NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1991/B-086

BETWEEN	MONICA BAILEY	PLAINTIFF
A N D	JAMAICA PUBLIC SERVICE COMPANY LIMITED	FIRST DEFENDANT
A N D	SYLVESTER BUNDY	SECOND DEFENDANT
A N D	GARNET BROWN	THIRD DEFENDANT

SUIT NO. C.L. 1991/D051

BETWEEN	DWIGHT DOUGLAS	PLAINTIFF
A N D	JAMAICA PUBLIC SERVICE COMPANY LIMITED	FIRST DEFENDANT
A N D	SYLVESTER BUNDY	SECOND DEFENDANT
A N D	GARNET BROWN	THIRD DEFENDANT

Both Actions Consolidated by Order of the Court dated May 10, 1994.

Mr. R. S. Pershadsingh Q.C., Mr. A. Mundell and Mr. H. Bryce for Plaintiffs.

Mr. D. Henry and Miss W. Marsh for Defendants.

Mr. C. Miller and Miss N. Anderson for Third Party.

HEARD: 9th, 10th, 11th, 13th, 18th, 19th, May, 1994 and 18th November, 1994.

HARRISON J. (AG.)

Facts:

On December 19, 1990, an accident occurred along Greendale Road, Spanish Town, in the vicinity of McNeil Park and Greendale Road.

Evidence led on behalf of both plaintiffs and third party reveal that a motor pick-up registered CC 695C, owned by the first defendant and driven by the second defendant, was travelling along Greendale main road behind a motor car coming from Kingston direction. As these two vehicles approached the junction of McNeil Park and Greendale Road, a motor cycle driven by the third party carrying the plaintiff, Dwight Douglas, was proceeding towards Kingston on its correct side of Greendale Road.

The evidence further revealed that the second defendant moved to his right and over the centre line in order to overtake the said car with the result that it collided with the motor cycle throwing off both rider and pillion passenger. The

second defendant lost control of his vehicle and by swerving to the left side of the road he collided with the female palintiff who was standing on the soft shoulder by a handcart.

The defendants joined issue as to how this accident occurred but maintain that there was no dispute however, that after the collision between the vehicles the first defendant's vehicle subsequently collided with the plaintiff Monica Bailey.

It was contended by the defendants that the second defendant was proceeding along the Greendale main road towards Spanish Town and as he negotiated a slight left hand bend in the vicinity of McNeil Park he observed a motor cycle approaching him from the opposite direction, and travelling at a fast rate of speed. This motor cycle was travelling on its incorrect side of the road as it had overtaken a motor car which was travelling in the left lane going towards Kingston. In order to avoid a head on collision with the motor cycle, the second defendant swerved to his left but this manoeuvre could not avoid a collision. As a result of the impact, the right front tyre of his vehicle "blew out" and this caused him to veer further left on his correct side of the road with the result that he collided with the female plaintiff who was then standing by a handcart on the left side of the road going towards Spanish Town.

Submissions on Liability

On the issue of liability, Mr. Henry submitted that the Court ought to accept the defendants' version of how this accident occurred. He submitted that the evidence of Bailey clearly indicated that she was unable to say how the first collision occurred. Her witness, Fitzroy Ramsay, was most unhelpful as his evidence had numerous inconsistencies.

According to Mr. Henry, Ramsay's evidence showed that he was standing on the soft shoulder facing across the road as the pick-up proceeded from Kingston on his left. He was some 7 ft. from the edge of the road surface and about 14 ft. away from the point of impact. From this account, Mr. Henry argued that it could be concluded that the first collision took place at a point some 7 ft. within the left lane going towards Spanish Town. He submitted that this evidence supports the second defendant's contention that the accident did occur in his left lane.

So far as the accounts given by Douglas and Brown are concerned, Mr. Henry submitted that it was highly improbable for a vehicle to veer right, then collide,

and after its right front wheel blew out, to end up on the left with the front turned towards Spanish Town. It was more probable, he says, and the Court should accept the defendant's version, that after the second defendant swerved to the left to avoid a collision but nevertheless colliding, that this impact caused the vehicle to end finally on its left soft shoulder.

For Mr. Mundell's part, he submitted that the Court should accept the evidence of the plaintiffs, and find that the first collision did in fact take place on the left hand side of the road as one proceeded in the direction of Kingston. He further submitted that the evidence of Assistant Superintendent of Police Sylvester McKenzie, the defendant's witness, ought to be rejected and to find that the second defendant was negligent and was the sole cause of the accident.

