

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. W 203 of 1985

BETWEEN	MONICA WILLIAMS	PLAINTIFF
AND	KINGSLEY BHOORASINGH	FIRST DEFENDANT
AND	HENRY WALLACE	SECOND DEFENDANT
AND	GOODYEAR JAMAICA LIMITED.	THIRD DEFENDANT

MR. AINSWORTH CAMPBELL, MR. ALVIN MUNDELL and MISS JANET NOSEWORTHY for plaintiff;

MR. CRAFTON MILLER and MISS NANCY ANDERSON instructed by MISS SANDRA JOHNSON of CRAFTON MILLER & CO. for first defendant;

MR. GUY JONES instructed by NUNES, SCHOLFIELD & CO. for third defendant.

4, 5, 6, 9 April; 30 May and 15 June, 1990

COOKE J.

On the coming of this action for trial the first defendant admitted liability. The plaintiff withdrew against the second defendant. The court ruled that the costs of the third defendant is to be borne by the first defendant. It is only left now to deal with the quantum of damages to be awarded.

The plaintiff, Mrs Monica Williams, who refers to herself as a hawk and peddler was on a bus owned by the first defendant when it overturned on Church Pen Road in the parish of St. Catherine. In the words of the plaintiff, "the bus on top of me - me on my chest - only head out and right hand. Side of bus on top of me - could not breathe." The bus was removed from off of her and she was taken to the Spanish Town Hospital where she was treated and sent home. She recounted that when she went home she had to be lifted from the taxi and carried. She said "I went inside - put on bed on back - from the 2nd March (1985) on back - can't raise up for three weeks. While on back for three weeks can't turn - nuff nuff pain. When raised up to be fed - nuff pain - to be fed three people involved, two holding, one feeding. After three weeks help myself with left hand." The plaintiff has thus painted a picture of suffering unremitting pain and being in a state of abject helplessness. Her injuries, she said, coupled with resultant traumatic neurosis brought on by those injuries, have made her unable to earn a living.

I will now deal with the physical injuries to the plaintiff. She said she received a big cut about three inches from above the wrist to the wrist. She also complained of pains to her chest. The pains to her chest she said still persists and her right hand is weak and virtually useless. Medical evidence came essentially from two sources: Dr. G.G. Dundas, an orthopaedic surgeon and Dr. John Hall, a neurologist. Dr. Dundas' evidence was by way of an agreed report dated April 15, 1985. This report was only tendered during the closing submissions by the defendant, and the tendering was no doubt prompted by the scathing remarks of counsel as to the absence of any evidence from this doctor. I now set out this report in full:

J.D.G. MCNEIL SMITH, C.D., F.R.C.S., F.A.C.S
G.G. DUNDAS, F.R.C.S. (EDIN)

Consultant Orthopaedic Surgeons

Orthopaedic Associates
12 Tangerine Place
Kingston 10
Jamaica, W.I.
Tel: 92-94763

April 15, 1985

Ainsworth Campbell
53 Church Street
KINGSTON

Dear Mr. Campbell,

MEDICAL REPORT ON MONICA E. WILLIAMS

I saw this patient on the 25th March 1985, for evaluation for an injury to her right forearm sustained in a road traffic accident on the 2nd March 1985.

Her main injuries were sustained on the dorsum of the right hand and forearm. Examination revealed the following:

1. A healed two-centimetre diameter abrasion on the dorsum of the hand.
2. Twelve-centimetre healed oblique laceration across the distal half of forearm. There was a one-centimetre zone of depigmentation on either side of the healing scar, and this was beginning to show signs of repigmentation. All her extensors were intact. There was about 30% restriction of wrist movements, which I expect she will recover.

Ms. Williams also pointed to some injury to her chest, which was possibly overlooked at her initial examination. She had sustained a fracture of the left third rib, and subluxed the right sterno-clavicular joint. The latter was significantly tender. her analgesic regime was recommended for continuation.

It is possible that she will have recurrent pain and discomfort from the sterno-clavicular subluxation. The other injuries should heal without any significant residue of disability.

Yours truly,

Signed

G.G. Dundas, F.R.C.S.....

Dr. John Hall examined the plaintiff on November 21, 1989. His opinion was that there was still pain and tenderness to the left armpit and the sterno-clavicular joint of the plaintiff. There were neurologically two important scars:

1. A twelve-centimetre long scar running down the back of the forearm to the wrist joint and
2. A three-centimetre scar from the wrist to the fourth metacarpal bone.

