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JUDICIAL OFFICE
JAMAICA

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C263/87

BETWEEN	SHEILA CAMPBELL	PLAINTIFF
AND	SHARON ANTONIA KIEM	
	AND	
	ROSILDA HUSSMAN	
	EXECUTRIXES OF ESTATE	
	LLOYD W. KIEM (DECEASED)	FIRST DEFENDANT
AND	BENJAMIN WELLINGTON	SECOND DEFENDANT

Miss Dorothy Lightbourne and Arthur Williams for Plaintiff
Defendants unrepresented

HEARD: FEBRUARY 7, 8, 1991.

COPAM: WOLFE J.

This matter comes before me for damages to be assessed on behalf of the Plaintiff.

The Plaintiff, a very attractive lady 40 years of age, is a flight attendant employed to Air Jamaica Limited.

On the 14th of May, 1987 she was driving her Volkswagen Motor Car licensed 7571AD along the Rockford Road, on her way to work at the Norman Manley International Airport, when the Second Defendant, the servant and/or agent of the First Named Defendants, who was travelling in the opposite direction in a Toyota Motor Pick Up collided with the Plaintiff's vehicle. The accident occurred at approximately 1.50 p.m. The Plaintiff lost consciousness and on regaining consciousness she found herself a patient in the Plastic Surgery Centre at Old Hope Road. She observed that her entire face except for her left eye was heavily bandaged. She had suffered lacerations to both arms. The lower portion of her body was immobile. She experienced excruciating pains. She was unable to eat anything solid and had to be fed on liquids. Her condition required immediate surgery which lasted for five hours. The lacerations to her face had to be sutured.

Apart from the facial lacerations she sustained a fracture to her cheek bone which required corrective surgery as well. There was also a fracture to her pubic area. She remained in hospital until the 27th day of May, 1987.

Upon discharge from hospital she was confined to bed until some time in June, following which she had to use crutches to move around. Her confinement to bed and her inability to move around without the aid of her crutches necessitated her employing a full time nurse at the rate of \$160.00 per diem.

It is the testimony of the Plaintiff that following the accident she continued to experience severe pain up to about July 1987. Pain killers were prescribed to alleviate the severity of the pain. Up to the time of testifying the Plaintiff states that she continues to experience pain in her lower back. The pain is more severe whenever she lifts anything heavy. The nature of her job requires her to assist passengers from time to time with placing their luggage in the over head compartment. Pushing the meals or drink trolley on flight is a source of discomfort as her right leg has lost its power.

The injury to her eye resulted in the eye being pushed back into the socket. There was also a serious laceration over the right upper eye lid. Her vision is affected. The size of her right eye has been reduced. She is unable to cope with sunlight. To this end she has been advised to wear tinted glasses and to have the glass windows of her house tinted. Wearing glasses on her job is strictly prohibited. As a result she wears contact lenses on the job.

The Plaintiff still embraces the hope of getting married and having children. My observation in the second paragraph of this judgment leads me to believe that the Plaintiff's hope of getting married is ^areal possibility however the question of her bearing children poses a problem. Lest my observation be misunderstood, let me at this point review the evidence of Dr. Warren Fabian Blake, Consultant Orthopaedic Surgeon attached to the Kingston Public Hospital.

Dr. Blake examined the Plaintiff on the 14th May, 1987 and found the following injuries.

1. Multiple abrasions and lacerations to the right side of the face.
2. Laceration to the right upper eye lid and lateral aspect of the right eye.
3. Haematoma of the right eye.
4. Xrays of the face revealed that the right Maxilla Antrum or cheek bone was fractured and depressed. Patient was referred to the Facial Maxillary surgeon to be treated. She was also referred to the Ophthalmologist for the injuries to her eye.

Having been ~~unconscious~~ she was referred to the Neuro-Surgeon to ensure that she had not suffered any brain damage. The Plastic Surgeon treated her facial lacerations. This treatment was of a cosmetic nature.

5. Patient was tender over the right pubis and sacro-iliac region Xrays revealed a double fracture of the superior pubic rami. This fracture was displaced i.e. it had shifted its position. The sacro iliac joint was widened indicating that the ligaments holding the joint together were ruptured. Rest in bed was the treatment prescribed to allow the healing of the fractures on their own.

Patient began to move about on crutches by the 31st May 1987 she became more weight bearing on the 15th June, 1987. The use of crutches was discontinued on the 9th July, 1987.

