IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO C 191 OF 1996

BETWEEN	BERTRAND CAGAN	PLAINTIFF
AND	EDWARD RAMSAY	FIRST DEFENDANT
AND	CANUTE SINCLAIR	SECOND DEFENDANT
AND	HAZEL SINCLAIR	THIRD DEFENDANT

David Batts for the Plaintiff
Andrea Walters for the Defendant

Heard on the 24th day of June and the 1st day of October 1999.

COURTENAY ORR J.

On July 1, 1990, the plaintiff who was on holiday from Canada was a passenger in a car driven by the first defendant, Edward Ramsay, and owned by the second and third defendants. The plaintiff was seated in the back of the car. The third defendant was also in the car. They were returning to Darliston from Negril, and after passing Whithorn in Westmoreland, the car was going up a hill when it hit a light post on the left side of the road, turned over, and plunged into a gully. The plaintiff became unconscious.

He regained consciousness in hospital two days later. His face was swollen, he had a headache. There was a big hole in his forehead, cuts on his hand and a cut below his left eye. He was in pain, bleeding and smelt of stale blood. He spent two days in hospital but left the hospital the evening on which he regained consciousness,

returned to the third defendant's home in Lennox, Bigwoods in Darliston, and then on to Canada where he was then living.

At the time of the accident he was sixty years of age and employed to Ford Motor Company in Canada as a welder. He did not return to work until 3rd December, 1990.

He said he did not resume duties earlier because of a scar and the fact that his hand had not healed sufficiently, he was then still under medical treatment and he was not seeing well. At the time of giving evidence he complained of still suffering from periods of dizziness.

When he was injured he was earning $16.00 Canadian per hour plus an allowance for midnight shift work when he worked at that time. He also received a cost of living allowance. On an average week he took home $900.00 Canadian, after tax. During the time when he was not working he received a sick and accident benefit of $410.00 Canadian per week after tax.

He had to pay an air fare of $756.00 Canadian, to attend court.

In June 1991, he was involved in another accident when a car collided with the back of the car in which he was driving. This caused a whiplash injury and pain in his shoulder for which he received therapy. Within a month, in July 1991, he had a "slight left side stroke". He has not returned to work since the stroke .

He maintained that neither the stroke nor the second accident had affected his eyesight, but he admitted that between 1992 and 1993 he was diagnosed as having glaucoma. He has been suffering with high blood pressure for twelve years but said it has constantly been under control. He insisted that the dizziness which he has been experiencing was not due to hypertension as he began to suffer from dizziness before the second accident.

The dizziness occurs when he gets up in the mornings and when the sun is hot, hence he wears a hat and tested glasses.

He applies drops to his eyes. His lawyers in Canada had advanced the payments to the doctors who treated him.

Medical reports from three doctors were admitted in evidence : firstly, 3 from Dr H. Misir MD FRCS (c) DABS., dated August 31, 1993, Exhibit 1(a) , September 1992, Exhibit 2 , and 1st January 1999. - Exhibit. 3. Secondly, 2 by Dr Chosen Lau, MD FRCS (c) FACS. Plastic, Cosmetic and Hand Surgeon.. One dated January 30, 1997, the other undated - Exhibits 1(c) and 1(d) respectively. Thirdly, a report dated 17th July 1990 - Exhibit 1(b) from Dr Tom Ing MD

The plaintiff asserted the blow to his eye affected his sight. Miss Walters submitted that the evidence on this aspect of his injuries was not very clear.

The evidence on this matter is as set out thereunder:

(1) The plaintiff said:

"I lost feeling in area in forehead (i.e. area of injury). After a while I couldn't see well.

> Used to see darkness so I went to Doctor Chenese, Doctor Ing. He test eyes and gave me drops.
>
> I returned to work 3.12.90. Didn't return before because scar and hand not well cured. I still under medical. Also I couldn't see good ..."
>
> Used drops in right eye for glaucoma. I wear tested glasses. . Doctor told me I had glaucoma 1992-1993. Now say 1993. From 1992 to 1993.

(2) Dr Misir whom the plaintiff visited right after his return to Canada on 14th June 1990, wrote:

> "On his return to Canada on July 14 1990, he was seen by me. He had two problems of serious concerns at that time. He was treated by Dr. C Lau for the cosmetic defect of his forehead. He was seen and treated by Dr T Ing for his eye"

Dr Ing, writing on 17th July 1990, said:

> "The patient's visual acuity was at least right eye 20/50 defective eye 20/200. The extra ocular muscles were intact. The patient had no symptom of double vision. The cornea were clear. The patient's pupils were equal. The fundi were within normal limits.
>
> Clinically, this patient has fracture of the orbital floor in the left side."
>
> (emphasis mine)

In his report Exhibit 3 dated January 18, 1999, Dr Misir wrote :

> "... Prior to his accident he indicated that he had no impairment of his visual acuity."

