

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

SUIT NO. C. L. B 237 1989

BETWEEN ROMANE BRYAN
BY NEXT FRIEND MARIE BRYAN PLAINTIFF

A N D YVONNE TERRELONGE 1ST DEFENDANT

A N D BERNARD TERRELONGE 2ND DEFENDANT

Mr. R.S. Pershadsingh Q.C. and Mr. Horace Edwards Q.C. for the Plaintiff.

Miss Dorothy Lightbourne for the Defendants.

Heard on February 22nd, June 28th-29th, 1993, October 23rd & 24th, 1995,
April 15th, 16th-18th, 1996 and January 29, 1999.

COURTENAY ORR J

INTRODUCTION

On the night of the 11th of March 1989 at about 6:30 p.m., the plaintiff then a baby of two months, was in his mother's arms. She was seated in the rear of a car driven by her husband up the Stony Hill Road on the extreme left. A car driven by the second defendant and owned by the first defendant came over on the plaintiff's side of the road and crashed head on into the car in which the plaintiff was travelling.

The impact threw the mother into the front seat of the car and she became unconscious for a while. When she recovered she saw a lady holding the plaintiff, he was not moving. A motorist took them to the Children's Hospital.

There was a difficulty in obtaining treatment at the Bustamante Children's Hospital so, they went to the University Hospital where Romane was treated and sent home. The following day he was admitted to the Bustamante Children's Hospital where he remained until discharged on 14th March 1989.

He was referred to Dr. Royes by the Children's Hospital for followup treatment as an out patient. Later, on 15th april 1990 when he was fifteen (15) months old he was taken to Susan Knight a Psychologist, and to Dr. Ivor Crandon, Consultant Neurosurgeon on October 3 and 7, 1991. On

1st July 1992, at the request of the defence he was examined by Dr. Rondolph Cheeks, Consultant Neurosurgeon.

This is an assessment of damages, interlocutory judgment in default of defence having been obtained on 9th May 1990.

The Claim For Special Damages

I award special damages as set out hereunder:

Medical Expenses	\$5,200.00
X-Rays	120.00
Registration Fee	10.00
Admission Fee	30.00
Prescriptions	716.00
Transportation	950.00
Extra Help (22 weeks)	1,540.00
Clothing	Nil.
Thermos	38.00
Blanket	35.00
TOTAL:	\$8,639.00

The evidence in support of this aspect of the plaintiff's case come only from his mother Marie Bryan. The awards for medical expenses and extra help differs from the amounts given in the Statement of Claim. The award for medical expenses is Seventy Dollars (\$70.00) less than the amount claimed as the award is in keeping with the evidence given. Marie Bryan said she employed extra domestic help because her hand was broken and she needed someone to care for the baby for a period of Twenty-nine (29) weeks. Miss Lightbourne attacked this as excessive.

I am of the opinion that Twenty-two (22) weeks is a reasonable period and make an award accordingly. She also said the cost of x-rays was One Hundred and Fifty Dollars (\$150.00), but no amendment was applied for so I awarded the sum claimed - One Hundred and Twenty dollars (\$120.00).

Finally, no evidence of the value of the clothing lost was given. So no award was made for that item.

General Damages

The claim for General damages is based on personal injuries to the plaintiff and is set out thus in the Statement of Claim:

“PARTICULARS OF PERSONAL INJURIES

- (a) Unconsciousness.
- (b) Severe pains and irritable (sic).
- (c) Laceration, bruised and swelling to back of head.
- (d) Vomiting streaks of bright red blood.
- (e) Stiffness of neck; inability to turn head for seven (7) days.
- (f) swollen right foot with black and blue marks.
- (g) Refused any feeding whatsoever for five (5) days.
- (h) Nervousness.
- (i) Signs of fear and pain by suddenly jumping and screaming at certain times since accident.
- (j) Signs of nightmare of unpleasantness by jumping out of sleep and screaming since accident.”

