point of impact was estimated between 21 - 23 feet. His car was about four feet six inches wide, the pickup about five feet six inches wide. He identified six photographs of the vehicles taken at the scene of the accident. Photograph numbered 3A shows a bus at left going towards Alcan. The plaintiff's car in the middle facing Shooters Hill. The impact had spun his car around and it was now facing the direction where he was coming from. 3B shows condition of both vehicles after the accident. 3C shows front of plaintiff's car, 3D shows both vehicles, 3E shows the pickup, 3F shows pickup on its side.

The plaintiff denied the particulars of negligence set out in the defendant's particulars of claim and said that the accident happened so fast, it was impossible to stop, slow down, turn aside or manouvre his vehicle to avoid the accident.

On application of plaintiff the particulars of special damage in the statement of claim was amended to include the following -

\$27,300.00 following operation to plaintiff's hand
in 1994.

\$146,000.00 paid from salary to driver

\$32,500.00 paid for helper's salary.

These sums totalling \$205,800.00 now added to the original claim of \$259,191.00 totalling \$464,990.00.

Under cross examination the plaintiff denied he was travelling between 45 to 50 miles per hour. He first saw the pickup when it was about quarter chain from him and it was on his side of the road then. He acknowledged that he did not blow his horn because it happened so fast. He lost consciousness about three minutes after the impact. He never measured the road at the point of impact. The driver started working on the 27th of January, 1989. He paid the driver up to December 1991. He denied he had recovered sufficiently to take over from driver in December 1989. This was the extent of the first plaintiff's case.

Mr. William Watson the plaintiff in the second action is a 71 year old farmer. His wife Joyce and himself are the parents of Dave William Watson who lost his life in the accident on the 26th of January, 1989. He testified that Dave was born on the 10th of May, 1964 and that at the time of his death was an employee at the Mandeville Tax Office. He received a letter from that office indicating Davis' salary. This was admitted in evidence by consent as exhibit 2. Dave was the father of one child Zulekha, born on the 5th May, 1993 (see birth certificate admitted by consent as exhibit I). She was one year and two months old at the time of her father's death and was living with her mother Sharon McDaniel at that time. Although he was not living with both parents, at the end of each month Dave gave his mother \$200.00 for pocket money and \$300.00 to Sharon for the maintenance of Zulekha. Zulekha is now attending school and is now living with himself and his wife.

Mr. Watson heard of the accident on the 26th of January, 1989 and went to the Mandeville Hospital where he saw Dave dead. He made arrangement for his son's funeral and attended same on the 4th of February, 1989. He paid to Lyn's Funeral Parlour \$17,500.00 and \$10,425.00 to Mr. James Lyons for preparing the grave and tomb stone. Receipts for these were admitted in evidence as exhibit 5 and 6. Dr. Christopher Rose, orthopaedic consultant surgeon saw the plaintiff Michael Watson at the University Hospital where he was a patient in 1989. He was 30 years old. He was suffering from injury to liver and stomach. Compound fracture of the right tibia and fibula. Fracture of the right olecranon (elbow joint). His team of doctors after cleaning up the wounds caused by the fracture placed the right foot in plaster of paris. An above elbow cast was applied to the right hand.

The patient was placed in intensive care unit as his respiratory distress syndrome was life threatening. It is a condition which primarily involves the lung.

On 7.2.89 he was taken back to theatre where an open reduction and internal fixation of the fracture to the elbow was performed.

On 15.2.94 he did further surgery on plaintiff at St. Joseph's Hospital as he had developed an ulnar nerve palsy which affected the right hand.

The plaintiff developed lower lobe pneumonia about the 9.2.89 and wound infection to the right leg - cast had to be removed to manipulate the fracture and replaced with above knee cast. Regarding surgery to the elbow the plaintiff was placed on an extensive programme of physical therapy. The plaintiff was discharged from hospital on 30th of March, 1989 and given appointment to the orthopaedic out-patient clinic.

