

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 0151 OF 2003

BETWEEN	HENRY BROWN	CLAIMANT
A N D	JOHN MARTIN	DEFENDANT

Miss Simone Jarrett for the Claimant instructed by Mr. Leroy Equiano of the Kingston Legal Aid Clinic

Mr. Andrew Irving for the Defendant

Heard: 13th November, 2003 and 14th November, 2003

JUDGMENT

RATTRAY, J:

Henry Brown and John Martin were never close enough to have been described as friends. However prior to July 1, 2002, neither could they have been called enemies. What happened on that fateful day to cause two persons, neighbours in the sense that they both resided on the same crescent, to end up before this Court?

Henry Brown claims that on the 1st July, 2002 he was the victim of an unprovoked and malicious attack by John Martin, who used a wooden plank

with a nail embedded in it to strike him, causing him to sustain personal injuries and incur loss and expense.

John Martin on the other hand maintains that it is he who was attacked by Henry Brown with a machete. In order to defend himself from this wrongful and unwarranted assault, Mr. Martin picked up a piece of board from the sidewalk and struck Mr. Brown, using no more force than was reasonable in all the circumstances.

What this Court has to decide is whether John Martin intentionally and without provocation attacked Henry Brown with the wooden plank and inflicted severe personal injuries or whether the circumstances were such that John Martin was acting in self defence in protection of his own life.

Henry Brown has brought these proceedings in Court claiming damages for personal injuries suffered and loss and expenses incurred as a result of Mr. Martin's actions.

The burden rests solely on Henry Brown to satisfy this Court on a balance of probabilities that he is entitled to Judgment in his favour and the consequential relief claimed.

Henry Brown says that on the morning of the 1st July, 2002, he was talking with his baby mother Lydia Brown, with whom at the time he no longer had a relationship, on Wellside Crescent in the parish of St. Andrew.

Her new boyfriend the Defendant in this action, John Martin called her and she went over to him and eventually walked away.

Subsequently John Martin came towards him with a piece of 4" x 4" lumber and threatened to kill him. Henry Brown says he had his machete with him as he was going to work at Newport West to chop bush and he held the machete in his right hand. He further says that John Martin came towards him with the piece of wood, but he (Brown) turned away and was moving off the sidewalk holding his bicycle with both hands and the machete in his right hand, when he was attacked from behind.

He goes on to tell this Court that John Martin hit him from behind with the piece of wood on his left side, while he (Brown) was standing on the sidewalk and Martin was to his left a little behind him standing in the road.

Mr. Brown says he rode off on his bicycle to the Police Station and was taken by the police to the public hospital where he was treated. The severity of the blow was such that he sustained fractures to his 2nd, 3rd and 6th ribs among other injuries.

John Martin in the amended Defence filed on his behalf denied the allegations of Henry Brown. In his evidence, he states that it was Mr. Brown who was being verbally abusive to Lydia Brown on that day and when he (Martin) engaged her in conversation, it was Henry Brown who

threatened to kill him and drew his machete and approached him menacingly.

Mr. Martin further states that on being approached by Mr. Brown who was angrily swearing, cursing and swinging the machete in his right hand, he (Martin) stepped back and picked up a piece of board from a wood pile on the sidewalk. Mr. Brown continued to approach him swinging his machete and in order to defend himself, he hit Mr. Brown with the board he had in his hand, as he feared that Mr. Brown would have chopped him with the machete.

John Martin's case is that he was standing face to face, about 2 – 3 feet away from Henry Brown, when he hit him with the board and he denied striking Mr. Brown from behind. He also said that he was not aware, at the time he struck Mr. Brown, that the piece of wood had a nail in it. He also denied having any relationship at the time with Mr. Brown's baby mother, Lydia Brown.

Two diametrically opposed stories have been advanced in this Court as to how the injuries to Henry Brown were sustained. Both cannot be correct.

The Court then must carefully examine the evidence given and also assess the demeanour of the parties as they gave their evidence in order to arrive at a reasoned decision in this matter.

The search for the truth is often elusive. It has been said:-

“At trial the truth emerges only as the evidence portrays it, often only partially, too often not at all.”

Where in cases such as the present, one party says one thing which is contradicted by the other, a perusal of the physical evidence viewed separately and then in conjunction with the rest of the evidence, oftentimes provides some insight that may lead to a resolution of the Court’s dilemma in ascertaining which party is telling the truth.