The Evidence Of Personal Injuries On Behalf Of The Plaintiff

This evidence on this aspect is comprised of two segments:

1. The testimony of the parents Marie Bryan and Rudolph Bryan.
2. Evidence of Medical Practitioners and Psychologists.

The Testimony Of The Parents

(a) The Mother's Evidence

Her testimony was to the following effect. After the collision she lost consciousness; when she awoke she saw a lady holding Romane. He was not moving unconscious at the Children's Hospital, but at the University Hospital after a while he began to move and to cry. Injuries: He had cuts to the back of his head and bruises to his forehead.

Treatment: By Dr. McDonald: He was x-rayed and sent home.

The next day 12th March, he was vomiting blood, his right foot was swollen and blue, and the back of his head was also swollen.

He was admitted to the Children's Hospital for three (3) days. He stopped taking his feed for about five (5) days after the accident.

After discharge: He would keep his head in one position rather than move it around normally.

(2) Cry out in his sleep and look frightened: He was taken to Dr. Royes.

Treatment Received: He was x-rayed and given medication.

He continued to cry out in his sleep and would run away when one tried to comfort him, as if he did not recognise his parents.

He had a stiff neck. He stopped turning it from side to side for up to the age of five (5) months.

He was taken to Dr. Royes for about four (4) occasions during the two weeks after the accident. On these occasions he was not ⁿcaughing but groaning - He did not have a "chest Sound". Dr. Royes had said one tonsil was red.

At first he would wake up out of his sleep every night. Then the frequency began to reduce until it would occur about three (3) times per week until he was two (2) years old.

After two years he was taken to Dr. Crandom, Consultant Neurosurgeon, and then to Mrs Susan Knight, Clinical Psychologist.

Before the accident he would sleep for long hours. He was doing well at school. At the time of giving evidence February 1993; he was waking up and crying once per week.

(b) The Father's Testimony

His evidence was very limited. He said that Romane acted like a normal eight (8) weeks old child before the accident. On his (the father's) return from hospital after about a month, he noted that Romane would cry out in his sleep and tended to wake up very frequently, which was unusual. at the time of giving evidence in October 1995, Romane was jumping out of his sleep two (2) times per night, and three (3) times per week on average.

One and one half years before then, (October 1995) was the last time they had taken Romane to a doctor, (Dr. Royes) about his night behaviour.

Romane was "not so fast in learning" and had to be doing extra lessons.

(2) Evidence From Medical Practitioners and a Psychologist

**(a) Dr. A. McDonald M.B. B.S. FRESC Dr. M. Sullig
Consultant Surgeon, University Hospital**

Dr McDonald's certificate was tendered in evidence. In it he indicated that Romane was seen on 11th March 1989, after he was allegedly involved in a motor vehicle accident.

He gave the following findings:

"Clinical examination was normal except for a haematoma over the right occipital area of the skull. X-ray of the skull revealed no fractures. The child's mother was reassured and the patient sent home with instructions to return the following morning for review. His injuries were not considered serious and no permanent disability should result."

**(b) Letter Of Referral From The Bustamante Children's Hospital To
The Paediatric surgery Resident/Consultant Of The University Of The
West Indies**

This letter recalled the following features of the patient's history and condition:

1. Taken to University Hospital after the accident. X-Ray of skull proved normal. Panadol elixir prescribed.
2. He became irritable and vomited bright red blood. But was otherwise asymptomatic.
3. Taken to Children's Hospital March 12, 1989. On examination he was irritable but easily soothed by his mother.

Other features:

Pink and moist. He was afebrile. His abdomen and central nervous system were normal.

He had (1) a haematoma 3x3 c.m. (soft) to the right parietal region. (2) a haematoma on the right foot plantar aspect.

X-Ray of his chest, abdomen long bones, foot and skull revealed no abnormalities.

Blood investigations revealed: No abnormalities.

He remained stable throughout his stay in the Children's Hospital.

He was referred to the University Hospital for follow-up as an out patient.