It was Mr. Miller's view that it would have been impossible for a collision to have occurred between the two vehicles when one considers the distance both parties contend they were travelling from the centre line at the material time.

On the issue of speed, he submitted that if the Court were to accept the evidence that the third party was travelling at 70 m.p.h. at the material time, then both motor cyclist and pillion rider would have sustained more serious injuries or could have been likely killed. He further argued that for the third party to be travelling at that speed, his stopping distance after applying brakes, would have been at least 200 ft. The evidence on the other hand showed that the motor cyclist had stopped some 10 ft. after the collision and that both himself and pillion passenger fell about 5 ft. from the motor cycle. It was his view that since the pick-up stopped 25-30 ft. after colliding with the plaintiff, Bailey, it was more probable and consistent with the evidence that it was travelling at a greater speed than the motor cycle.

Mr. Miller further submitted that the injuries which Brown sustained were not "spectacular" and those sustained by Douglas were slightly more serious. The probabilities were therefore, from Mr. Miller's stand point, that the third party could not have been travelling at 70 m.p.h. He urged the Court to consider the demeanour of the witnesses and to find that the third party and his pillion passenger have corroborated each other in every material respect.

The Law

By virtue of the provisions of section 44(1) of the Road Traffic Act, the

driver of a motor vehicle is required to observe eight rules of the road laid down in the sub-section. Of these rules, one is relevant when considering the question of negligence in this case. It states inter alia:

> "(a) meeting or being overtaken by other traffic shall be kept to the near side of the road. When overtaking other traffic the vehicle shall be kept on the right or off-side of such other traffic..."

Fox, J.A. in the case of James v. Seivright (1971) 12 J.L.R. 617, in considering the application of section 44(1) (a) of the Road Traffic Act, stated inter alia, at page 621:

> "For all practical as well as legal purposes section 44(1) (a) divides the roadway into two halves and identifies the particular half in which a motor vehicle shall have the right of way, depending whether it is meeting or is being overtaken by, or is overtaking other traffic. As a result in the event of an accident between two vehicles on the road, the point of collision becomes an important fact in determing fault. Proof that this point is located within a particular half of a road is capable of giving rise to an inference that the driver who should have kept his vehicle within the other half is to be blamed for the accident. The further away from the centre line this point is the stronger may be the inference of negligence. The legal consequence of the inference is to put an evidential burden upon the driver of the vehicle which has encroached to show that the accident was not caused throught his fault. In any action for damages resulting from the collision, the extent of his liability would be largely dependent upon the degree of his success in discharging this burden."

Now, it seems evident from the above extract, that where a vehicle is overtaking another and if circumstances permit him safely to do so, the driver may bring his motor vehicle into the other half that is, over the centre line. If vehicles are approaching however from the opposite direction, then before he commences

to occupy the other half of the roadway, he must properly judge the distance and speed of the oncoming vehicle. It is further my view, greater care as to the judgment of speed and distance is required especially at nights. Consonant with his duty not to create the risk of an accident, he must then proceed out of the right of way of oncoming traffic as quickly as possible.

Issues in the Case

On the evidence, overtaking remains a common factor. It is being contended by the defence that the third party had overtaken a car preceding the collision. The plaintiffs and third party, on the other hand speak of a movement to the right by the second defendant and an attempt to overtake a vehicle travelling ahead of him just before the vehicle collided.

On Ramsay's account, the collision took place in the middle of the road; "over the motor cycle sid eof the road." Under cross-examination he stated that a car which was ahead of the van was about one chain from him when the van started to overtake it. The motor cycle was then about 15 yards from himwhen he first saw it. According to him, "the van never overtake the car. Him draw up beside the car, side and side. The car leave the van a little distance. Is not when the van beside car that it hit the motor cycle. I don't know where the car was when the van hit the bike. The car drive up and gone ...."

The evidence of the second defendant reveals that he was driving a left hand drive vehicle, negotiating a left hand bend. He then saw a motor cycle and a motor car coming from the opposite direction. The motor car was on his extreme right and the motor cycle which was travelling at approximately 70 m.p.h. overtook this car and kept coming directly in front of him in his lane. He swerved about 2 ft. to the left to avoid a head-on collision but the motor cycle nevertheless collided into his right front fender on his side of the road. He then lost control and collided with Bailey. He denied attempting to overtake a car and that he went over to the right hand land and collided with the motor cycle.