In respect of (1) supra, his clinical findings were that there was tenderness in that area and a condition known as hyper-aesthesia existed which indicated extreme sensitivity and led him to conclude that there was traumatic neuritis - that is damage to the branches of the lateral cutaneous nerve of the right forearm and also of the superficial branches of the radial nerve on that side. It was his view that the impairment of the nervous system should be categorized as severe. In respect of (2) supra there was interference with the nerve branches and this interference further exacerbated the disability in respect of (1) supra. There was weakness of the right hand and in particular an inability to cock up the wrist. The plaintiff's disability he said would be a severe handicap in the affairs of daily living as for example washing, cooking and combing her hair as she would be unable to dorsiflex.

I accept that the plaintiff received the injuries as stated in the report of Dr. Dundas. However, his expectation that she would recover from the thirty percent restriction of movement has not been realized and I accept the conclusion of Dr. Hall that there has been an impairment of the nervous system resulting in a severe impairment in the use of the right hand of the plaintiff.

I now turn to the area of traumatic neurosis. The plaintiff complained that as a result of the accident she was not her old self. She hears voices when no one speaks. Her sex drive has vanished. When her husband of thirty years touches her she becomes frightened. She fears she might now lose him. She is now an insomniac. The slightest noise frightens her. She said she had not gone back to sell, "can't go back to selling as I feel now." She complained that her brain was "mixed up."

The plaintiff called three doctors in support of her contention that she was suffering from traumatic neurosis. They were Dr. Barbara Hutchinson, Dr. John Hall and Dr. Ruth Doorbar. Dr. Hutchinson said she saw the plaintiff in October 1985 about two months later, then in February 1986 and finally on the day she (Dr. Hutchinson) gave evidence when there was a cursory examination within the precincts of the court. She opined that the plaintiff was depressed, disoriented and demotivated and there has not been any improvement in her emotional state. To her the plaintiff could not answer simple questions and this doctor had no doubt that the plaintiff's neurotic symptoms arose as a result of the accident. Dr. Hutchinson admitted that as a general practitioner, albeit with thirty years' experience, she was not specifically qualified in the area of emotional disorders and that it was her view that if she thought a patient required special care she would refer such a patient to a specialist. Presumably she did not think that this patient needed special care although in her overall assessment she deduced that the plaintiff's overall function was only "30% of the total person." Dr. Hutchinson prescribed anti-depressants.

Dr. John Hall is undoubtedly eminent in the field of neurology but he does not profess to have specialized expertise in the field of psychiatry. He says there is overlap between psychiatry and neurology. His evidence in this area is as follows: "I interviewed her in extenso and established she was a credible witness. She had good attention span - good recall - well oriented in time and place that allowed me to place credence in respect of her complaints and I deduced that she was affected by a chronic anxiety state and depression which were psychiatric disabilities precipitated by the accident and she has not recovered." Further, Dr. Hall was of the view that the plaintiff's psychiatric problem was not mild because "there is a clinical state persisting since the precipitatory episode." He believed that the plaintiff's psychiatric problem was a serious impairment to her pursuing employment and that this psychiatric problem coupled with the injury to the plaintiff's right hand seriously compromised her ability to earn a living. He held out little hope that the plaintiff would recover from her emotional disorder although there may be

some amelioration with the lapse of time and the use of potent medicaments.

Dr. Ruth Doorbar is a clinical psychologist. She utilized the Rorschach Test which she says is "a personality test that measures unconscious dynamics of personality." She found that "the plaintiff gave dysphoric responses from a psychotic person. I knew that she was having delusions either auditory or unusual." It was Dr. Doorbar's opinion that the plaintiff was experiencing extreme hopelessness about herself in vocational and domestic activities as well as social functioning. She concluded by saying "I believe that she should be tried with some intensive treatment. I don't think it will do any good. This needs a psychiatrist. Her condition is deteriorating."

I will now turn to deal with whether the plaintiff's assertion that she is suffering from traumatic neurosis as a result of the accident is sustainable. There is no doubt that if proved the plaintiff would be entitled to substantial damages for the resultant psychiatric disorders.

Lord Bridge of Harwick in his speech in *McLoughlin v. O'Brian* and others [1982] 2 WLR 982 said at p. 1000:

No judge who has spent any length of time trying personal injury claims in recent years would doubt that physical injuries can give rise not only to organic but also to psychiatric disorders. The sufferings of the patient from the latter are no less real and frequently no less painful and disabling than from the former. Likewise, I would suppose that the legal profession well understands that an acute emotional trauma, like a physical trauma, can well cause a psychiatric illness in a wide range of circumstances and in a wide range of individuals whom it would be wrong to regard as having any abnormal psychological makeup. It is in comparatively recent times that these insights have come to be generally accepted by the judiciary. It is only by giving effect to these insights in the developing law of negligence that we can do justice to an important, though no doubt small, class of plaintiffs whose genuine psychiatric illnesses are caused by negligent defendants.