(c) Medical Report Of Dr. John Royes

After tracing the history of the patient Dr. Royes stated that Romane was taken to him on 15th March 1989 because his neck was thought to be stiff.

He then made the following notations:

"1. Physical Features: Not ill looking but irritable. Nutrition and development satisfactory.

Tonsils were pail, temperature normal. Tends to keep neck rather stiff.

Left hand tonsil normal

Right hand tonsil red and dull

Throat normal

Spinal movement normal

Respiratory system: Wet sound in cough with transmitted sound

Skin fine papular rash on face

Scaly scalp

Motor system, slight reduction in movement in right lower limbs

Swelling on right foot

Findings

1. Motor vehicle accident soft tissue injuries
2. Respiratory tract infection with stitis media
3. Stiff neck? 2% to resolving meningitis.
4. Eczema (skin infection)
5. Anorexia.

Medication

1. Tempur Syrup
2. Laboratory test, full blood count and HB Electrophoresis, Testing for sickle cells, Cerebro spinal fluid plus X-rays to neck
3. Skin application
4. For haematimics later.

Results

X-Rays normal

CSF Normal

Prescription with bactrin continued.

The stiff neck may have been 2% to soft tissue injury in that area or may have been 2% to muscle spasm associated with the upper respiratory tract infection which he had.

(d) Testimony of Susan Knight Msc Clinical Psychology and Chartered Member of the British Psychological Society, Lecturer University of the West Indies Faculty of Medicine, Psychologist, University Hospital of the West Indies.

This practitioner examined Romane on April 12, 1990 when he was about fifteen (15) months old. She obtained a history from his parents that he had been having paroxysmal episodes during sleep, in which he screamed out, appeared terrified and did not respond to comforting until he began to calm down after approximately one minute. At first the episodes occurred once or twice nightly, four times per week. But by the time she saw him they had decreased to approximately once per week. She was also told he had received a head injury in a motor vehicle accident and that his behaviour had been normal up until then.

She found him to be developing normally otherwise. The frequency of the episodes was at first much higher than normal and the age of onset much lower than normal.

She regarded the episodes as night terrors which differ from nightmares in that in night terrors the patient is awake but not responsive to others and often quite active e.g. running around. In nightmares on the other hand, the patient remembers the episode and is asleep during it. A child usually grows out of night terrors.

She said that as there was no family history of this problem and no evidence of toxic or social environmental causes, and barring neurological or medical causes, she felt it possible that the onset could have been precipitated by a stressful or traumatic experience. The only event she could elicit was the motor vehicle accident which could be the cause of the stress.

She felt that his prognosis was good. The fact that the episodes were decreasing was a good sign.

It was possible that he could have been in pain and responded as he did. Night terrors without move are not considered serious.

She had not received a medical report other than one from Children's Hospital indicating that he had a haematoma in the rightregion. She was unaware that he had suffered from an upper respiratory tract infection and stiff neck. Such an infection would cause him to suffer discomfort.

He had not been referred to her by a doctor but by Mr. Pershadsingh.

The frequency of the episodes suggested that the stress must have been significant, and the early onset also pointed to some degree of significance.

**(e) Dr Ivor Winston Crandon BSc. MB. BS FRCS, Consultant
Neurosurgeon and Lectureer in Neurosurgery at the University
of the West Indies**

He examined Romane on October 3 and 7, 1991. He received the same history as that given Susan Knight thought but with addition that Dr. Royes had done a Lumbar puncture and x-rays of Romane's neck and these studies were normal. The only complaint of his mother was his problematic nocturnal episodes.

Dr. Crandons' examination revealed no abnormal physical findings, but he felt that Romane had suffered a head injury with a concussion and that he had lost consciousness for a period. However there was no evidence of residual clinical effects.

In his opinion there was a temporal relationship between the accident and the development of the episodes, and therefore he felt that the accident may have been influential in these developments.

He regarded the episodes as "night terrors" and felt that they were likely to be a consequence of the injury to the brain and the concussion Romane sustained at the time of the accident. Night terrors follow injury or stressful events in the life of a child.

