IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1983 D. 1983

BETWEEN	ANN MARIE DIETRICH	PLAINTIFF
AND	GODFREY CHEN	DEFENDANT

Mr. Hugh Small and Mr. John Graham instructed by Myers, Fletcher & Gordon, Manton & Hart - Attorneys-at-law for the plaintiff.
Mr. M. Vacianna instructed by Vacianna & Whittingham, Attorneys-at-law for the defendant.

Heard: 22nd and 23rd March, 1984; 10th May, 1984; 31st July, 1984.

JUDGMENT

PATTERSON J.

The Plaintiff's claim is against the defendant to recover damages for injuries she sustained in a motor car accident along the Mamee Bay main road in the parish of St. Ann on the 19th February, 1982. The defendant did not contest his liability to pay damages and the matter proceeds for an assessment of the damages.

The plaintiff, a widow since 1978, was at the time of the accident 58 years of age, in regular employment since 1971 as a travel consultant to "Travel City", a California, U.S.A. based company with a subsidiary named "Travel City International Golf Safaris". She organised vacation tour packages with golf as the major component, and she travelled to various countries with these tours. She lives in California and it was while here on one such tour that she sustained the injuries.

Prior to the accident she was a very outgoing person. She was a professional dancer from age 16 years until age 29 years when she got married. She did not seek employment again until 1971. She was full of energy - she played golf both in the U.S.A. and when on tours, her associates were to a large extent wealthy persons from private country clubs in California and those persons whom she accompanied on the tours she organised. Before seeking employment, she was a very active member of her club, she organised junior golf activities, socials, put on shows and danced at these shows.

At first sight, her injuries appeared superficial, but as it transpires, the after effects have been disastrous. Just before the collision, she had been sitting in the front passenger seat of the car in which she was travelling looking back and talking to a lady in the rear seat and the impact twisted her and threw her against the windscreen. She sustained lacerations to her face in the region of her nose. She was "cleaned up" at a clinic, but she was in tremendous pain; her head and face, her neck and "breastbone", and her right hand all pained her, and the rest of her body was "just numb". Nevertheless, she flew out of Jamaica that afternoon at 4 o'clock as scheduled, reaching Los Angeles the following morning at about 6 a.m. That very day (a Saturday), she consulted her family doctor, Dr. Watson, by telephone, and on his advice, she spent most of the day and the next in bed. On the Monday she "passed out" and was taken to Dr. Watson's office and he sent her to the Valley Presbyterian Hospital where she was admitted for 3 weeks. The full effect of her injuries began to reveal itself over this period. Her evidence is that on the Monday she realised she had lost function on the left side of her body - she could not control her left eye and there was no power in her left hand She could not stand on her left leg and indeed, she could not walk. She had severe headaches and her back and entire body were in extreme pain. Her nose and entire face were badly swollen and she was having difficulty in breathing. Dr. Watson's initial diagnosis seems to have been cervical strain and cerebral concussion. A "Delta Scan" was done on February 24, and again on March 3, 1982 and numerous X-ray pictures were taken but no fractures were seen. She received medical treatment as well as physiotherapy.

Whilst in the Valley Presbyterian Hospital, the plaintiff was seen by one Dr. Landman an E.N.T. specialist, by Dr. Regan, a neurologist, and also by a psychiatrist. After leaving hospital she was treated for acute cervical and lumbar sprain at the Beverly Manor Convalescent Hospital up to July 16, 1982, and her evidence is that

she "improved somewhat since therapy". She also consulted Dr. Sheldon Schoneberg, orthopaedic surgeon in California, on the 4th June, 1982, because she was still suffering from the pain in her neck and lower back. X-rays again failed to reveal any fractures or dislocations of either the cervical spine or the lumbar spine. Dr. Schoneberg found that clinically, she showed signs of a dorsal and lumbar scoliosis with main complaints in the low lumbar region. He further stated that as regards permanent disability, in the absence of any definitive neurological findings other than subjective complaints, none was anticipated then. He did not find it necessary to see her again after June 8, 1982. She continued office visits to Dr. Watson for the rest of the year over varying periods. She consulted Dr. J. D. G. McNeil Smith, orthopaedic surgeon in Jamaica, on the 21st March, 1984 and he examined her with the aid of X-rays. It is interesting to note the opinions expressed by both these orthopaedic surgeons. Dr. Schoneberg stated his impression thus:

> "Residual cervical and lumbar sprain superimposed on degenerative changes in both areas with no definite signs of neurologic involvement".

