

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CL 1996/B125

BETWEEN	AUBREY BRYAN	CLAIMANT
AND	COOLIT LIMITED	1 <sup>ST</sup> DEFENDANT
AND	GLENFORD COLEMAN	2 <sup>ND</sup> DEFENDANT

Ms. Racquel Dunbar for the Claimant.

Defendant not represented.

**Heard 25<sup>th</sup> and 27<sup>th</sup> January 2005**

**Campbell, J.**

**Assessment of Damages**

On the 20<sup>th</sup> July 1990, Mr. Aubrey Bryan was driving his Lada motorcar along Palmers Cross main road when he was involved in a collision with a motor truck driven by Glenford Coleman, which was traveling in the opposite direction. The truck was owned by Coolit Limited (Coolit).

On the 16<sup>th</sup> April 1996, Coolit and Coleman were given Notice of the Assessment of Damages, by way of service of the Orders made at the Case Management Conference, on the 30<sup>th</sup> day of August 2004.

Notice of intention to tender into evidence Hearsay Statements made in a Document was served on O.G. Harding, who appears on the record for Coolit, and by registered post on Glenford Coleman.

The evidence of Bryan was admitted that immediately after the accident he lost consciousness, and when he awoke he was in the Kingston Public Hospital. He presently complains of "bad headaches and my head would hurt me for a long time." A swelling comes up on his neck every now and then. He could not continue at his occupation of being a taxi driver because of serious complaints by his passengers about his management of the car.

His common-law wife, Hyacinth Bryan, testified that her husband was in the hospital for four weeks. He doesn't now speak properly. His memory is poor. He is still very weak. Contrary to his normal behaviour, he gets angry with his grandchildren. He has to be directed to take care of his hygiene. She has to assist him in getting around.

Dr. Crandon reports of having seen Bryan on the 19<sup>th</sup> September and the 18<sup>th</sup> October 1990. His short-term memory was poor and responses slow with obvious retardation in his mental agility. There was physical neurological deficit. He opined that Bryan had a head injury and has clinical evidence of impairment affecting his memory. He stated that he had made a satisfactory physical recovery and there is no evidence of epilepsy.

In his report of the 16<sup>th</sup> October 1990, he opined, "Clinical findings suggested brain damage at least involving the left frontal, temporal and parietal region. Subdural haematoma could also not be excluded.... He is not fit to operate a motor vehicle and is dependent on his wife for anything other than routine medical care."

Dr. Cheeks' report of 25<sup>th</sup> October 1990 spoke of "soft tissue (muscle & ligamentous) injury to the neck. X-rays of the skull and neck showed no fracture.

The claim for Special Damages for drugs, travelling to the hospital and fees, etc., supported by receipts was allowed in the sum of \$14,665.55. Bryan gave evidence that he earned \$400 per day, however, he has pleaded that his loss was \$400 per week, save for a period of three months when he attempted to work. He has not worked for fourteen years - \$302,000.

Mr. Bryan will not be able to work in the future. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. It was clear from the evidence that Mr. Bryan was a man who worked to support his family. The multiplicand is the minimum wage of \$2400.00 per week and a multiplier of five applied. See Osourne Espeut (Khans Vol. iv Table A), where a multiple of five was used. An award of \$624,000 is made for loss of future earnings.

In respect of General Damages, it was urged on behalf of the Claimant that the severity of the injuries is evidence by the fact that almost fifteen (15) years

later the effects are still being felt. He has a 12% whole person disability. The quality of his life has been lessened. Counsel relied on Isaiah Muir v Metropolitan Parks & Markets Limited and Dennis Whyte Khans Vol. 4 Personal Injuries.

1. Unconscious
2. Blow to the left frontal region of head. Laceration of the left forehead.
3. Central concussion
4. Compound

At KPH scalped sutured and he was hospitalised for ten (10) days. Loss of consciousness with generalized stiffening of the body, cramp-like feelings in the left leg. Change of personality and undue irritability. Dr. Cheeks reported a compound linear fracture of the skull vault...posttraumatic epilepsy. He as given medication to control epileptic seizures and would require anti-epilepsy medication for life.

General Damages of \$1,624,600.00 (of this sum \$1,500,000.00 with interest at 3% was for Pain and Suffering and Loss of Amenities) was awarded on the 21<sup>st</sup> July 1995. Updated, that figure is \$4,045,321.80.

It was submitted that Bryan's injuries are more serious. I don't agree. In Muir the Plaintiff had suffered epileptic seizures on some five occasions between the 28<sup>th</sup> of November 1990 and the date Dr. Cheeks did his examination on the 6<sup>th</sup> March 1991. He also suffered headaches and change of personality and undue irritability. The fact that no permanent disability percentage was assigned by the doctor and that the period of hospitalisation was longer than for Bryan, is to my

mind secondary to the epileptic seizures and the frequency of their occurrence to which Muir was subjected.

I made an award of \$4,000,000.00 for General Damages. Interest on both Special damages and General Damages at 6% for a period from 20<sup>th</sup> July 1990 to 27<sup>th</sup> January 2005, and from 1<sup>st</sup> August 1996 to 27<sup>th</sup> January 2005 respectively. An award of \$624,000 is made for loss of future earnings.

Cost to the Claimant to be agreed or taxed.