In reliance on that passage the plaintiff has to demonstrate (1) that her psychiatric illness is genuine and (2) that this illness was caused by the negligence of the defendant. It is well recognized that in this difficult area the court welcomes the assistance of the psychiatrist - for it is the field of psychiatric medicine that concerns itself with the specialized study of emotional disorders. However, even in cases where there is a wealth of evidence from psychiatrists the court must still assess that evidence despite the fact that it may be all in one direction. The medical evidence proffered by the plaintiff pertaining to her emotional disorder was as to be expected supportive of her cause. However, none of those doctors who concluded that she was suffering from emotional disorder was a psychiatrist. Dr. Hall spoke of an "overlap" between psychiatry and his discipline of neurology but the court was left in darkness as to the extent or degree of this "overlap". It is the evidence of the plaintiff that she went to see Dr. Aggrey Irons, the noted psychiatrist. Yet she did not call him nor was any report from him tendered or any attempt made to tender any such report.

The court is therefore in a position where it has not received any assistance from an expert. The conclusions arrived at by the three doctors were based essentially on what the plaintiff told them. They were prepared to accept her credibility. Except for Dr. Hutchinson their role was entirely diagnostic and not concerned with curing. The plaintiff visited Dr. Hall and Dr. Doorbar with a view to presenting her case in court. There is no evidence that the plaintiff has concerned herself in any meaningful way in seeking medical attention in respect of her emotional disorders. There is no evidence of any course of treatment other than the taking of anti-depressants prescribed by Dr. Hutchinson which last prescription would have been in June 1986. There was nothing in the giving of her evidence either in her demeanour or in the answering of questions which even vaguely suggested that the plaintiff was not a totally whole person - and this is supposedly a person whose emotional state has been deteriorating since 1985. In my assessment of the plaintiff's credibility I find the report of Dr. Dundas most instructive - not for the medical opinion expressed therein but for the dates which it contains. This plaintiff swore that for the next three weeks immediately following the accident

she was bedridden. The accident was on March 2, 1985. Dr. Dundas saw her for the second time on March 25, 1985. I infer that she had been sent by her attorney-at-law to see Dr. Dundas. I infer this because the report is addressed to her attorney-at-law, Mr. Ainsworth Campbell and because of the language used in the report, "I saw this patient on the 25th March 1985, for evaluation for an injury to her right forearm sustained in a road traffic accident on the 2nd March 1985." It follows therefore that either while the plaintiff was supposedly helpless in bed she had been to see her attorney-at-law and had been to see Dr. Dundas at least once or that in two days she was able to see her attorney-at-law who arranged for her to see Dr. Dundas and she saw this doctor twice. I am inclined to the former view. I have formed the view based on the behaviour of this plaintiff that from the time of the accident she became preoccupied with the amount of damages she could obtain. She has not been averse to fabrication. There is nothing in the report of Dr. Dundas which indicates that when the plaintiff describes her helplessness after the accident she is being sincere. On a balance of probabilities the plaintiff has failed to establish that her assertion of psychiatric illness is genuine. I do not accept the conclusions of the doctors because as already stated their competence in the area of psychiatric medicine is quite limited or not well founded and their opinion was based to a large extent on the credibility of the plaintiff whose credibility in this area I find to be very suspect.

I now turn my attention to making an award to the plaintiff which I consider full and fair compensation for the injuries she has suffered and the consequential loss arising therefrom. It cannot be said from Dr. Dundas' report that the injuries are very serious. However Dr. Hall's view was that because of the damage to the nerves in her right hand she would be severely handicapped in her daily living. I accept that she is not able to work, cook, or comb her hair with her hitherto accustomed facility. I accept that her capacity to live a full life because of her physical impairment has been diminished. I accept that she has had and will continue to have recurrent pain and discomfort from the sterno-clavicular subluxation.

The plaintiff spoke of the excruciating pain she experienced after the accident and the great pain which is with her even now. But she is given to exaggeration and her lack of candour does not permit me to accept her word as to the level of pain which she says she has suffered and is suffering. Equally the court because of this lack of frankness, is reluctant to accept her word when she speaks of her right hand being useless. She was 51 years old at the time of the accident and I will take into consideration that the recurrent pain and discomfort from the sterno-clavicular subluxation will attend her for the rest of her life. She is right handed. The court is conscious that it is without any expert evidence of the degree of permanent partial disability.