The Particulars of the Injuries sustained by Henry Brown were outlined in the Particulars of Claim and reads:

- (1) pain through the left anterior chest wall
- (2) shortness of breath
- (3) mild cardio pulmonary distress
- (4) reduced chest expansion in the left hemothorax
- (5) paradoxical breathing movement
- (6) subcutaneous emphysema
- (7) fracture of the 2nd, 3rd, and 6th left ribs

This summary of Mr. Brown’s injuries was extracted from the Medical Report of Dr. Vaughn Whittaker dated September 10, 2002, which was tendered in evidence as Exhibit 2. That report went on to indicate that:-

“...The patient was hit to the left chest with a plank with nail to the posterior middle zone of chest.”

Nowhere in that medical report is there a reference to any injury to Mr. Brown's left hand or left arm.

If these injuries were occasioned by Mr. Martin striking Mr. Brown while standing in front of him, face to face at a distance of 2 – 3 feet away, his swinging of the plank at Mr. Brown ought to have caused some injury to Mr. Brown's left hand or side, bearing in mind Mr. Martin's evidence that he was right handed. Mr. Martin also testified that he held the piece of wood with both hands and swung it at Henry Brown from right to left.

The above passage cited from the medical report also demonstrates that the area of contact on Mr. Brown's body hit by the plank wielded by Mr. Martin was to the left chest to the posterior middle zone of the chest.

In the Court's view, this establishes that Henry Brown was hit from behind and not from a blow to the front of his body as alleged by John Martin.

This Court therefore find^s on the balance of probabilities the evidence of the Claimant, Henry Brown more credible and accept^s him as a witness of truth. The Court further finds that the injuries suffered by Mr. Brown were sustained in the manner described by him.

The finding of this Court then is that the Defendant John Martin is responsible for Henry Brown's injuries and is therefore liable in damages.

Special Damages

After an enquiry by the Court, Counsel for the respective parties advised of an agreement as to the following items of Special Damages

(i)	Medical Report	\$ 1500.00
(ii)	Medical Expenses - South East Regional	250.00
(iii)	Prescription	188.00
(iv)	Bus fare from Kingston Public Hospital	50.00
(v)	Medical Expenses - Dr. Whittaker	<u>1500.00</u>
	Total	\$3,488.00

No evidence was led on behalf of Henry Brown with respect to item (e) of the Particulars of Special Damages, that is Betnovate-N-Crème in the amount of \$285.00. This sum is therefore not allowed.

The following items of Special Damages were however contested by Counsel for John Martin.

(a) **Victoria Jubilee Bill – \$7700.00**

Objection was raised by Counsel for Mr. Martin that the Victoria Jubilee Bill could not be tendered without calling the maker thereof.

Miss Jarrett therefore led evidence from Mr. Brown as to the amount of the bill, the period of his hospitalization, the treatment he underwent while in hospital and the number of x-rays done while under the hospital's care. A suggestion was put to Mr. Brown by Counsel for Mr. Martin that he (Mr. Brown) was seen elsewhere while allegedly hospitalized. However no witness was called nor any evidence led support that suggestion.

I am satisfied therefore that this item of claim has been proved and I award the sum of **\$7,700** in that regard.

(b) **Shirt - \$1,000.00**

This item was challenged by Counsel Mr. Irving on the ground that the shirt worn by Mr. Brown on the day he was injured was old and worn and not worth \$1,000.00. He instead suggested a figure of \$500.00 as compensation for the shirt which was destroyed.

He also challenged Mr. Brown's allegation that it was a relatively new shirt received from his sister who lived abroad, on the basis that he would not be wearing a new shirt to go to cut grass.

I am satisfied with Mr. Brown's explanation that the type of shirt he would wear to do work would not matter to him. I have already accepted him as a truthful witness and the sum claimed of **\$1,000.00** is awarded for this item of loss.

(c) **Loss of Earning at \$3,000.00 per week for 12 weeks**

Henry Brown gave evidence of being a labourer, who did odd jobs such as painting and cutting bush. At one time he was also involved in buying and selling peanuts.

His evidence is that on the day in question he was on his way to Newport West to cut grass for a Mr. Brown, a gentleman for whom he had often worked doing odd jobs, both at his business place and at his home. As a result of the incident he did not get to work on that day and he thereby lost out on being paid \$1,500.00 for that job.