And in his report Exhibit 1(a) dated August 31, 1993, he advised thus:

> "He (the plaintiff) had an injury to the orbit of his left eye with residual impairment of visual acuity".
> (emphasis supplied)

Dr Misir did indicate that the plaintiff was being treated for glaucoma, but from the context of his earlier remarks of August 31, 1993, I find that the impairment of visual acuity is as a result of the injury to his left eye and not due to the glaucoma. It must also be noted that from Dr Ing's report, the eye most impaired is the left eye (20/200), that is, the eye that was injured. Unlike Miss Walters, I am in no way troubled by the fact that Dr Ing does not say that the plaintiff complained of "seeing darkness".Doctors do not always identify problems in the words offered by patients.

> My findings regarding his injuries and disabilities are as follows:
>
> A 2.5 cm fairly deep cut over the left forehead with skin loss and triangular in shape.
>
> Bruises over his face.
>
> A fracture of the left orbit with residual impairment of visual acuity.

Mild cerebral concussion.

Occasional dizziness.

Headaches which still continue and numbness of sensation over the left forehead. Both of those are compatible with the injury to the forehead.

On 5th September 1990, under general anaethesia he had revision of left forehead scar repaired. He is left with a scar over the mid-forehead area which can only be detected on close examination.

He still has occasional pain in his left eyeball.

SPECIAL DAMAGES

The plaintiff submitted various bills for medical expenses. These he said, were paid by his Canadian attorney and he was expected to reimburse him. The total of these bills is $1,374.50 in Canadian currency.

I therefore make an award in that amount.

Exhibit 6 - a letter from the plaintiff's former employers showed his loss of earnings during the time he was absent from work because of the injuries received in the accident. The figure given is $19,206.25 in Canadian currency. But he received $410.00 per week for 21 weeks as a sickness and accident benefit, which should be subtracted. I shall therefore award him $19,206.25 less ($410.00 x 21 = $8,610.00) = $10,596.25 Canadian.

The total award for special damages is therefore $1,374.50 + $10,596.25 = $11,970.75 in Canadian currency.

GENERAL DAMAGES

The only item considered by the parties under this head is Pain and Suffering and Loss of Amenities.

AWARDS REFERRED TO BY COUNSEL

By Mr. Batts:

Lorraine Garrell v Byron Williams Recent Personal Injury Awards Vol. 4 by Mrs Ursula Khan (Khan's) P. 187.

> Plaintiff aged 16 at time of Award. October 1995. When aged 3 October 1992, hit down by motor vehicle whilst walking.
>
> Injuries: Depressed fracture of left parietal bone. Displaced closed fracture of shafts of left femur and right humerus..
>
> Treatment: In hospital under general anaethesia closed manipulation reduction of left femural and right humeral fractures done. Discharged 15/10/82. Plaster Splice and arm to chest splint respectively.
>
> Later slight angulation of right humerus. Fracture of parietal bone healed with a depression.
>
> Findings of Judge: No brain injury or intellectual abnormality. Permanent cosmetic defect as surgery

not recommended. The scar and depression would have psychological effect on plaintiff. Only disability regarding fracture of humerus - was a slight angulation.

Award $300,000.00 worth approximately $437,400.00 today.

Heram Colquhoun v Alvin Ramcharan

Khan's Vol. 4 P. 192.

Heard February 1993. Male Security Officer aged 50 at date of hearing. Injured when struck from behind while walking.

Injuries: Unconsciousness for approximately 5 minutes, concussion. Fracture of left temporal bone
Injury to left tympari nerve resulting in partial loss of the sensation of taste.

Injury to left auditory nerve resulting in reduced hearing in the left ear.

Abrasion over left scapula.
Pain at the back of right hip aggravated by sitting for long periods. Bleeding from left ear.

Treatment: Admitted to hospital but discharged on medication after one day upon his own insistence.

Prognosis: He had recovered fully from effects of concussion and has no evidence of brain damage or anything to suggest intellectual loss or personality change.

Dr Cheeks reported - "The impact to his right hip postural resulted in a sacroiliac strain which will resolve itself fully in a few months".

Award $474,000.00 worth $1,300,00 today.

Tricia Thompson (b.n.f.) Althia Sheriffe v Junior Sheriffe

Assessment of Damages for Personal Injuries by Harrison J - Marc Harrison (Harrison's ADPI.

Heard October 1990. Plaintiff - schoolgirl.

Injuries: "Brief unconsciousness and a minor concussion.

Laceration on the left side of the head behind the ear and bruising the shoulder.

Dizziness and darkening of vision intermittently.
Impairment of recent memory. Impairment of hearing in both ears (of moderate severity). Risk of 4% of epilepsy developing.

Award: $170,000.00. Equal to $247,835.00 today.

