

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1987/C.069

BETWEEN	VICTOR CAMPBELL	PLAINTIFF
A N D	SAMUEL JOHNSON	FIRST DEFENDANT
A N D	THE ATTORNEY GENERAL OF JAMAICA	SECOND DEFENDANT

Crafton S. Miller and Miss Nancy Anderson instructed by Crafton Miller and Company for Plaintiff.

O. Burchenson and D. Irvine instructed by Director of State Proceedings for Defendants.

FEBRUARY 25, 1991 AND MARCH 22, 1991

ELLIS, J:

The plaintiff in this case, claims damages for injury and consequential expenditure and loss sustained by the negligence of the first defendant, the servant or agent of the second defendant.

The plaintiff said that on the 16th of August, 1986, he was a passenger in a vehicle owned by Government and driven by the first defendant. He stated that the first defendant drove at an excessive speed and caused the vehicle to collide in a parked truck. As a result of the collision his right arm was crushed to the extent that it had to be amputated below the shoulder.

He tendered agreed medical reports from Professor Golding in proof that his arm was amputated because of a crush injury. The reports also suggested the cost of obtaining and annual servicing of a prosthesis. The medical reports conclude that the total loss of the right arm has resulted in a 60% impairment of the plaintiff.

The plaintiff was cross-examined by Mr. Burchenson for the defendants. The tenor of the cross-examination suggested that the plaintiff contributed to his injuries. The suggestion was vehemently rejected by the plaintiff in his answers.

The plaintiff was the only witness in support of his claim.

Counsel for the defendants called no witness and rested on the Defence which alleged contributory negligence.

LIABILITY:

On hearing Mr. Miller and Mr. Burchenson on this aspect and in the absence of any evidence from the defendants, I am convinced on the balance of probabilities that liability rests solely on the defendants and I so find.

DAMAGES:

There has been no challenge to the proven special damages of \$10,855. The plaintiff is therefore awarded that amount as special damages with interest at 3% as of the 16th August, 1986.

Miss Anderson addressed the Court on general damages. She invited the Court to award general damages under the following heads:

- (i) Pain and suffering;
- (ii) Loss of future earnings;
- (iii) Handicap on the labour market;
- (iv) Acquisition and servicing of prosthesis.

She cited and suggested several cases by which this Court should be guided in assessing the damages.

Mr. Burchenson on his part, suggested a reduction in the period of servicing the prosthesis from ten years to six years. He also argued that no evidence has been adduced to enable the Court to formulate a position on future earnings. That head should therefore be eliminated or at least be set at about \$3,000 for a period of six years instead of ten years.

The plaintiff said that prior to the accident he earned \$8,000 from farming. He had to give up farming three months after the accident as he could no longer manage. He did say he employed a manager at one stage but he had to cease farming nevertheless.

Before a Court can award damages for loss of future earnings loss must be "real assessable loss sufficiently proved by evidence". See Lord Denning's dictum in Fairley v. John Thompson Limited [1973] 2 Lloyd's Report 40.

It is my opinion that the plaintiff did give some evidence as to his earnings as a farmer and he has suffered loss of that earnings as a result of his injury. Coupled with that loss, there is however, a duty on him to mitigate his loss. I am not convinced that the plaintiff has sufficiently

shown that he mitigated his loss. I am of opinion that had he continued farming his earnings would not have been wiped out completely.

In that respect, I agree with the submission of Mr. Burchenson that loss of earnings should not exceed \$3,000 annually.

There is no history of the plaintiff being in any employment from which he could have been thrown on the labour market. I therefore make no finding of any damage for handicap on the labour market. I am thus concluded since the cases in which awards have been made for "handicap on the labour market" are cases in which the plaintiffs were in employment at date of trial and from which there was strong likelihood of their being dismissed. (See Fairley vs. John Thompson Limited [1973] 2 Lloyd's Report 40 at 42; Clarke v. Rotax Aircraft Equipment Limited [1973] 1 W.L.R. 1570 and Nicholls v. National Coal Board [1976] 1 C.R. 266).

The general damages are thus assessable under the following heads:

- (i) Pain and suffering and loss of amenities;
- (ii) Loss of future earnings;
- (iii) Cost of and servicing of prosthesis.

The plaintiff is now 48 years old. In that light I hold that a multiplier of seven years is applicable. There is no doubt that a crush injury as the plaintiff suffered in this case resulted in excruciating pain and suffering. The injury has resulted in the total loss of a limb with loss of amenities. In the circumstances and considering the cases cited I make the following awards:

For pain and suffering and loss of amenities	-	\$250,000
For loss of future earnings \$3,000 x 7 years	-	21,000
Cost of and servicing of prosthesis at \$750 and 7 servicing at \$750 each	-	<u>6,000</u>
TOTAL	-	\$277,000

The plaintiff is awarded \$277,000 as general damages with \$250,000 thereof to bear interest at 3% as of the date of service of this Writ.

Costs to plaintiff to be agreed or taxed.