In December 1993, he carried out an evaluation on the plaintiff who complained of the following:

1. Numbness in the right 4th and 5th fingers.
2. He complained that objects tend to fall from his right hand.
3. Pain and stiffness of right elbow.
4. Pains in the right leg.

Looking at the plaintiff in Court there is obvious bony prominence in the middle 3rd of his right leg. This limb is susceptible to open injury as almost no muscle over the bone of the tibia.

The range of motion of the right elbow was from 40° to 70°. The normal range is from 0° to 130°. This would produce difficulty in brushing hair, teeth and washing back. He last saw plaintiff on 27th April, 1995.

The restriction on the elbow and shortening of the low limb still remained.

The plaintiff suffered 27% permanent partial disability of the upper extremity which is equivalent to 16% of the whole person.

There was an 8% permanent partial disability of the lower extremity equivalent to 3% of the whole person.

Looking at plaintiff's stomach scars these represent surgical incisions.

Dr. Rose was paid \$10,000.00 for the operation he carried out, his assistant \$3,000.00 and the anaesthetist \$4,500. He regard stomach, liver and spleen as vital organs for the well being of man. Man can't survive without a liver, damage to the liver can be a serious injury.

Plaintiff can make a complete fist but there is weakness in the hand. The power of his grip is reduced.

Under cross-examination Dr. Rose stated that a compound fracture can take up to a year to heal, if infected. The elbow bone would take about eight weeks to heal. By end of 1989 the plaintiff could bear full weight on his leg. He was of the opinion that by end of 1989 the plaintiff would have been able to drive a motor vehicle. Dr. Rose's bill for fees tendered as exhibit 8.

This was the end of the plaintiff's case.

Defendant's case

George Grindley testified that he was employed as Dairy Supervisor at Alcan Jamaica Limited. At about 1:30 p.m. on the 26th of January, 1989, he was driving a right hand drive pickup from direction of Alcan going towards Shooters Hill. The road was asphalted, dry and visibility good. He was travelling uphill about 25 - 30 miles per hour on the left hand side of the road. He was accompanied by two students who were seated beside him. There was no white line in the middle of the road.

He said he saw a Toyota Celica "coming in an uncontrollable manner, it was bearing down on my side. I then realized it was coming towards me. I then made a quick turn to my left by which time the impact took place and my vehicle overturned, it was coming about 60 miles per hour. My right front was hit".

The defendant and the two students were injured. Defendant received treatment at the Mandeville Public Hospital then transferred to Hargreave Hospital where he received treatment for seven days. From there he was transferred to Medical Associates Hospital, Kingston, spent seven days there and then discharged.

In August 1992 because of dizzy spells he was having he consulted Dr. Hall of the University of the West Indies Hospital who sent him to a brain centre in Miami. He did an X-ray of the head and received treatment there for five days. He sought further medical attention in Miami as he was having severe headaches.

In giving further details the defendant said that the accident took place on his side of the road and not on the plaintiff's side. He denied he was travelling between 50 - 55 miles per hour and denied that his vehicle mounted the side of the Celica.

He continued - "When I made the left turn to avoid the impact, the collision took place then and because my vehicle was on a left turning position it turned over on the right side." Vehicles coming behind could not pass on his side of the road. He denied that he was not keeping a proper look out and that he lost control of his vehicle.

Under cross-examination defendant said he was driving in 3rd gear at the time of the accident. The width of his pickup was five feet six inches and he was within two feet six inches of his near side while plaintiff's car about six feet from his (the plaintiff's) side. The car was about half chain from him when he first saw it and the width of the road measurement by him was thirty feet. The plaintiff's car came over on his half of the road. He was shown photographs of the scene taken after the accident and insisted accident took place on his half of the road and that the impact was on the left side of the car. He did not apply his brakes or blow his horn before the accident. He did not take the bend wide and went on plaintiff's side of the road. He returned to work forty one (41) days after the accident but never lost any pay.

