

WMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. A048/1993

BETWEEN WALTER AMORE PLAINTIFF
AND RUEL SUDU DEFENDANT

Mr. Norman Samuels for the Plaintiff.

Miss Debbie Robinson instructed by McGlashan, Robinson & Company for
Defendant.

Heard: 5th, 6th, 7th, 8th, 9th & 13th February, 2001
& 31st July, 2001

WESLEY JAMES, J.

The plaintiff , a farmer, was injured when he fell from a motor bus owned by the defendant and driven by one Jack Thomas on September, 1992. As a result the plaintiff brought this action to recover damages for personal injuries as well as other consequential loss.

The plaintiff was hospitalized for about ten (10) days suffering from injuries including those to his head, over left eye and shoulder. After his discharge from Kingston Public Hospital he sought medical attention from Dr. Hal Shaw, ENF Consultant, Dr. John McHardy and Dr. Cheeks Neuro-Surgeons and Dr. Franklyn Ottey, Consultant Psychiatrist.

The nature and extent of the head injuries are contained in the report of Dr. McHardy . They were described as follows:-

- (a) fracture of the left frontal bone of the skull
- (b) fracture of the base of the skull
- (c) leaking of cerebro spinal fluid from left nostril
- (d) no recollection of the accident two (2) days after accident
- (e) drowsy two (2) days after accident.

Dr. Shaw's report deals with hearing loss which has deteriorated to 50% of normal hearing

Dr. Cheek's evidence is concerned with injuries to plaintiff's head. He described them as follows:-

- (i) Concussion so severe that the cerebral spinal fluid normally contained in the head and spinal cord escaped and flowed through the nostril.

- (ii) Fracture of the base of skull exposing the brain matter to infection and involving vital nerves particularly the acoustic nerves dealing with hearing and the sense of balance as well as nerves involving recent memory function.
- (iii) inability to pursue farming activities due to imbalance caused by dizzy spells.

The injuries left the plaintiff with a disability of 17% of the whole person.

Dr. Ottey's evidence diagnosed plaintiff as suffering from post concussional disorder and said the plaintiff was functioning about 40% less in his psychological, social and occupational areas.

The plaintiff's evidence was supported by that of Phyllis Palmer, a passenger who testified that she was standing near to plaintiff when he fell through the opened door.

The witness Lloyd Forman's evidence was concerned with the plaintiff's activities as a farmer.

The evidence on behalf of the defendant was given mainly by Jack Thomas, driver and Horace White conductor.

The evidence of these two employees of the defendant if believed would at its least make plaintiff a contributor to his injuries. They said that

plaintiff behaved badly during the journey from Annotto Bay to Lennon where he fell from the bus. The plaintiff was described as being drunk, noisy, using indecent language; leaving his seat touching and being a nuisance to other passengers. They also testified that the bus was stopped on occasions for the purpose threatening to put plaintiff off on account of his bad behaviour.

Neither the driver nor conductor gave any evidence of seeing plaintiff fall from the bus. The conductor testified that he was collecting fares from passengers for Black Hill and Lennon districts when he heard a voice shouted "look how the man pull the door and drop out the bus."

Perhaps it would not be reasonable to expect the defendant to bring such person to give evidence after such lapse of time.

Suffice it to say that having seen and heard the plaintiff and his witnesses as well as the defendant and his witnesses. I have no difficulties on a balance of probabilities in finding that:

- (a) when plaintiff took bus in Annotto Bay up to the time of accident there was only standing space on the bus.
- (b) that plaintiff at no time got up from his seat and interfered with other passengers. I find the plaintiff was never seated.
- (c) that the door of bus opened at the time plaintiff fell out and

that plaintiff did not open door.

Plaintiff counsel relied on *Western Scottish Motor Traction Co. Ltd. v Ferne & Others* T.L.R November 1943 for liability and I agree with these submissions.

I accept plaintiff's and Miss Phylis Palmer's evidence as truthful and reject that of the driver and conductor. And find the defendant liable.

I now turn my attention to the determination of the losses plaintiff has suffered and expenses incurred . Plaintiff's evidence in respect of his farming activities is substantiated generally by evidence of Lloyd Foreman.

I find as a fact that the following crops were planted and reaped at the times given in evidence. They were, plantains, potatoes, okras and canes. I however have difficulty in accepting the acreage. I conclude it is less than 6 – 8 acres.

I accept the evidence that plantains were sold to operator of a truck fortnightly on Mondays and to higglers also fortnightly on Thursdays although not in the same week. However, I do not accept the evidence that the sums claimed in respect of each item/product are accurately pleaded. Both plaintiff and his witness Mr. Foreman gave viva voce evidence, neither of them making any reference to any record of sales and receipts. In the

circumstances I do not think plaintiff can reasonably expect to be awarded the sums claimed.

In addition to the above findings having regards to the evidence I would disallow claim for renta yam.

By Counsel for plaintiff's calculations, he submitted that plaintiff earned \$7,402.63 weekly from his farm. He then proceeded to calculate the loss of earnings from the farm for a period of 9 years 5 months.