Garnet Brown, the third party, maintains that he was riding at about 25-30 m.p.h. in his correct lane about 5-6 ft. from the centre line. He saw two vehicles travelling in the opposite direction heading towards Spanish Town. He had to make a "small quick swerve" to his left because he saw two lights came suddenly from behind one of the vehicles and came over to the right hand side of the road with the result that it collided with him.

Point of Impact

The point of impact is very crucial and must be ascertained in order to determine who was responsible for this collision. The evidence reveals that there is a major intersection (McNeil Park) and a bend, in close proximity to where this accident occurred.

Both Douglas and Brown claim that the point of impact was in the midddle of the left lane on the straight and before you got to McNeil Park and the bend. The width of the road at this point, has been estimated by them to be 45 ft., whereas, the second defendant has estimated it to be 25 ft.

Bundy on the other hand is saying that the accident occurred in his left lane whilst he was approaching from the opposite direction and negotiating a left hand bend before one got to McNeil Park. On his estimation, the collision occurred approximately 12 ft. before he got to McNeil Park and as he proceeded towards Spanish Town.

Sylvester McKenzie, Assistant Superintendent of Police, and officer in charge of the Remand Centre, Kingston, could be regarded as a disinterested witness. He claimed that he visited the scene as a "peacemaker." He futher testified that he was at a certain business place in Spanish Town on the night of the accident and that he visited the scene of the accident along with Bundy after receiving a report from him. From his evidence he visited the scene twice. Bundy on the other hand, makes reference to one visit and that was after Superintendent McKenzie had accompanied him to Spanish Town Police Station for assistance.

Superintendent McKenzie maintained that on his first visit to the scene he saw a J.P.S. Nissan Jeep, a motor cycle, and handcart. The jeep was parked in the extreme left lane heading towards Spanish Town with a portion of it resting on the soft shoulder. He saw the motor cycle on the same side of the road as the jeep. A white line was in the centre of the road and the motor cycle was about 5 ft. from this line and in the lane going towards Spanish Town. He further observed that in the vicinity of both vehicles, there were some earth, particles of splinters and what appeared to be engine oil. He also noticed that the defendant's vehicle had damages to the right side, right head lamp and right running board. From all appearance he did not note nor take any measurements at the scene of this accident.

After making these observations, McKenzie left with Bundy for Spanish Town

Police Station and on his return to the scene with other policemen he further observed that the motor cycle was removed and placed on the other side of the road over the white line. He claims that it was actually seen at the same distance from the white line when he first saw it on the other side.

The indications are therefore, if Superintendent McKenzie is to be believed, that the collision must have occurred in the left lane as one headed towards Spanish Town, that is, the lane in which the second defendant was travelling.

Under cross-examination, Superintendent McKenzie maintained that when he returned to the scene, the motor cycle was removed from its original position. It was seen in the left lane as one travelled towards Kingston and before you got to McNeil Park. It was suggested to him that there was no damage to the van's front headlamp. His response was that he had said the front light which meant the section of the park light on the front which was to the side of the headlamp. It was also suggested to him that no Nissan Jeep was involved in the accident. To this he responded, "the jeep I saw resembled a Nissan." He denied going to the scene once. He further denied that Bundy came to the bar where he was and that they left together for the station.

Damage to the Vehicles

Motor Pick-up

The Assessor's Report, Exhibit 3, describes the defendant's vehicle as a Datsun twin cab pick-up. It was inspected on the 8th January, 1991 and Colin R. Young, Director of Motor Insurance Adjusters Limited states inter alia, that as a result of an impact to the front of the vehicle, it sustained the following damages:

(i) right front fender
(ii) right front fender molding
(iii) front bumper
(iv) front bumper splash shield
(v) left front fender
(vi) left front park lamp
(vii) right wheel panel
(viii) right front bumper
(ix) grill
(x) right front park lamp
(xi) tyre
(xii) right front bumper arm

(xiii) right front door

(xiiii) right side of cab

(xiv) right chassis leg

Motor Cycle

No evidence was led in relation to the damaged areas on the motor cycle. By consent, the repairs bill was however agreed. Brown when cross-examined did say that he thought it was the right front, to the right front fender of the van which came in contact with his motor cycyle. He claimed that his motor cycle came head on into that section of the van.