In *George Brown v. Herbert Thompson* [C.L. 1981 B. 210] in the compilation *Recent Personal Injury Awards made in the Supreme Court of Jamaica*, Vol. 2 at p. 114 an award of \$25,000 was made in 1984 in respect to pain and suffering including the partial impotence and loss of amenities. Here there was:

- (1) permanent partial disability of right hand assessed at 90%;
- (2) half inch shortening of right lower limb;
- (3) permanent partial disability of 10% of right lower limb.

In 1985 in the same Vol. 2 referred to above the plaintiff in *Egbert Service v. George Leslie* [C.L. 1983 S. 160] at p. 118 was awarded \$12,000 for pain and suffering and loss of amenities in circumstances where:

- (i) left hand crushed with damage to muscle and bones;
- (ii) deformity to three metacarpal bones;
- (iii) 60% loss of function of the hand.

Again in that same Volume 2 in 1986 in *Joseph McLaren v. Kenty's Block Supplies Co. Ltd. v. Norman Noel* [C.L. 1985 M.359] at p. 124, the plaintiff was awarded \$15,000 for pain and suffering and loss of amenities where there was a 25% permanent disability to the function of the right hand. In this case there was:

- (1) comminuted fracture of middle finger of right hand;
- (2) fracture of proximal phalanx of little finger of right hand;
- (3) oblique fracture of four metacarpals of right hand.

As a result of the injuries the plaintiff lost a firm grip with his right hand, suffered pain when he tried to grip and lost the functions of three affected fingers.

In coming to an award under the head of pain and suffering and loss of amenities I have to as best I can make a finding as to the degree of permanent partial disability of this plaintiff's right hand. I bear in mind Dr. Hall's opinion as to her limitations. I saw her lift the Bible with her right hand to be sworn. Her complaint as to the utter uselessness of her right hand I reject. In all the circumstances I will say that her permanent partial disability is between 60% to 75%. Using this range and the guidance offered by the awards referred to above and taking into consideration the declining value of money, my award under this head is \$60,000.

I will now deal with special damages. The plaintiff bought garlic, cinnamon, nutmeg and Irish moss in bulk at the Coronation Market in Kingston and these items she transported to the May Pen market where she retailed them. This she did on Fridays and Saturdays. It was while she was on her way to the May Pen market that the accident occurred. It is agreed that if the plaintiff worked every weekend her net earnings would be \$23,234 p.a. She said that because of the accident she could not work and asks that she be compensated for loss of income from the time of the accident until the trial. This request is denied. The injuries suffered did not preclude the plaintiff from pursuing her means of livelihood for that entire period. It is her evidence that when she bought her items in bulk she employed handcartmen to do the transporting both in Kingston and in May Pen. There is nothing to prevent her from still so doing. The items she sold were parcelled in small quantities and the selling of them does not demand any great physical exertion nor does it require the use of both hands. The defendant has suggested that she should be compensated for seven months. Without any comment on this time span, I will follow that suggestion. The plaintiff will therefore be awarded \$13,903. The plaintiff is entitled to household help for one day per week to assist in the domestic chores at the rate of \$40 per week which sum when totalled is \$10,860. I accept that she lost \$350 at the scene of the accident. It has been agreed that loss pertaining to goods and personal effects is \$728. Dr. Hutchinson's fee of \$180 is also agreed.

I will allow \$180 in respect of Dr. Dumas' fee as well as \$800 in respect of Dr. Hall. The defendant took issue with the amount of Dr. Hall's fee as well as that of \$1,950 for Dr. Doorbar. He argued that both bills were excessive and that Dr. Doorbar's bill was not properly incurred. It is true that Dr. Doorbar is not a psychiatrist but it cannot be said that her contribution was entirely non-relevant. I will allow the cost of \$1,950 with some reluctance. There is no evidence from which it can be said that the fees charged were excessive. The total award under the head of special damages is \$28,151.

It is my view that the plaintiff is to have household help for one day per week hereafter. She is now 56 years old. I will use a multiplier of 4 years. The sum of \$8,320 which results will be taxed down by one-fifth for immediacy of payment. She will therefore receive \$6,656. To summarize, my award is as follows.

General damages \$66,656 with interest at 3% p.a. on \$60,000 from the date of the service of the writ until April 4, 1990.

Special damages \$28,151 with interest at 3% on this sum from the date of the accident to April 4, 1990.