

NMCS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT No. D038 of 1990

BETWEEN	GEORGE DAWKINS	PLAINTIFF
A N D	THE JAMAICA RAILWAY CORPORATION	DEFENDANT

Dennis Daly Q.C. and Miss Paulette Warren  
instructed by Daly, Thwaites and Campbell  
for the Plaintiff

Ms. Minnette Palmer instructed by Myers  
Fletcher and Gordon for the Defendant

January 13, 14 and 24, 1997

CLARKE, J.

The plaintiff sues to recover damages from the defendant arising from personal injuries he alleges he suffered on 11th March, 1989 while travelling on the defendants' railway.

As far as the question of liability is concerned two main issues arise. Firstly, was the plaintiff at all material times lawfully travelling on the defendants' railway? Secondly, if the answer is in the affirmative has the plaintiff proved that he suffered personal injury and that same was caused "by want of reasonable care diligence and skill" on the part of the defendants? (see Section 62 of the Jamaica Railway Corporation Act).

The defendants admit the following facts:

- (1) That they undertook to carry for reward passengers from May Pen to Balaclava by railway train controlled and managed by their servants or agents.
- (2) That at a point between Mile Gully and Comfort Hall in the parish of Manchester the said train was forced to stop because of an obstruction along the track caused by the derailment of another railway train.
- (3) That passengers were instructed by the servant or agent of the defendants to board a third railway train beyond the

obstruction which was also controlled and managed by the defendants, their servants or agents, to continue their journey.

- (4) That a coach of the third railway train became detached from the remainder of the train and ran down a grade.

The defendants traversed the plaintiff's averments that he was one of the passengers as described at (1) and (3) above. Yet, at trial the defendants did not challenge the plaintiff's evidence that he was one of the passengers so described.

The plaintiff, whose credibility I have assessed, was, in my judgment, a truthful witness. I accept his evidence that he duly paid his fare before boarding the train at May Pen to go to Balaclava and that he remained a passenger on a train controlled and managed by the defendant until he fell out of one of the coaches and suffered injury. Accordingly, in answer to the first question posed earlier I find that at all material times the plaintiff was lawfully travelling on the defendants' railway.

Then too, it is plain on the evidence that the coupling on the coach of the third railway train, finally boarded by the plaintiff, parted and that that coach separated from the rest of the train. I find that on the parting of the coupling the coach careened down a steep grade of the railway line, to the great injury of the plaintiff.

The actual cause of the accident, more particularly, the cause of the parting of the coupling, is unknown. The witness called by the defendants had driven and parked the third railway train up to the point of the obstruction. He was not, however, able to say how the accident happened. In fact, he said he had no idea what caused the coach to become detached from the rest of the train. And according to him, before the train proceeded from Montego Bay earlier that day its braking system had been tested and certified to be in good working order. After he had halted the train at the point of the obstruction he went outside. He was standing beside the locomotive when the coach detached and ran down the hill. And no one had entered the locomotive before the coach became detached and ran down the hill.

Nevertheless, the mere happening of the accident speaks for itself. Although the cause of the parting of the coupling is unknown the accident is, in my

judgment, more consistent with negligence on the part of the defendants than with other causes. The defendants have not given any explanation to show how the accident may have occurred without negligence on their part. I find that the circumstances are eloquent of the negligence of the defendants who, in my judgment, brought about the following series of events which resulted in the plaintiff sustaining injury:

- (1) On the defendants' instructions the plaintiff boarded a stationary train parked on a steep grade. He was seated for about 10 minutes on the front seat of the rear coach close to an open door.
- (2) He then heard sounds of commotion as the passengers in his coach ran toward him shouting "Lord we dead now".
- (3) He got up beside the open door and observed that the coach was travelling fast down the hill.
- (4) The careening coach swung to the right and passengers who had by now reached down to where the plaintiff was standing panicked and inadvertently bounced against him.
- (5) He thereupon fell through the open door of coach and sustained injury.

I respectfully disagree with Ms Palmer that the panic stricken passengers in inadvertently bouncing the plaintiff out of the moving train, caused his injuries. Rather, I find that the parting of the coupling and the careening of the coach down the steep grade caused the panic and the inadvertent bouncing off of the plaintiff. As Lord Wright has said:

"Causation is to be understood as the man in the street and not as either the scientist or the ~~metaphysician~~, would understand it. Cause here means what ... a man would take to be the cause without too microscopic analysis but on a broad view": see Yorkshire Dale S.S. Co. v. Minister of Transport [1942] A.C. 691.

So, on the evidence before me it is plain that the injury, loss and damage suffered by the plaintiff was caused entirely by want of reasonable care, diligence or skill on the part of the defendants and I so find. That finding therefore answers the second question posed earlier in this judgment.