He received no report from a doctor that Romane had been unconscious ; just what the mother had told him. But on the day he gave evidence 28th June 1993 he saw Dr. McDonalds report, and noted he saw a haematoma.

His conclusions were based on the history of loss of consciousness.

There is no way of telling a patient had been unconscious if when the doctor examines him he is awake but there are signs which can indicate that a child has suffered an injury.

Concussion in general has been shown to be associated with damage to the brain at a microscopic level and this microscopi damage does not necessarily produce any permanent disability. Romane's unconsciousness had produced no detectable clinical effect. It would be incorrect to say that that concussion does not cause brain damage.

The late effects of brain injury in a child who is a few months old are largely unknown. He was unable to say whether Romane's ability to learn, memory or other neurological functions whould be adversely affected. He had done a complete neurological examination and there were no abnormal neurological findings - no physical abnormality whatever.

Nothing needs to strike the head to cause loss of consciousness. This could be caused by acceleration of the brain e.g. the sudden stopping of a motor vehicle in which a passenger is travelling. The resultant injury may not show up on machines. C.T. Scan or M.R.I. will not detect all types of brain damage. It depends on the degree of brain damage.

On a single occasion a child in pain could appear to be having night terrors - or even for a week or two weeks.

He was not saying that brain damage caused the night terrors. He did not think it is known what causes them. The condition is associated with stressful situations. He could not say that night terrors were a result of the accident.

Subarachnoid bleeding may occur but not be visible on a C.T. Scan. It may heal and produce ill effects later in life.

He had seen Dr. Roye's report which spoke of respiratory infection, a stiff neck and soft tissue injury.

The Evidence On Behalf Of The Defendants

The defendants calledd one witness - Dr. Randolphs Cheeks, FRES, Consultant Neurosurgeon and exhibited the medical report of his examination of Romane on July 1, 1992.

The report showed the following findings and opinion:

“EXAMINATION

The subject is of healthy general appearance and takes an active interest in the environment. He is normocephalic. Neurological examination revealed no abnormalities and the vital signs were normal.

CONCLUSION

This child did not have any neurological abnormalities when seen by me. He learns quickly, e.g. he grasped the concept of size rapidly, and according to his behaviour and academic activities there appear to be no problems during his waking hours. The fact that he awakens screaming on some nights suggests that he may like many children his age be having ‘bad dreams’. The cause is unknown.

I requested a CAT brain scan to determine whether or not any structural damage was present because of the history of head injury. The scan was carried out on 2nd October and the results show no structural brain injury is present.”

In his oral evidence Dr. Cheeks said that the cause of night terrors is unknown but what is certain is that they are not related to head injury. The mechanics of head injury itself could not bring on nightmares and the evidence of researchers does not indicate that trauma could be a trigger for night terrors. He came to the conclusion that Romane had been experiencing nightmares or bad dreams and not night terrors.

In a mild case of concussion such as this there is no structural injury to the brain. Subarachnoid haemorrhage would be visible in a CAT Scan because the Cat scanner can show an abnormality the size of a pin head.

By mild concussion he meant that the brain was shaken but not damaged; shaken sufficiently to create a temporary fully reversible functional disturbance of consciousness - such as when you are briefly dazed following a blow to the head.

THE SUBMISSIONS ON BEHALF OF THE PARTIES

(a) On Behalf of the Defendant

The aberrant nocturnal activity of Romane had decreased. Why the delay in taking Romane to a doctor when the behaviour became evident?
- One and a half years.

There is no evidence of treatment for the condition. Susan Knight does not recommend any, and did not observe the behaviour complained of.

Dr. Crandon has never seen night terrors.

There is no medical evidence to support unconsciousness. Dr. McDonalds report (from the University Hospital) does not mention it. It is unlikely that he would have sent Romane home if there were 'signs of unconsciousness'. Dr. Cheeks evidence is to be preferred.