By Miss Walters:

Margot Thompson v Foster's Trucking Construction Company, Jamaica Limited and David Deer.

Award made September, 1994.

University student 18, injured in accident March, 1992 when a piece of steel protruding from truck hit her in her face. Wanted to become a doctor.

Injuries: Severe injury to right eye . Multiple facial lacerations. Right cornea- scleral laceration with iris and vitreous prolapsed.

Hospitalized from 15/3/92 to 2/4/92. Surgery performed. Injury caused plaintiff to lose the lens vitreous part of the iris and there is also retinal detachment. A small metal fragment remained deeply embedded in her right cornea

Dr Calder, Consultant Opthalmologist, gave evidence that she could always have problems with that eye - bright light problems and her squint might never be corrected. There were increased risks of glaucoma and retinal detachment. She would always need medical care and may need further surgery.

Dr Calder felt she could still achieve her ambition to become a doctor.

He assessed her right eye loss at 80%.

Award: $250,000.00 worth $438,492.00 today.

Robert Smith v Kelly Riley Harrisison's ADPI. P240.

Award made April, 1992.

"Tailor injured by splinters from a bottle ... while he was a patron in the defendant's bar".

Injuries: Jagged laceration to the right cornea; Rupture of the lens and prolapse of the vitreous. The damaged lens was removed and the vitreous trimmed and scattered. He now has a significant visual impairment.

Award: $90,000.00 now worth $282,607.00.

Edward Johnson v Ramsay Codner & Ian Cooke.

Award made July 1992.
Injuries as a result of a motor vehicle accident.

Extensive damage to the exterior pole of the right eye with rupture of the choroid. Scarring of the macula and atrophy of the retinal pigment epithelium. 5 c m laceration of the left impra-orbital area of the face; tenderness and restricted movements of the neck due to pain sublimation of C2 and C3 of the cervical spine.
Disability: 35% loss of total visual function.
Award: $150,000.00 worth $443,319.00 today.

Samuel Thomas v BRC Jamaica Ltd Harrison's ADPI P.238.

Assessment June 1990.
Plaintiff 42 year old, casual worker, was injured on the job when a crank handle from a crank shaft dislodged and struck his face. He remained unconscious for several hours. He regained consciousness the following day in hospital.

Injuries: Cornea - scleral laceration, laceration of the left upper eye lid. Laceration of left cheek. Remained in hospital for one month and upon discharge was an out patient for 3 months.

Disability: Left eye permanently blind.
Award $80,000.00 Equals $685,000.00 today.

Miss Walters submitted that the cases referred to by Mr Batts were not close to the instant case having regards to the injuries suffered by the plaintiff which were not as serious.

The fractures of the left femur and the right humerus in Miss Garrell's case and the 4% risk of epilepsy and the impairment of memory in Miss Tricia Thompson's case took those cases out of the realm of the instant case. Nor was Mr Colquhoun's case helpful as he suffered a partial loss of taste and of hearing.

She found it strange that Dr Ing does not speak of the plaintiff having dark vision.

She suggested that one must be unsure that the medical evidence ties in sufficiently with pleadings as the plaintiff had had further illnesses soon after the accident.

She suggested that an Award of between $300,000.00 and $400,000.00 would be proper.

Mr Batts on the other hand submitted that the plaintiff's injuries were more serious than Miss Walters was willing to admit. The evidence of his visual deficit was compelling and the court should bear in mind the other injuries the plaintiff clearly received. He submitted that an award of $800,000.00 to $1,000,000.00 would be appropriate

The awards in the cases mentioned, range from $247,835.00 in Tricia Thompson's case to $685,000.00 in Samuel Thomas' case.

The courts have repeatedly quoted with approval the dictum of Lord Blackburn in Livingstone v Rawyards Coal Co. (1880) 5 App Cas. 25 at 39. He there defined the measure of damages as:

> " ... that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had

> not sustained the wrong for which he is now getting his compensation or reparation".

In light of this principle, I find the Awards in the case of Margot Thompson v Robert Smith and Edward Johnson amazingly low. For an 80% loss of vision in her left eye, Miss Thompson received the equivalent of $438,492.00. Mr Smith had significant visual impairment in the right eye but received only the equivalent of $282,607.00 and Edward Johnson with a 35% loss of total visual function in the right eye received only what is now worth $443,319.00. I regard these awards as niggardly.

In all the circumstances having regard to his age, the injury received, the operations undergone, and the resultant disabilities, I am of the opinion that an Award of $800,000.00 is appropriate.

The judgment of the Court is there as follows:

Damages assessed at $11,970.75 in Canadian currency being Special Damages with 3% interest from July 1 1990, and $800,000,00 in General Damages for pain (and suffering and loss of amenities) with interest of 3% from the service of the writ that is: July 26, 1996

Costs to the plaintiff to be taxed if not agreed.