His evidence further is that he usually earns between \$3,000.00 – \$3,500.00 per week, although he sometimes would earn \$5,000.00 per week. In answer to the Court, the Claimant admitted that his employment with Mr. Brown was not on a daily basis but was sometimes three to five days per week and that over the period of a month, he would probably work with Mr. Brown for approximately two to three weeks. He stated that his earnings ranged between \$1,250.00 to \$1,300.00 per day depending on the job.

Mr. Irving on behalf of John Martin complained that there was no medical evidence before the Court in corroboration of Henry Brown's claim that he was unable to work for a period of three (3) months.

However, no suggestion was put to Mr. Brown challenging his assertion that he was unable to work for the period he alleged. He suffered three (3) fractured ribs as a result of Mr. Martin's actions and complained of pain in the area of his injuries while bending. All this went unchallenged by Counsel and I find in light of the nature of the injuries sustained and the fact that Mr. Brown's evidence in this regard was left unquestioned, that the amount and the period claimed for loss of earnings is reasonable.

Mr. Irving also submitted and I find correctly so, that items of special damages must be specifically pleaded and proven. He argued that loss of earnings was not proven to any satisfactory level before this Court and urged the Court not to award any damages based on the lack of documentary or other evidence in support.

He relied on dicta in the well known Jamaican Court of Appeal case of Hepburn Harris vs Carlton Walker Supreme Court Civil Appeal No. 40 of 1990 in support of this submission.

In the leading case on pleading and proof of damage, Ratcliffe vs Evans (1892) 2 QB 524, Bowen L J opined in relation to special damages:-

“...As much certainty and particularity must be insisted on ... in pleading ... of damages as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

I accept without hesitation the dicta of Wolfe J.A. (Ag) as he then was in the case of **Desmond Walters vs Carelene Mitchell** (1992) 29 J LR 173 at 176 where he stated:-

“Without attempting to lay down any general principle as to what is strict proof, to expect a sidewalk or a push cart vendor to prove her loss of earnings with the mathematical precision of a well organized corporation may well be what Bowen L.J. referred to as ‘the vainest pedantry.’”

Having considered Mr. Brown’s occupation as a labourer doing odd jobs and in light of my acceptance of his evidence as being truthful, I am satisfied that he has cleared this evidential hurdle and I am of the view that he is entitled to the sum claimed of \$36,000.00 for loss of earnings.

General Damages

On the issue of General Damages, Counsel for the Claimant

Miss Jarrett cited two (2) cases:-

- (1) **Corine Peart vs Chin’s Transport Limited and Hayden Smallwood** at page 95 of Justice Harrison’s Assessment of Damages for Personal Injuries.
- (2) **Derrick Isaacs vs Evan Jones and Ranger Protection and Security Company Limited** page 134 of Khan’s Volume 5 Recent Personal Injury awards made in the Supreme Court of Judicature of Jamaica.

Based on those cases, she suggested a figure of **\$512,000.00** as General Damages for Pain and Suffering and Loss of Amenities.

Mr. Irving on the other hand, while not citing any authorities pointed out that the Plaintiff in the **Corine Peart case** sustained five (5) fractured ribs as compared to the three (3) fractured ribs suffered by Mr. Brown in this case. Applying strict mathematical proportionality to the award, he suggested a figure of **\$307,00.00** and then reduced that sum further to **\$250,000.00** on the basis that no evidence as to loss of amenities was adduced by Mr. Brown.

While I accept that Counsel failed to lead any evidence from Henry Brown as to loss of amenities in this matter and I also agree that the injuries were more serious in the Corine Peart case than in the present one, I do not accept the amount suggested by Mr. Irving nor the formula at which he arrived at that figure. An amount for compensation in respect of fractured ribs is not and cannot be awarded per rib. Each litigant faces adversity in their own way and the Court must consider the circumstances of and the evidence given by the particular litigant before it on each occasion.

The authorities on quantum damages are mere guidelines. In the present case, Henry Brown complained of feeling pain up to the time of filing his Witness Statement a few months ago. This also was never challenged in cross examination.

After considering the evidence before me and looking at the authorities referred to, I am of the view that the sum of **\$375,000.00** would be adequate compensation for Pain and Suffering in this matter.

Judgment then is awarded in favour of the Claimant against the Defendant in the sum of **\$423,183.00** being:-

Special Damages	\$48,183.00
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General Damages -

Pain and Suffering	375,000.00
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Interest on Special Damages at 6% per annum from the 1st July, 2002 to the 14th November, 2003. Interest on General Damages at 6% per annum from 1st February, 2003 to the 14th November, 2003.

Costs to the Claimant to be taxed if not agreed.