(b) **On Behalf of the Plaintiff**

Mr. Pershadsingh submitted that the mother's evidence was sufficient to prove unconsciousness. The court should therefore find that Romane suffered brain damage is a result - as suggested by Dr. Crandon.

There was ample evidence to make a finding that there were night terrors and that these were due to the trauma of the accident.

THE COURT'S FINDING REGARDING INJURIES

Miss Lightbourne argues that there was insufficient evidence in which to make a finding that Romane was unconscious. I do not agree. The evidence of the parents together with the surrounding circumstances of the accident is enough to convince me that he was unconscious. The fact that Dr. McDonalds report does not mention it is to my mind due to his having forgotten about it, in much the same way by his report does not mention the injury to his foot - an injury noted at the Children's Hospital in the letter of referral, and Dr. Royes who saw him four days after the accident.

I do not regard the fact that Romane was not detained in the University Hospital as significant, in view of Dr. Crandon's evidence, which I accept on this point, that "even outside of Jamaica a head injury with loss of consciousness does not necessarily mean admission for observation."

On the issue of whether there was brain damage Mr. Pershadsingh referred to the work Forensic Medicine by Sydney Smith and Frederick Smith Feddes to support his submission that Romane must have suffered brain damage. With respect I prefer the evidence of Dr. Cheeks

whose experience and qualifications are impressive and I accept his testimony that there was no structural injury to the brain. I find there was only a mild concussion in which the brain was shaken but not damaged; “shaken sufficiently to create a temporary fully reversible functional disturbance of consciousness” (Dr. Cheeks).

As regards the claim of night terrors, I again accept the evidence of Dr. Cheeks that Romane was not suffering from night terrors. I note that although Dr. Crandon thought the phenomenon was night terrors he said finally “ I cannot say that night terrors were as a result of the accident.”

This means that I reject the opinion of Susan Knight in this point, and find that Romane was having night mares.

I find the following injuries occurred as a result of the accident. I list and number them as they appear in the statement of claim:

- (a) Loss of consciousness.
- (b) Severe pain and irritability.
- (c) Laceration bruising and swelling to back of head.
- (e) Stiffness of neck; inability to turn head for seven days.

I base this finding on Dr. Royes’ opinion that the stiff neck may have been due to soft tissue injury in that area. Although he gave another possible cause in all the circumstances. I regard it as more probable that it was as a result of the accident.

- (f) Swollen right foot with black and blue marks.

I reject the following symptoms on the basis that they were not caused by the accident:

- (d) Vomiting streaks of bright red blood.
- (g) “refused feeding” I regard this as due to the tonsillitis.
- (i) Signs of fear and pain by suddenly jumping out and screaming
- (j) Signs of nightmare of unpleasantness etc.

I also reject the following claims as not proved to have existed:

- (h) Nervousness.
- (k) Signs of trembling and fits.

Miss Lightbourne referred to awards made in the following cases:

Frederick Folkes v Albert Thompson

Harrison J Casenotes P61 Heard: 20.12.90

Unconsciousness, headaches, abrasions, severe blow to head with abrasions to face, right hand, and right costal areas, loss of consciousness and persistent headaches. He was hospitalized for two days.

Award \$20,000.00 - worth \$141,866.00 today.

Cephas Omphrey v Yvonne Williams

Harrison J Casenotes Issue 2 P 64

Heard: Assume July 1991 Cerebral concussion and a 1 1/4 inch laceration over the occipital region of the head.

By consent damages assessed at \$20,000.00. inclusive of costs would be worth today \$107,043.00.

2. **Junior Panton v A.G.**

Harrison's Casenotes P. 67 Heard: 2.10.92

Injuries Head injuries: Multiple bruises to face and pain all over body.

Award: \$30,000.00. This is equal to \$85,385 today.

3. **Verta Scott & Ashbin Scott v Tankweld**

Harrison J. Case Notes Issue 2 P. 65 Award

January 1992 Blow and wound to the head and neck causing pain in the head and neck.

Award \$9000.00. Equivalent to \$33,488.00 in today's money.