There are factors which should on the evidence remind the returns or earnings from the farm. Factors like the uncertainty which exists in agricultural undertakings. Plaintiff was away in the United States of America for approximately 5 years.

After the accident plaintiff states that he employed a man for about one (1) year but that the man came only when it was time to sell plantains. Mr. Foreman's evidence is that while plaintiff was in hospital he carried on the farm for plaintiff, selling plantains to truck operator and higglers.

At any rate this activity ceased after 3 months as a result of stealing and cows damaging crops. It seems clear therefore that well within the year all farming activities had ceased if Mr. Foreman's evidence is correct.

Plaintiff is not entitled to compensation for loss of farming products for the entire period of 9 years and 5 months.

Accepting that his state of health would not allow him personally to carry out his normal farming activities there is nothing in the evidence which prevented him from supervising employees for carrying out planting and general tending to growing crops.

The generally accepted principle applicable to cases of assessment of damages is that the plaintiff must mitigate his loss. Plaintiff has failed to adduce evidence that he made any effort in mitigation of his loss.

In all the circumstances and after taking into considerations the earnings, injuries and plaintiff's conduct in failing to take reasonable steps to mitigate his loss, plaintiff would be allowed 2/3 the gross weekly sum claimed for one (1) year only – a total of \$260,000 in respect of his earnings from his farm.

Plaintiff will be allowed his medical expenses of \$21,630 and the sum of \$540 for transportation in respect of medical attention.

General damages & Loss of earnings from farm	\$260,000
Medical expenses	\$21,630
Transportation	<u>540</u>
	<u>\$ 282,170</u>

The assessment of General Damages poses for greater considerations than these applied to the Special damages.

From the medical evidence I have accepted that plaintiff suffered moderate personal injuries. Particular attention is placed on the findings of Dr. Cheeks. The injury to the skull was the most significant injury. This has left plaintiff still suffering from dizzy spells, loss of hearing quantified as being 4%. Impairment of recent memory function. He concluded that a combination of the disabilities amount to a Permanent Partial Disability of 17% of the whole person.

When Dr. Franklyn Ottey, Consultant Psychiatrist, examined plaintiff in February, 2000 he found him displaying residual features of a post concussional disorder. He felt that the residual features are likely to be chronic and to cause an impairment of his psychological functions which he assessed at 40%.

Counsel on both sides referred to a number of cases, most of which are confined to local jurisdiction. I do not think the case of Lynden Palmer v. Neville Walker and Michael St. John decided March 1997 is helpful. In that case the plaintiff suffered instant blindness when he was involved in a motor vehicle accident. The case of Glenville Bell v The Attorney General & Neville Walfall decided May, 1997 may be more useful in determining the measure of general damages. In that case most of the injuries suffered

were similar to those in the instant case. The total permanent whole person impairment was assessed at 20%.

Although it does not appear that plaintiff counsel relied on Taylor v Octavius Atkinson Ltd. 1973 C.A. No.112A, this case is more helpful than Hall v John Thompson (Design & Contracting) Ltd. Nottingham Assizes December 13, 1971.

In Taylor's case, plaintiff was 28 years old at the time of the accident in which he sustained a fracture of the frontal bone of the skull, the fracture was not depressed. He also sustained severe cuts around the head and other minor injuries. He was unconscious but regained consciousness on the way to hospital.

He suffered from bouts of dizziness for a short time after the accident. His injuries left him in moods of depression and irritability. The injuries also affected his hearing. Thus plaintiff returned to work but earned less than he did before the accident.

The defendants counsel has relied on Campbell & Clarke at page 59 – Harrison's Assessment for Personal Injuries and Hinal Colquhoun v Alvin Ramcharan – Chan's Vol.4 page 192.

In Campbell v Clarke the injuries included a fracture of the base of skull, residual disabilities including permanent late traumatic epilepsy and injury in ears and giddiness after standing for long.

The awards for general damage were \$1.7 & \$1.5M at today C.P.I. calculations respectfully.

Plaintiff is now 63 years old. His trip to the U.S.A where he spent some five years was not in search of medical attention. He testified that he did light work inside during the Winter doing painting. Unfortunately, plaintiff gave no evidence of his earnings and so denies me consideration for any kind of damages.

It is difficult to assess any compensation for loss of earnings as I have held that the plaintiff has not mitigated his loss.

For pain and suffering and loss of amenities	\$1.8M
And in respect of handicap on the labour market	\$88,000

There is no evidence of Plaintiff requiring any special medical attention or medication and I therefore make no award.

Judgment for the Plaintiff in the sum of \$2,170,170.00 being special damages \$282,170.00.

Special damages -	\$282,170.00
with interest @ 3% p.a. w.e.f. 29/9/92	
to 31/ 7/2001	

General damages (Pain & Suffering and Loss of amenities)	\$1,800,000.00
---	----------------

Handicap on the labour market	<u>\$ 88,000.00</u>
	\$2,170,170.00

Interest on \$1.8M @ the rate of 3% per annum with effect from
2/11/93 to 31/7 /2001.

Costs to the Plaintiff in accordance with Schedule A of the Rules of the
Supreme Court (Attorney-at-law Costs Rules).