

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L.1987/B052

BETWEEN BARRINGTON BOWFORD
AND ROSEMARIE CORNWALL PLAINTIFFS
AND IRVING BUS SERVICES LIMITED FIRST DEFENDANT
AND BASIL WALKER SECOND DEFENDANT

Mr. Norman Samuels for the Plaintiffs.

Mr. Charles Piper for the Defendants.

heard: February 6 and 7, November 25 and December 19, 1991.

RECKORD, J.

Having heard the evidence tendered on the part of both parties and the submissions of their Attorneys, I find as follows:-

That the plaintiff was riding his bicycle along the Salisbury main road in the parish of St. Andrew behind the New Star Bus.

That the bus stopped and the plaintiff stopped behind the said bus.

That he rode off from behind the bus without any indication that the city bus was approaching from the opposite direction.

That as the plaintiff was over taking the parked bus he was confronted by the oncoming bus just 2 chains away.

That he could go neither to the right nor to the left, the parked bus being to his left and high bank to his right.

That in this predicament he stopped his cycle beside the bus.

That the driver of the oncoming City Bus failed to stop the bus and so negligently drove the bus in passing the plaintiff that it hit the plaintiff off his bicycle causing him injuries and damage.

That the City Bus only came to a stop when it stuck in the bank on its left.

I accept the plaintiff's evidence that he became unconscious and regained consciousness the following day. That he spent ten days as patient in the Linstead Hospital where he was treated for his injuries and that he incurred expenses as a result of these injuries.

The witness Keith Dotting impressed me as a witness of truth. I accept his evidence that he was a passenger on defendant's bus on the day of the accident.

That he was standing behind the driver and could see the road ahead.

That the second defendant seemed to have been having problems with the braking system of his vehicle as he kept on pumping the pedal on each occasion that he attempted to stop the bus. He corroborates the plaintiff's version of how the accident occurred. He rejected the defendant's version that it was the plaintiff who rode into the bus after the bus had swung away from the plaintiff and stuck into the bank. I also accept his evidence that himself and other passengers refused to go back on the bus when it was leaving because of the suspected nature of the brakes.

The evidence as to expenses incurred was given by the grandmother of the plaintiff as pleaded and was not challenged.

The medical reports were admitted in evidence by consent.

The evidence of the second defendant as to how the accident occurred seemed unlikely and was unacceptable.

Although travelling at only 20 m.p.h. he failed to stop the bus before it hit into the bank when he swerved to avoid plaintiff. It was his evidence that after the bus stopped the plaintiff rode into the side of the bus and fell. What then caused the plaintiff to be unconscious until the next day. On the evidence plaintiff was riding very slowly.

Although he agrees that accident happened on a straight stretch of road yet when he first saw the New Star Bus he was only 15 feet from it and then saw plaintiff swinging from behind about 35 feet away. Witness Keith Dotting saw the bus about 1-1½ chains away and saw plaintiff stopped by its side. Was defendant keeping a proper look-out?

The second defendant gave no evidence that he sounded his horn as he negotiated the corner; neither did he give any evidence that he sounded his horn on approaching the New Star bus. The accident took place on the main road leading from Salisbury Plain to Above Rocks where St. Mary's College is situate. This was a regular school day and it should reasonably be expected to have school children using that road at that time. Yet second defendant gave no warning of his approach.

Defendant contradicted himself by saying that it was not the impact on the bank which caused his bus to stop - it was the brakes. Yet he admitted that his passengers assisted him in pushing his bus from off the bank as it had stuck in the soft bank. When asked what was the condition of his brakes that morning he said it was fairly good. Later he said he meant by this that it was perfect. Although it was pleaded that the second defendant was negligent by "driving a defective motor bus in particular with defective brakes," no expert witness was called by the defendant to give evidence about this air-brake system. The evidence given by the second defendant himself in this regard can only be regarded as self serving and no weight can be placed on it in view of the evidence given by Mr. Dotting.

On the totality of the evidence I find on a balance of probability that the defendants failed in their duty of care to the plaintiff and are wholly responsible for the injuries and damage sustained by him.