Mr. Pershadsingh cited the following cases:

Anthony Rose by next friend Yvonne Walker & Yvonne v Thomas Smith

Khans Vol. 2 P. 210

Infant aged 11. Injuries: Unconsciousness severe bleeding from nose, Fracture of medial malleolus of left lower leg (ankle). Damage to left frontal and temporal areas of brain affecting memory.

Treated in hospital ten days. Ankle heated and broke again. Behaviour pattern changed

become truant and noisy. At thirteen years five months had a reading level of five years. Judge found he had brain trauma. On appeal the Court found that there had been significant brain damage, that his prospects were blighted, and "that any brain damage is a serious injury as medical science cannot accurately predict the short term or long term effects of such injury ..."

The award at past instance of \$10,000.00 was increased to \$18,000.00 May 1985. Today this sum would be worth \$269,357.00

Judine Kitson *bnf*

L. Kitson v Everal Hoshin

Khans Vol. 3 P. 320 Heard: May 1990.

Infant five years old. Motor vehicle accident. Injuries: Minor concussion, unconsciousness for fifteen minutes. Bleeding in left ear - cleaned spontaneously. Abrasions over right side of forehead.

She was examined by Dr. Cheeks, Consultant Heamosurgeon. Findings, she was of dull normal range of intellectual performance, but he did not think that the minor concussion accounted for her intellectual status. She had a *history* of low blood sugar and that both the head injury and the hypoglycaemia at both contributed usually 50% each to her in intellectual impairment.

She had a 2cm hypopigmental scar on the right side of her face and a 4cm hypertropical scar on the right shoulder.

Award \$250,000.00 would be worth \$2,128,447.00 today.

RANDOLPH BISASOR (INFANT) V HARRY SOBERS ET AL. CL 1318 OF 1972 LEVY'S CASES P. 49.

Heard 10th May 1974

Plaintiff 6 years old when he was injured in November 1970.

Injuries: Gaping laceration 3" long in right frontal-parietal region with a depressed fracture of the skull at the floor of the laceration and a 1 1/2 inch laceration above the right ear.

On January 21, 1971 a piece of wood was removed and also bone which was depressed - from the wound. The area from which bone was

removed was 4 1/2" x 2 1/2". There was therefore an area of brain which did not have normal skull covering.

As a result there was a depressed area partly hidden by hair.

Plaintiff was discharged home from hospital 10th February 1971 but continued as out patient till July 1973.

Psychological examination by Hilda Janice Evans, psychologist revealed he had mental age about two years below his chronological age.

The Court found he had suffered permanent partial disability and that his memory is forever impaired and he would therefore be compelled to work in an unskilled occupation; and that prior to the injury he showed promise of being an intelligent child.

Awarded \$14,000.00 which when updated equals \$1,314,000.00 approximately.

The range of the awards cited begins at \$83,488.00 in Scott's case and ends with Kitson's case in which the award is worth \$21,128,447.00.

In view of my findings, the cases of Bisasor v Sobers and Kitson v Hoshein are not helpful and the injuries sustained ^{and} the effects of those injuries in these two cases exceed by far the injuries and resultant disabilities suffered by the plaintiff, Romane, in the instant case.

The injuries in Rose's case included significant brain damage, hence the injuries in that case exceed significantly those in the instant case.

I find therefore that the injuries to Romane, ^{as} ~~is~~ more in keeping with those in Cephas Omphrey v Yvonne Williams, and Folkes v Thompson.

I therefore make an award of \$160,000.00 for pain and loss of amenities. This award shall bear interest of 4% from the date of service of the writ namely:

In summary, therefore damages are assessed at \$168,639.00 being special damages of \$8,639.00 with interest of 4% from 11th March 1989, and general damages of \$160,000.00 with interest from ^{4%} 9/10/89. Costs to the plaintiff to be taxed if not agreed.

I apologise for the delay in delivering this judgment. This is due to the fact that during periods of my protracted illness, this case was somehow overlooked in clearing up the back log that resulted.