Dr. Blake opined that the widening of the sacro-iliac would cause the Plaintiff to continue experiencing pain. More importantly he testified that if she became pregnant there was the possibility she would develop problems because of the deformity of her pubic inlet which is now out of shape. This condition is likely to result in obstructed labour, necessitating Caesarean section which has inherent risks and reduces the chances of having more than three children. There is a 10% impairment of the whole person.

Dr. Geoffrey Williams, a Consultant Plastic Surgeon, Fellow of the Royal College of Surgeons (Canada). Examined the Plaintiff on diverse days and found that she had

1. Severe scarring on her right upper eyelid.
2. Two areas of scarring on her right cheek.

Both sets of scars are quite obvious. The doctor is of the view that the Plaintiff can benefit from Plastic Surgery but that she will not be completely rid of the scars.

The right upper eye lid would require a skin graft. The scars on the cheek would be treated by a procedure known as dermabrasion. Both procedures the doctor observed are very painful.

A second operation would be necessary twelve months after the first. Both operations would require the Plaintiff to be away from her job for a period of 6 - 10 weeks.

The estimated cost of both operations is as follows:

Surgeon's fees	-	\$18000.00
Hospitalization	-	\$15000.00
a total of	-	\$33000.00

There will be a 10% facial impairment after the corrective surgery.

Dr. Williams was asked to proffer a view as to the possibility of the Plaintiff bearing children at age 40. The doctor observed that with the advancement of medical technology the Down's Syndrome makes it possible for the embryo to be tested in utero to determine whether or not the child will be born handicapped. This advancement has removed what was the greatest fear of women over 40 years of age conceiving. He further stated that in North America and Europe quite a number of women, especially career women, are postponing child bear to beyond 40 years of age.

DAMAGES

SPECIAL

Carlton Wright, a Loss Adjuster employed to Caribbean Loss Adjuster Limited examined and assessed the damage to the Plaintiff's car on the 4th September 1987. I accept his evidence that the car was extensively damaged and that the extent of the damage made it uneconomical to be repaired. He assessed the pre-accident value of the car at \$10000.00 and valued the salvage at \$1,500.00. The Plaintiff however testified that she sold the salvage at \$9000.00. I therefore award her a sum of \$1000.00 in respect of damage to her motor car. She paid an amount of \$370.00 to have the wreck removed from the scene of the accident as the car could not be driven. This amount is allowed. Assessor's fees \$85.00. Total \$1455.

MEDICAL EXPENSES

I find that all the medical expenses incurred by the Plaintiff were reasonably necessary and were satisfactorily proved having been supported by receipts in respect of the payments. They are as follows:

Dr. Blake	\$900.00
Dr. Williams	180.00
Dr. See (Ophthalmologist)	964.25
Dr. Jackson (Plastic Surgeon) for Surgery and Hospitalization	32000.00
	<u>\$34044.25</u>

C/F \$34044.25

MEDICAL CERTIFICATES

Dr. Jackson 1500.00

Dr. Blake 400.00

FOR DOCTORS TO ATTEND
AND GIVE EVIDENCE

Dr. Blake 3000.00

Dr. Williams 3000.00

To purchase of eye glasses 567.00

Contact Lenses destroyed 1783.95

To fill prescriptions 147.50

Eye examination (Superior Optical) 60.00

Loss of meal allowance for 8½ months
at \$3492.50 per month 29686.25

Loss of Production Incentive at
\$1045.00 per month for 8½ months 8882.50

Cost of tinting windows
(Doctors advice) 375.00
\$84901.45

Accommodation expenses re
visit to Dr. See in Miami 613.76
\$85515.21

Re motor car 1455.00
\$86970.21

The claim for loss of earnings is disallowed as the evidence discloses that the Plaintiff was paid her basic salary of \$119.09 per day during the time she was absent from work. The claim for value of sick leave used up is also disallowed on the basis that sick leave if not taken does not enure to the benefit of the Plaintiff financially.

The Plaintiff's attorney sought to amend the statement of claim to include claims for loss of grooming, stockings and shoes allowance, but the amendment at this stage would require notice being given to the Defendants because these heads of damages were not specifically pleaded.

GENERAL DAMAGES

FUTURE SURGERY

The Plaintiff testified that because of her scars Air Jamaica sought to ground her, as it is the policy of Airlines not to employ persons as Flight

Attendants who have facial scars. This was averted on the intervention of her Trade Union. Since then she has sought employment with American Airlines but her applications were denied because of the residual scarring. She intends to pursue this particular type of employment as a career. In the circumstances the court is of the view that it is reasonable to allow her claim for further surgery in order to have the scarring minimized. The amount of \$33,000.00 for further surgery is allowed.