Findings

On the basis of the evidence presented, I am faced with two diametrically opposed versions as to how this accident happened.

Although the plaintiff Monica Bailey was unable to say how the vehicles collided, I accept her account that she was standing with Fitzroy Ramsay on the left soft shoulder going towards Spanish Town and that her back was turned towards Kingston direction. I further accept that by the time she heard Ramsay said "look out Monica," she looked and saw the van coming towards them from "over the right hand side of the road." She has impressed me as a witness of truth and I find that she was hit by the defendant's van as she stood on this left shoulder.

Much ado has been made by Mr. Henry in relation to Fitzroy Ramsay's evidence. Admittedly, there are some conflicts in his evidence as to where he was standing and on which side of the road the first collision took place. But, having regard to his admission under cross-examination, that he "cannot read and write so much," it is understandably why he has been apparently inconsistent in this regard.

The manoeuvering of the vehicles must be considered next. Both Brown and Douglas have maintained that the collision occurred in their left lane after Brown made a slight swerve to the left to avoid the accident.

Bundy, on the other hand, has stated that he is driving a vehicle which is 5 ft. wide and that there is no vehicle travelling ahead of him. He was travelling some 4 ft. from the left curb as he proceeded towards Spanish Town and there is a soft shoulder on his left which is 4 ft. wide. At the material time, Brown's motor cycle was about 25-35 ft. away approaching Bundy on his side of the road.

Further, according to Bundy's evidence, Brown is approximately 6 ft. from

the curb on his Bundy's side, so he swerved 2 ft. to his left to avoid a head-on collision and Brown swerved 1 ft. to his left. No vehicle is travelling ahead of him and the plaintiff Bailey is standing some 15 ft. ahead of him. Apart from swerving 2 ft. to the left, he took no other action. His evidence was that he never blew his horn; he never braked; stopped or slowed down to avoid this collision. Clearly, this evidence gives the impression of an indifferent motorist who sees an imminent collision but continues nevertheless as if he were wearing blinkers.

Could there be a meeting of the vehicles based on Bundy's description of what took place? It seems most improbable. I agree with Mr. Miller's submission that it would be most unlikely on the basis of this evidence for both vehicles to have met and collide.

I find, that the second defendant whilst driving his left hand driven pickup emerged from behind a motor car travelling ahead of him and in doing so he encroached in his right lane and collided with the motor cycle which was approaching in close proximity to him at the material time.

I also find that the damages sustained by the pick-up are more consistent with the manoeuvering described by the plaintiffs and third party.

I reject the defence. I find the second named defendant most unreliable and untruthful.

So far as the defence witness is concerned, I am of the view that probably his vision was impaired having regard to the business place where he was found by the second named defendant. Certainly, a police officer with his experience, both in traffic and otherwise, ought to appreciate the difference between a pick-up and a jeep. It is my view and I so hold, that his evidence concerning his first visit to the scene coupled with his initial observations is most unreliable and is therefore rejected.

On a balance of probabilities, I find that the plaintiffs and third party have discharged the burden placed upon them. I hold that the second named defendant is to be fully blamed for this accident. Both plaintiffs' claims and the third party's counter-claim, therefore succeed against the defendants.

Damages - Special Damages

By consent the undermentioned items have been agreed between the parties:

Monica Bailey

Hospital Fee ..... $ 450.00

Transportation	600.00
Medication	700.00
Help - $130 p.w. by 12 wks	1,560.00
Blouse	200.00
Slippers	120.00
Pants	200.00
Loss of earnings	3,850.00
	$7,680.00

Dwight Douglas

Medical Expenses	$6,210.00
Medical Report	550.00
Loss of earnings 14 wks @ $1,850 per week	$25,900.00
Crutches	150.00
Jacket	800.00
Pants	800.00
Shoes	$1,800.00
	$36,210.00

Garnet Brown

Loss of earnings	$ 3,150.00
Repairs to motor cycle	10,600.00
Loss of watch	450.00
Jeans	250.00
Physiotherapist	480.00
Medical Reports	600.00
	$15,530.00

General Damages

In awarding general damages I am guided by the statement of Campbell J.A. in Beverley Dryden v. Winston Layne (by next friend Stanley Lane) SCCA 44/87 where he states inter alia:

> "...personal injury awards should be reasonable and assessed with moderation and that so far as is possible comparable injuries should be compensated by comparable awards."