The defendant called no witness and the Court heard addresses from counsel on both sides. On behalf of the defendant Mr. Frankson submitted that the paramount question was on whose liability did the accident lay. On the totality of the evidence and balance of probability the defendant's version must be preferred. His credit was not impeached, his account was simple, straight forward and consistent. He was not illusive with his answers. He conceded the defendant was unreliable regarding measurements. This in contrast to the plaintiff's account which was inconsistent and complex and evasive under cross-examination. He perjured himself by giving evidence of his knowledge which was not so.

On the question of damages for injuries suffered by the plaintiff Mr. Frankson admitted that the defendant suffered serious injuries but that the internal ones were healed satisfactory within two months. He questioned the doctors opinion that the plaintiff suffered permanent partial disability of 27% of the whole man as rather high and submitted that no award be made for handicap on the labour market. Mr. Frankson referred to a number of cases where assessment of personal injuries were done and submitted that Court contemplate an award within the range of \$200,000.00 - \$400,000.00.

With regard to injuries suffered by the second defendant, Mr. Frankson submitted that an award of \$120,000.00 for pain and suffering and asked for judgment for the second defendant.

With regard to the claim by William Watson, near relative of Dave William Watson, deceased in Suit No. C.L. W010/92, the claim of \$27,925.00 for Special Damages was not being challenged.

The Damages under the fatal accident Act. Mr. Frankson submitted that the deceased was not maintaining his parent. In any event the father was not over seventy-one years old. Mother over sixty-two years old, he suggested multiplier of three years for father and six years for mother. In relation to the child now eight years old he suggested a multiplier of sixteen years.

Finally Mr. Frankson argued that the question of contributory negligence ought to be considered by the Court and submitted that the plaintiff was more to be blamed.

Submissions on behalf of the plaintiff were shared. Miss Anderson on behalf of the near relatives and Mr. Miller on the question of general liability.

Miss Anderson referred to Court to S.(4) of the Fatal Accident Act. She submitted that the evidence of \$200 per month by the mother and father was not challenged. She suggested a multiplier of ten years. She was entitled to maintenance until she was eighteen years old. The sum was \$300.00 per month. She was under two years at time of accident and agreed that multiplier of sixteen years be applied.

On Liability

Mr. Miller submitted that neither of the two witnesses in the defendant's vehicle was called to testify and no explanation was given for their absence. The Court must draw reasonable inference from the physical evidence of the vehicles.

There was agreement that the impact was on the left front section of the car. There was also agreement that just at time of collision the defendant made a manouvre to the left; that the plaintiff's car spun around on impact and faced direction it was coming from.

That the pickup, the bigger of the two vehicles overturned in the road. Mr. Miller submitted that in defendant's evidence his failure to see the car before it was half chain away from him was due to him not keeping proper look-out. On the measurements given by the defendant both vehicles would be eleven feet apart - no accident could have occurred - again if defendant's evidence was accepted that plaintiff was six feet from his left, then the accident occurred on the plaintiff's side of the road corroborating the plaintiff. He submitted that the defendant came around the bend wide, hit the plaintiff's car, hooked it around and then overturned. He asked the Court to find that defendant was travelling as fast or faster than the plaintiff. The plaintiff was unconscious for over twenty-four hours.

The accident could not have happened in the manner described by the defendant, but as the plaintiff said. This was not a proper case for contribution and the defendant's case was distraught with irregularities, he has not come up with any explanation as to how he overturned.

Re Special Damages

Medical expenses agreed at	-	\$259,190.00
Additional claim not challenged.		
Medical expense, salary for driver and helper, Loss of earnings	-	\$205,800.00
		<u>\$464,990.00</u>

Re General Damages

Mr. Miller submitted that it was agreed that plaintiff suffered very serious and life threatening injuries, excruciating pains, underwent treatment in intensive care unit. Surgery had to be done to his neck to insert tube to assist him in breathing, (see Dr. Wellington's report exhibit 7). A piece of his liver was removed. He was discharged from hospital on crutches and on Dr. Rose's evidence he continued to see plaintiff and carried out operation on him in 1994. On the totality of the evidence he asked the Court to find that plaintiff did not return to work until December 1991. He further asked the Court to look at the injuries separately and then make a global award.