PAIN AND SUFFERING

The injuries sustained by the Plaintiff were quite serious. She suffered excruciating pains and is likely to continue experiencing pains. She will have a combined permanent impairment of 20% of the whole body even after corrective surgery is completed.

Three cases were cited by Miss Lightbourne in an attempt to assist the court as to what would be an appropriate award in the circumstances of this case, but the court on examination of the cases finds them unhelpful. However in deference to counsel I will advert to the decisions cited.

1. Pancheta Campbell v Errol Mullings Reported in Recent Personal Injury Awards made in the Supreme Court and compiled by Mrs. Ursula Khan, Attorney-at-Law, at page 49 of Volume 2.

In the cited case the Plaintiff suffered the following injuries.

- (i) A distended bladder.
- (ii) Tenderness over pubic bone.
- (iii) 4 cm. oblique superficial laceration to left tibia minora (of vagina).
- (iv) 4 cm. laceration from clitoris extending along vaginal wall.
- (v) Butterfly fracture of Pelvis.

She was awarded \$26,000 for General Damages in 1986. The nature of these injuries are not in any way similar to the injuries sustained by the Plaintiff in the instant case.

2. C.L. 1984/D105 Sheila Darby v Jamaica Telephone Company Limited and Daniel Russel. Reported at p.60 of the same work.

The Plaintiff therein suffered the following injuries.

1. Severe shock
2. Loss of blood
3. Fracture of the third, fourth and fifth ribs of left side of chest.

4. Severe blows to the head and face resulting in loss of 4 teeth (incisors).
5. Comminuted fracture of the mid shaft of the left femur with a permanent partial disability of 10% of the whole body.

Again the court observes that the injuries sustained by the Plaintiff herein are vastly dissimilar to those of the Plaintiff in the instant case.

3. C.L. 1983/0279 Vivienne Creary v Executive Styles Furnishing Limited and Milton Swaby. Reported at p. 196 of the same work.

This Plaintiff suffered the following injuries.

1. Fracture of Nasal bones.
2. 10 cm. laceration of dorsum of nose just right of midline extending into nasal cavity, septum involved and extending onto upper lip and into oral cavity.
3. 2 cm. laceration just inferior to lower lip in mid lesion.
4. 1 cm. laceration on chin in midline.

There is obviously no similarity between these injuries and those sustained by the Plaintiff. A careful examination of the cases reported in both Volumes of Mrs. Khan's work does not provide me with any assistance, principally because the Plaintiff suffered two completely different types of injuries. I shall therefore have to use my own initiative, guided by the evidence, to determine what is an appropriate award in the circumstances of the case. In considering this award I bear in mind that with future surgery the scarring of the Plaintiff will be greatly minimized but that the injury to the lower body will continue to prove problematic. In all the circumstances therefore I award the Plaintiff a sum of \$190,000.00 for pain and suffering and for loss of amenities \$10,000.00.

LOSS ON THE LABOUR MARKET

Dr. Williams gave evidence to the effect that he was satisfied that future surgery could effectively minimize the scarring of the Plaintiff. It is therefore unlikely that she would be seriously handicapped on the job market were she to lose her job with Air Jamaica. However I must bear in mind the Plaintiff's evidence as to the attitude of Airline Organizations to the employment of persons with facial scars. I will award what I consider to be a medical amount of \$15,000.00

LOSS OF FUTURE EARNINGS

With future surgery the Plaintiff will be required to be absent from work for a period of 6 - 10 weeks. I award a period of eight weeks loss of future earnings at her present basic salary of \$136.95 per diem = \$7669.20
8 weeks production incentive at US\$217.00 per month = 3622.07
8 weeks meal allowance at US\$635.00 per month = 10599.16
8 weeks grooming allowance at US\$65.00 per month = 1084.95
8 weeks stocking allowance at US\$65.00 per month = 1084.95
\$24,060.33

Damages are accordingly assessed in favour of the Plaintiff as set out hereunder:

Special Damages	= \$86,970.21
General Damages	= 272,060.33
	<u>\$359,030.54</u>

Interest at 3% on Special Damages from 14th May to 8th February, 1991. Interest at 3% on \$200000.00 from 10th July, 1987 to 8th February, 1991.

Costs to be taxed if not agreed.