But, in awarding damages under this head, I realize that the concept of moderation must be subject to the rapid growth of inflation and the depreciation of the Jamaican dollar. Support for this view has been judicially considered by Rowe P. in the case of Hepburn Harris v. Carlton Walker SCCA 40/90.

Monica Bailey

Dr. N. Graham of the Orthopaedic Department, Kingston Public Hospital, saw and examined the plaintiff Monica Bailey. She was admitted to that institution on December 20, 1990.

Medical Report, Exhibit 2, was agreed. It reveals that the plaintiff was 48 years old on the 26th February, 1991, the date of this Report. On examination she had a urinary catheter inserted. The pelvis area was tender; she was swollen at the left hip, and had pain on moving both limbs. An x-ray was done and it showed that the spine was normal. She sustained a fracture of the left acetabulum and fracture of the left inferior pubis ramus. These fractures were all in the pelvis region. She was placed on skeletal traction and discharged after thiry-five days in hospital. She was due for clinic in four weeks time but there has been no further reports and neither was the Doctor called to give evidence.

After her discharge she visited a Dr. Campbell twice.

Pain and Suffering

The injuries which this plaintiff sustained were no doubt, of a serious nature. Mr. Henry has certainly appreciated this and has admitted it in his address on general damages.

She testified that she could not continue with her job of taking care of an elderly lady because of pain she was experiencing and that she cannot stand up for long. Whenever she feels the pain in her hip it goes down to her feet and she was still having pains in the hip at the time of trial.

There is no medical evidence of any physical disability.

Counsel for the defendants referred me to the case of Myers v. J.R. Transport C.L. 1986/M169 to be found in "Casenote" Issue No. 2 - "Personal Injury Awards of the Supreme Court" compiled by K.S. Harrison, Registrar of the Supreme Court.

In Myers case, damages were assessed on the 1st day of February, 1991. He sustained the following injuries:

(i) Fracture of the left pubic ramus

(ii) Dislocation of the pubic symphysis

(iii) Left iliosacral dislocation

(iv) Abrasions of the posterior aspect of the pelvis

He was admitted in hospital for a period of thirty-eight days followed up by visits to the out patients orthopaedic clinic. A Steinmann pin was sited to facilitate treatment of the fracture dislocations. I.V. fluids, antibiotics and analgesics were given. Skeletal and physiotherapy were administered. He was totally disabled for six months following the injury. There was 30% whole person loss for a further one year. Finally there was 15% whole body impairment with low back pain that may increase later. For pain and suffering and loss of amenities he was awarded $75,000.00.

Mr. Henry was of the view that the injuries were more serious in the Myers case and submitted that an award of half that amount would be appropriate in all the circumstances. Mr. Mundell while admitting that the injuries were not as serious like those in the said Myers case, submitted that the award should be reduced by one third rather than by one-half.

I am of the view that the injuries sustained by the plaintiff Bailey do not reflect the type of seriousness as seen in the Myers case. Due to the absence of further medical evidence, the Court is not in a position to place a percentage on her physical disability if any. In all the circumstances, it is my view that an award of $175,000.00 for pain and suffering would be reasonable.

Re Dwight Douglas

The agreed medical report, exhibit 1, reveals the following:

> This plaintiff was seen by Dr. Warren Blake, Consultant Orthopaedic Surgeon on the 7th January, 1991. This was some three weeks after the accident. X-rays revealed a displaced fracture of both medial and lateral malleoli. He was admitted into Saint Joseph's Hospital and internal fixation took place on the 15th January, 1991. The fractures were fixed with the aid of metallic screws. He was discharged from Hospital on the 16th January, 1991. He continued seeing Dr. Blake as an out patient. After leaving hospital he was not allowed to bear weight on his right limb and he got around on crutches. On the 25th February, 1991 he was allowed to commence weight bearing on this limb. He was last seen by Dr. Blake on the 25th March, 1991 when it

> was noted that he had regained an almost full range of movement of his ankle. Dr. Blake further stated that he has not been seen by him since and it would have been difficult to comment accurately on permanent disability. His view was however, that from the assessment at his last visit, he suspected that the disability would be rather small.

