IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 232 OF 1990

BETWEEN	IVAN CLARKE	PLAINTIFF
A N D	LIONEL BAYLISS	FIRST DEFENDANT
A N D	MRS. LIONEL BAYLISS	SECOND DEFENDANT

Mr. Patrick Brooks for plaintiff.

Messrs. Maurice Tenn and Thomas Ramsay for defendants.

HEARD: May 18 and 27, 1992

PANTON, J.

The plaintiff, a mason, claims that while he was lawfully riding a motor cycle on Durie Drive, St. Andrew, he was attacked by the defendants' dog. This attack caused him, his passenger and the motor cycle to fall. He suffered bodily injury, and was unable to carry out his trade for ten weeks. The motor cycle was also damaged.

The plaintiff's evidence was graphic and was substantially in keeping with the particulars of claim. The pillion rider, Leerue Smith, also gave evidence.

The defendants allege that the injuries suffered by the plaintiff were as a result of his incompetence and negligence, in that he allowed a pothole to unseat him from the motor cycle.

Both defendants testified. They admitted ownership of the dog. They did not witness the incident so were unable to seriously assist the Court as to the cause of the plaintiff's injuries. However, the second defendant did say that the plaintiff had told her that the dog had run out in front of him, the front wheel had hit the dog, and he fell.

In my judgment, the plaintiff's evidence was clear. It was not shaken in cross-examination. I find it wholly acceptable as I am of the view that the plaintiff spoke truthfully. I find that the dog in question left its owners' premises, sprang on the handle of the motor cycle, bounced the front wheel, thereby causing the plaintiff to fall.

The only serious question left to be determined is the quantum of damages. In this regard, learned attorney-at-law, Mr. Tenn, for the defence, has submitted that the wording of Section 2 of The Dogs (Liability for Injuries By) Act excludes compensation for the damage done to the plaintiff's motor cycle.

Section 2 reads thus in part:

> "The owner of every dog shall be liable in damages for injury done to any person, or any cattle or sheep by his dog ..."

This submission, though interesting, ought not to detain one for any significant period of time. From as long ago as 1625, Dodderidge, J. in Cable v. Rogers 3 Bulst 311 at 312 had this to say -

> "The word "injury" is a general and large word, and comprehends in itself all manner of wrongs ..."

Wharton's Law Lexicon, 14th edition, defines "injury" as any damage done to another, either in his person, rights, reputation or property, for which an action lies at law.

In my judgment, the words "injury done to any person" as they appear in the legislation referred to earlier, cover not only bodily injury but also material losses. That is the clear meaning. I see no reason to restrict that meaning along the lines suggested by Mr. Tenn. Surely, he is not advocating that the plaintiff should file another action, perhaps in negligence, to secure a judgment in relation to the damage to the motor cycle.

The plaintiff suffered an undisplaced fracture of the greater tuberosity of the left humerus and abrasions to the left palm, left elbow, and left leg and pre-patella with paresthesia of the left knee. When he was seen at the hospital on September 12, 1989, he was treated and required to return for dressing every three days and a check every three weeks. He did not return. I do not accept his reason for not returning - that is, lack of means.

He complains of still feeling pain in the shoulder. The medical evidence indicates that his injuries were not serious and should have been totally healed within three months. The probability

is that he would have been fully recovered if he had returned to the hospital as directed. There is, in any event, no medical evidence to support the disability that the plaintiff now claims; and I would not in the circumstances be prepared to accept that there is a disability, without such supporting evidence. It follows that I do not see this as a case where the plaintiff has any handicap so there can be no award for handicap on the labour market.

I have considered the assessments made by my learned brothers in the various cases to which I have been referred. In arriving at what I consider to be an appropriate award, I have considered the nature of the injuries, and the pain, suffering, discomfort, and inconvenience resulting from the injuries.

Judgment is as follows:

Special damages: Eight Thousand Five Hundred and Fifteen Dollars ($8,515.00) plus interest at 5% from September 12, 1989, to May 27, 1992.

General damages: Forty Thousand Dollars ($40,000.00) plus interest at 5% from the date of service of the writ to May 27, 1992.

Costs to the plaintiff are to be agreed or taxed.