### The plaintiff's injuries

The medical evidence has not been challenged and I accept it. The personal injuries the plaintiff sustained as a result of the accident include:

- (1) fracture of the upper jaw (with cranio-maxillary disruption) and fractures of the inferior orbital area on the left side of the face associated with severe nose bleed;
- (2) fracture of the lower jaw or mandible;
- (3) laceration and swelling of the tongue;
- (4) lacerations above and below the left eye and of the upper lip.

He lost consciousness as he lay on the ground but regained it before he was taken to Mandeville Hospital. The next day he was transferred to the Kingston Public Hospital for specialist treatment. There he was hospitalized for some six weeks. In hospital he developed respiratory distress due to blockage of the nasal passages and occlusion of the oral cavity by the tongue swelling. A tracheostomy had to be done to facilitate breathing. This was done on March 13.

On March 29 an operation was performed to stabilize his loosened upper jaw to the cranial base and his fractured lower jaw was immobilized by a closed procedure.

Finally on April 17, 1989 fixation wires were removed. He was then left with residual facial asymmetry. His eye levels were, and still are, not the same. There is<sup>a</sup> facial scarring below the left eye 2½ inches long and his sense of smell is impaired. He was left with a left lateral rectus palsy and was experiencing diplopia on looking up or to the left. He still has difficulty breathing through the left nostril.

In fine, the plaintiff has suffered severe facial trauma and has been left with a facial deformity and scarring which can only be corrected by further surgery.

### General damages

The plaintiff is entitled to be awarded fair and reasonable compensation, once and for all, on the basis of the physical injuries he sustained resulting in pain and suffering and loss of amenities past and present and future.

The case of Errol Butler v. Lionel McDowell and The Attorney General noted in Khan's Volume 3 at page 183 and cited by counsel on both sides, is, I think, an appropriate guide. There, the injuries were not dissimilar to the injuries sustained by the plaintiff in the case before me, involving, as they did, a depressed maxillary fracture and bilateral mandibular fractures. In January 1987 W.D. Marsh, J. assessed damages for pain and suffering and loss of amenities at \$30,000.00. Applying the appropriate consumer price indices that award would in today's money come to \$325,000.00. Although in the case before me the medical evidence does not in terms speak of permanent disability, the plaintiff's facial deformity and scarring is only correctible by further surgery. Again, his tongue was cut and swollen and a tracheostomy had to be done. The tracheostomy was not closed until fifteen days later. I also note that his sense of smell has been impaired. In my judgment an award of \$450,000.00 for pain and suffering for pain and loss of amenities falls within the range of awards that constitutes fair and reasonable compensation under this head of damage and I award that sum.

#### Special damages

The plaintiff pleaded loss of earnings for 56 weeks at the rate of \$2,500.00 a week and continuing. I accept that up to the time of the accident he was a self employed motor mechanic earning \$2,500.00 a week out of which he would pay an assistant \$500.00 a week. I accept his evidence that since the date of the accident he has been unable to work at his trade. He, however, obtained employment as a driver in or about June 1994 and earns from that job \$1,500.00 a week.

Given the medical evidence and his six week period of hospitalization and treatment as an out patient I find that he would not be able to work at all for some twelve months after the accident. He has however, not said, nor has he adduced any medical evidence, that from then he was unable to do any work until he was employed by his uncle in or about June 1994. Nor is there any evidence that between the said dates he sought employment. Nevertheless, I find that the reduced income of \$1,500.00 a week he now earns is due to his inability to resume his occupation as a motor-mechanic.

So I award the sum of \$170,000.00 for loss of earnings broken down as follows:

12 months at \$2,000.00 a week for 52 weeks	=	\$ 104,000.00
Partial loss of earnings from 1st July 1994		
to now (122 weeks at \$500.00 a week)	=	66,000.00

The plaintiff has proved that he spent \$3,400.00 for medical expenses up to May 1990. He has also proved that since 1990 to the present time he has had to expend an ~~additional~~ \$2,200.00 a year for eye drops and inhaler. Medical expenses therefore come to \$12,000.00 + \$3,400.00 = \$15,400.00.

I am also satisfied that he lost the goods and cash specified in his particulars. He has proved their value. That adds up to \$3,480.00.

After he was discharged from hospital he lived with his brother in Lyssons in St. Thomas and travelled to hospital in Kingston twice a week for three months. I accept his evidence that these expenses cost him \$3,500.00.

There will therefore be judgment for the plaintiff in the sum of \$642,380.00 made up as follows:

(a) Special Damages	-	\$192,380.00
(b) General Damages for pain and suffering and loss of amenities	-	450,000.00

The plaintiff is awarded interest on the special damages at the rate of 5% per annum as from 11th March 1989 to 24th January 1997 and interest on the general damages at the rate of 5% per annum as from 2nd November 1990 to 24th January 1997.

The plaintiff must have his costs which are to be taxed if not agreed.