Mr. Henry referred me to the case of Jack v. Madden C.L.1984/J483, found in "Casenote" Issue No. 2 compiled by K. S. Harrison, Registrar, Supreme Court. Damages were assessed on the 23rd January, 1990. In that case the plaintiff a 35 year old man sustained a bimalleolar fracture of the left ankle; a ½" laceration over the forehead and a 3/4" laceration on the ankle with residual ankle stiffness. Physiotherapy was prescribed which resulted with full range of movement of the ankle. He was awarded $12,000.00 for pain and suffering and loss of amenities.

The case of Mighty v. Witter C.L. 1990/M021 found in the same work mentioned above, is also of some relevance. In that case the plaintiff had sustained a fracture of the lateral malleolus of the ankle and he was incapacitated for ten weeks. He was awarded $35,000.00 for pain and suffering and loss of amenities on the 4th June, 1991.

Mr. Mundell did refer me to the case of Campbell v. Parkes C.L. 1991/C089, also referred to in the above works. In that case the plaintiff had sustained an undisplaced bimalleolar fracture of the left ankle which resulted in swelling around the ankle and pain. He also suffered from a weakness and numbness in the left leg and ankle. For pain and suffering and loss of amenities he was awarded $50,000.00 on the 25th September, 1991.

All three cases referred to me are quite relevant in that they deal with fracture injuries to the ankle leaving no permanent disability. In the present case, the plaintiff complains that he still feels a numbness in the lower limb from his injury. He is now 29 years old and is not able to play cricket which he played formerly. In my view, an award of $150,000.00 in respect of pain and suffering and loss of amenities would be quite reasonable in all the circumstances.

Garnet Brown

The agreed medical reports, Exhibit 4, have revealed that this plaintiff was seen by two Doctors. He was first seen on December 22, 1990 by Dr. Lambert Green

who diagnosed a fracture of the right forearm which was placed in a plaster of paris cast. Further examination of the plaintiff by Dr. Lambert Green revealed that he had bruises on the right knee and upper leg with tenderness on palpation over adjacent soft tissues. He was treated with analgesics and referred to a Surgeon.

Dr. W. Miller of Spanish Town Hospital saw and examined him. Examination revealed a swollen and deformed right wrist with abrasions to the right knee and right leg. An x-ray was done which showed a fracture of the right wrist and fractures of the middle and ring fingers. He was given tetanus toxoid and analgesics.

Mr. Henry referred me to the case of Gardener v. Clarke C.L. 1989/G204 found in "Casenote" No. 2 by K.S. Harrison, Registrar, Supreme Court. In that case the plaintiff sustained a compound fracture of the left wrist and left carpal. He also had burns to his body including his chest, abdomen, and both forearms and hands. For pain and suffering he was awarded $45,000.00 on the 13th January, 1992.

In the case of Stanley Campbell v. Inswood Estate and Anor C.L. 1980/C240 the plaintiff had a crushing injury to the right hand and finger resulting with fractures of three fingers. His disabilities resulted in stiffness and loss of movement of the distal inter phalangeal joint of the 3rd and 4th fingers of the right hand. He also had a permanent deformed right hand. He was awarded $40,000.00 for pain and suffering on the 8th February, 1990.

In the instant case, the injuries suffered, bear significant similarities. Perhaps, an award of $130,000.00 would be reasonable in all the circumstances taking into consideration the relevant factors which I have mentioned earlier when it comes to assess damages. I therefore award that sum in respect of pain and suffering.

Conclusion

Finally, there shall be judgment for the plaintiff Monica Bailey against the Defendants as follows:

General daamges in the sum of $175,000.00 in respect of pain and suffering with interest of 3% thereon from the date of service of the writ until today and special damages in the sum of $7,680.00 with interest of 3% thereon from the 19th December, 1990 to today. Costs to this plaintiff to be taxed if not agreed.

There shall be judgment for the plaintiff Dwight Douglas against the Defendants as follows:

General Damages in the sum of $150,000.00 in respect of pain and suffering and loss amenities with interest of 3% from the date of service of the Writ until today and Special Damages in the sum of $36,210.00 with 3% interest thereon from the 19th December, 1990 to today. There shall be costs to this plaintiff to be taxed if not agreed.

There shall be judgment for the third party Garnet Brown on his Counter Claim against the defendants as follows:

General Damages in the sum of $130,000.00 in respect of pain and suffering with interest of 3% thereon from the date of service of the third party notice and Special Damages in the sum of $15,530.00 with interest thereon as from the 19th December, 1990. Costs to the third party to be taxed if not agreed.