Mr. Miller cited several cases from Mrs. Khan's books on personal injuries awards made in the Supreme Court.

Injury to right elbow - two operations		
To elbow - claiming	-	\$500,000.00
Inability to make tight fist	-	\$200,000.00
Injury to leg - this caused infection - claiming	-	\$210,000.00
Unconsciousness - plaintiff unconscious for 30 hours claiming	-	\$100,000.00
Respiratory distress syndrome claiming	-	\$220,000.00
Liver and stomach - no comparable case can be found in our books but see Kemp & Kemp Vol. 2 - 1992 thereupon page 56304 - claiming	-	\$1,000,000.00
	Total:	<u>\$2,270,000.00</u>

Mr. Miller submitted all these claims are at the bottom of the ladder and that no further scaling down ought to be done.

Handicap on the Labour Market - Claiming - \$20,000.00

Findings

On the totality of the evidence and on the balance of probability the evidence given by the plaintiff must be preferred to the defendant. From the measurements given by the defendant the accident could not have occurred at all - the vehicles would have passed each other at least ten feet apart. The defendant also gave no satisfactory evidence of how his vehicle the bigger and by far the heavier of the two vehicles ended up in the middle of the road after overturning on its right.

I agree with the submissions by Mr. Miller that the defendant's failure to see the plaintiff before he was half chain away was due to the fact that he was not keeping a proper look out. He had two female students in his vehicle and his attention was obviously directed elsewhere than on the road which caused his vehicle to take the slight bend in the road on the right hand side and hit the plaintiff's car on its left front fender. I accept the plaintiff's evidence that defendant was travelling much faster than he admitted.

The weight and speed of defendant's vehicle spun the plaintiff's car around, mounted it on its left side and overturned. Looking at the photographs tendered in evidence it is clear that the plaintiff's vehicle received by far the worst damage.

I find no evidence to support the defendant's submission that the plaintiff's driving contributed to the accident. I accept the plaintiff's version that the accident occurred on his side of the road and that the defendant was totally to be blamed. The defendant's counter-claim is therefore dismissed.

Re Damages on suit C.L. W134/89

Undoubtedly, the plaintiff received some serious injuries. The respiratory distress syndrome was life threatening and he had to undergo treatment in the intensive care unit. Save for the claim made for injury to his liver and stomach all the other claims were based on awards in the Supreme Court and do not appear to be unreasonable. Despite Mr. Miller's request not to further scale down these claims I will make a global award of \$2M for pain and suffering and loss of amenities. The claim for \$20,000 for handicap on the Labour Market is refused as the circumstances of the case does not justify such an award.

The claim for \$464,990.00 as special damages was not seriously challenged. I accept the plaintiff's evidence that he never returned to work until December 1991. Accordingly, that is the sum awarded.

Re Damages in Suit No. C.L W010/92

Dependency of infant daughter - \$300 per month x 12	=	\$3,600.00 p.a.
\$3,600 p.a. for 163/4 years total	=	\$60,000.00
Dependency for parents - \$200.00 p.m. for 12 months	=	\$2,400.00
Multiplier of 5 years total	=	<u>\$12,000.00</u>
Funeral expenses	=	\$27,925.00

Final Judgment

On the first claim there shall be judgment for the plaintiff against the first and second defendants in the sum of \$464,990.00 for special damages with interest at 3% from the 26th January, 1989 to date of trial.

General damages assessed at \$2,000,000.00 with interest at 3% from date of appearance of writ 9.8.89 to date of trial.

Cost to be agreed or taxed. Counter claim dismissed with cost to the plaintiff to be agreed or taxed.

On the second claim there shall be judgment for the plaintiff against the first and second defendants in the sum of \$99,925.00 with interest at 3% from 17.6.93 to date of trial.

Action against third party dismissed.

Cost to be agreed or taxed.