

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

SUIT NO. C.L. 2000/B-187

BETWEEN	DALTON BROWN	CLAIMANT
A N D	BARBARA HINDS	DEFENDANT

Ainsworth Campbell for Claimant

Alexander Williams for Defendant

**Heard 9<sup>th</sup> November 2005, 9<sup>th</sup> and 25<sup>th</sup> January 2006**

**Campbell, J**

**Assessment of Damages**

On the 24<sup>th</sup> March 2000, the claimant was riding his pedal cycle towards the Bog Walk main road. He was proceeding on Church Road. Although there was no stop sign at the intersection, the claimant said he stopped, and I accept he did stop and make a left turn. His evidence is that one would have to stop because of the busy nature of the Bog Walk main road. He denied the suggestion that he was going across the road. He said he made a left turn and while riding on the side of the road he was struck from behind.

He regained consciousness in the Kingston Public Hospital some five days later. He had a wound to the back of his head, and he was in traction. He had pains in his left knee, left shoulder, and back of head, he complains

of nervousness, and his hands tremble. He was returned to Linstead. He did not see who hit him.

He has had problems in walking and has fallen on occasions. He complains of dizziness.

Mr. Michael Lewis, who was present on Bog Walk main road about a chain and one half away, did not actually see the accident, however, after the accident he saw where the complainant had fallen near the sidewalk.

Mr. William Brown, said he saw the accident whilst at the intersection of Church Road and the Bog Walk main road. He said the pedal cyclist rode on the left side of the road on the soft shoulder, but before the van hit the cyclist it swerved from another vehicle exiting on the other side of the road from the pedal cyclist. The defendant's vehicle went to its extreme left, in doing so, striking the pedal cyclist. He maintained that the van was driving very fast.

The defendant admits being the owner of the vehicle she was driving, registered 1159VG. She denied that the accident happened in the way described by the claimant and his witnesses. She had been travelling from Ocho Rios to Kingston. She said on reaching Bog Walk Gorge area, she saw when a cyclist suddenly appeared to her left windscreen; he was traveling across her path. In her witness statement she says when she saw

him he was already in front of the van. She said she was travelling around 35 - 40 miles per hour. Her vehicle was left hand drive. She said that after impact the cyclist flew in the air. In cross examination she said the road was about 40 - 50 feet wide. The car that had been travelling behind her overtook her just before the intersection. She said when she first saw the cyclist he was about four feet away. She said at the point of impact the road was about 20 feet wide in the direction she was going and there was a soft shoulder. She said she was about three feet from the centre-line and was about twelve feet from her left side of the road.

The claimant has admitted that there was nothing blocking her vision, there was nothing in the nature of shrubbery along that section of the road. There is no explanation why she would not have observed the cyclist emerging from the side of the road. Travelling at 35 mph, if she had been keeping a proper look-out, she would have seen the cyclist. She said where the claimant fell two feet before her car there was a soft shoulder there. This is an indication that the accident did not occur directly before the intersection, but at a section where there was a soft shoulder, which is more likely on the version that was presented by the claimant. On her own case, if she had been keeping a proper look-out she should have seen the cyclist. I prefer the claimant's account.

## **DAMAGES**

### **Special Damages**

The claimant testified that he worked as a cook prior to the accident. I accept that he did. There was no pay slips tendered, he has said that he was not paid in that manner but was given cash; truly a Jamaican situation. I find that he would be employed, as stated in his witness statement, at \$800 per week, awarded for a period of two years, \$830,000. The cost of brain scan, \$13,000.00. Medicine for \$1,200.00. Cost of bicycle \$10,000.00. \$46,000.00 for transportation. I accept that his state requires assistance to be given and that has been provided by his mother, it would seem to me however illogical to award him for that help beyond the available means to pay for it. Based on his income of \$800 per week I would award \$400 per week for a period of six months for a total of \$10,400. Total Special Damages - \$163,800 with interest at 6% from the 24<sup>th</sup> March 2000 to 25<sup>th</sup> January 2006.

### **General Damages**

The claimant suffered a loss of consciousness, laceration of 13cm left parietal area. Swelling of right frontal bone, abrasions upper limbs and left lower chest wall, abrasions anterolateral aspect left thigh and both knees. The consultant neurosurgeon states that he observed chip fracture to the left

humerus and possible left C5-6 upper limb radiculopathy, his behaviour was generally intolerant and interpersonal relationship have been difficult to establish and maintain. He has an impairment of 10% of the whole person.

The case of Judine Kitson, was submitted as relevant. Infant injured in motor vehicle accident, was unconsciousness for 15 minutes, suffered bleeding in the left ear. Abrasions over right side of forehead; right shoulder and both knees. The Court awarded \$250,000.00 for General Damages. Khan Vol. 3, page 230. The updated sum is \$4,125,000.00. Mr. Campbell submitted that the claimant's case being much worse, the Court should award the claimant \$5,500,000.

Mr Williams was highly critical of the authority of Judine Kitson and cautioned the Court about proceeding on it. He pointed out that the judgment in Khan's work, sometimes quite helpful, but is abridgements. He drew the Court's attention to the ambiguity on the face of the summary, where at paragraph b, it stated that it was the opinion of Dr. Cheeks that the minor concussion she suffered at the time of the accident was not the cause of her intellectual status. However the summary went on say that the head injury contributed fifty percent to her intellectual impairment. I agree that the summary was ambiguous. Mr. Williams suggested that a better guide was Nicholas Sergen, where the memory deficit assessed at 10% resulted in

a whole man impairment of 5%. The claimant, a boy 12 years old. Mr. Justice Langrin awarded \$750,000.00 updated \$1,500,000.00. There was a 1% risk of epilepsy and had suffered temporary blindness, there had been an actual fracture of the skull, fracture of the right tibia and fibula. The impairment in the instant case was greater. I would make an award of \$1,700,000.00 with interest at 6% from 26<sup>th</sup> September 2000 to date of payment.

Cost to the claimant to be agreed or taxed.