What were his injuries:-

See Exhibit 2 from Dr. Kotaiah of Linstead Hospital:-

1. Abrasions on the left wrist.
2. Abrasions on the knees.
3. There is a displaced fracture of the radius.

Referred to Kingston Public Hospital Orthopaedic Surgeon.

The injury is of a serious nature but not likely to leave any permanent disability on the patient.

See Exhibit 3 from Dr. Osbourne of Kingston Public Hospital Orthopaedic Department dated 27th November, 1988.

Right arm was put in cast for five weeks. Fracture healed with slight deformity - no impairment of his range of movement.

He should suffer no permanent disability because of his injury.

See Exhibit 1 from Dr. McNeil-Smith dated 4th February, 1987.

Thickening just above right patella. X-ray examination shows a short radius relative to the ulna and some angulation. Femur showed no evidence of bone injury. In my opinion this patient has got mainly a cosmetic deformity and his permanent disability should not exceed 5% of his right upper limb.

Exhibit 4 - From Dr. Warren Blake dated 20th March, 1990. X-ray revealed a united angulated fracture of the distal third of his right radius. Also an un-united fracture of the ulna styliod.

On the plaintiff's evidence he was unconscious until the following day. He had received a cut on the back of his head and spent 10 days as a patient in the Linstead Hospital.

On the question of special damages Mr. Piper for the defendant submitted no award should be made under item 9 of the amended statement of claim relating to damages for loss of contract as the plaintiff had no work permit to work in Cayman and therefore could not legally perform the contract. He further submitted that the plaintiff had failed to prove any quantifiable loss of future earnings, so no award could be made under that head of damages. However, under handicap on the labour market a conventional sum of between Ten Thousand Dollars (\$10,000.00) to Fifteen Thousand Dollars (\$15,000.00) could be awarded. Other areas of special damages were admitted.

On general damages he referred to Mrs. Khan's book on personal injury awards - Volume 3 at page 108 - Bryan v. Hines and page 106 - Wibon v. Thompson - both more serious than the present case and said an award not exceeding Thirty Thousand Dollars (\$30,000.00) for pain and suffering and loss of amenities would be appropriate.

Mr. Samuels for the plaintiff submitted that the plaintiff complaints of his injuries were genuine and supported by the medical reports and that an award of Eighty Thousand Dollars (\$80,000.00) would be justified. He referred to page 110 of Volume 3 of Mrs. Khan's book where an award of Forty Thousand Dollars (\$40,000.00) was made in 1989 where the injuries were not too dissimilar.

On the question of special damage he contended that had it not been for the injury to his hand suffered by the plaintiff his probationary period would have blossomed into a two years contract. In support of his claim for damages for loss of contract he cited the case of Donsalla v. Barr (1969) 3 AER. p. 487. In this case the plaintiff had claimed and was awarded damages when he suffered injuries which prevented him from taking up a contract to work in Nigeria.

The instant case however, may easily be distinguished. The plaintiff had received his injuries and afterwards he went off to Cayman where he was offered a contract which because of his injuries he could not perform. In Donsalla's case (supra) the plaintiff had a contract to do work in Nigeria and subsequently received injuries due to the defendant's negligence.

I find that this injury is too remote and the plaintiff cannot recover damages as claimed under sub. paragraph 9 of the amended statement of claim. If this were otherwise anyone who has suffered an injury could thereafter enter into a substantial contract of a lucrative nature which he knows he can't perform and claim damages.

No award is made for future loss of income as there is no evidence to ground this claim. The plaintiff is obliged to produce precise figures and has failed to do so.

Under the heading of handicap on the labour market, there is no doubt that an award ought to be made.

In the event therefore there shall be judgment for the plaintiff against the defendants with damages assessed as follows:

Special damages:-

One Thousand One Hundred and Seventeen Dollars and Eighty Cents (\$1,117.80) with interest at three percent (3%) from 7th April, 1986 to today.

General damages:-

Handicap on the Labour market - Ten Thousand Dollars (\$10,000.00)
Pain and suffering and loss of amenities - Fifty Thousand Dollars (\$50,000.00)
with interest @ three percent (3%) from date of service of writ to today.

Costs to the plaintiff to be taxed if not agreed.