Dr. McNeil Smith expressed his opinion thus:

> "In my opinion this patient had a moderately serious road traffic accident which has been superimposed probably on pre-existing cervical spondylosis and possibly some lumbar spondylosis, but there has been a tremendous amount of functional overlay and I feel that until litigation is at an end, her symptoms are likely to persist, but following this her prognosis may well improve".

Nevertheless, the plaintiff still insists that she is suffering from the pain in her back. Dr. Thomas Curtis, a psychiatrist, expressed the view that the back pain is real and that it will not improve by the settling of this case. He has not had specialist training in orthopaedics, and his opinion is based on experience.

The injuries to the plaintiff's face, and in particular to her nose, left her looking "terrible" after she was discharged from the Valley Presbyterian Hospital. She was still having difficulty in breathing as her nose was swollen, her doctor had expressed the

view that the swelling would last for about 4 months. She still suffered from severe headaches. She continued office visits to Dr. Landman after leaving hospital, for treatment of the injury to her nose.

The defence called Dr. Hal Shaw, an E.N.T. specialist, and although he had not seen the patient, he expressed the view that the swelling to the nose was most likely caused by leaking of body fluids under the skin and should have disappeared within 5 - 10 days, it certainly would not last for 4 months. In January 1983 she consulted Dr. J. Edson Price Jr. a plastic and reconstructive surgeon. His view was that apparently she had sustained fractures of the nasal bones at the time of the accident and had "developed very severe difficulty breathing through her nose with scarring and persistent deformity of her nose including deviation, a broad dorsum and irregularity of the nasal bones". She was admitted to the Glendale Adventist Medical Centre on February 6, 1983 for surgery for open reduction of the old nasal bones fractures, nasal reconstruction and septoplasty. This surgery was performed in an effort to help her breathing problems and the deformity of the nose. She was discharged from hospital on February 12, 1983. Her evidence is that since the operation she has been breathing very well and her headaches are less severe. Formerly headaches involved both the front and back of her head - now only the back ached. This operation was apparently very successful in restoring her former facial looks, and in solving the direct problems arising from the injuries to her nose.

Despite the fact that the plaintiff is not now suffering from any detectable physical injuries to her back, head or face, she claims that she is quite unable to return to her job or, indeed, to any of the activities which she enjoyed prior to the accident. She said that this is due to a depressed condition which has developed since the accident.

Her evidence is that whilst in the Valley Presbyterian Hospital she had signs of depression. She did not want to speak with anyone, she got "agitated and upset" whenever the telephone rang.

She said, "I could not be like I was. I was different. I didn't feel I could handle talking to people. I felt I was changing so much I could not deal with the things that I used to deal with. I didn't want anyone to come in. I became very reclusive".

This feeling of depression continued after she left the hospital. She spent most days in her room; she did not go anywhere. She continued seeing Dr. Watson, and on April 19, 1982 he diagnosed depression as a concurrent condition. She was referred to William R. Flynn, M.D., Diplomate, American Board of Psychiatry and Neurology. His findings were that the plaintiff had a severe persistent depression His view was that the accident was clearly the precipitating cause of the depression in that because of the pain and disability, she was deprived of her customary high level of activity which had been an essential part of her lifestyle and indispensable to her emotional well being. He treated her thrice weekly for about one year and three months, and his opinion then was that she was substantially better, but had not recovered completely. His treatment consisted primarily of psychoanalytic psychotherapy, but he also used anti-depressant medication from time to time without significant results. Apparently the plaintiff was not pleased with her progress under the treatment of Dr. Flynn, She discontinued seeing him in July, 1983, and instead, consulted Dr. Thomas Curtis, a psychiatrist who has been specializing in psychiatry for the past 12 years.

Dr. Curtis gave evidence before me, and he said that the plaintiff first consulted him on September 16, 1983. From his examinations, he concluded that she was suffering from "a major depression". He based his opinion on the history provided by the plaintiff, his visual examination of her and on the results of psychological tests, the most important being the Minnesota Multiphasic Personality Inventory. He painted a picture of a person emotionally withdrawn, with facial expression revealing a mask of depression - insufficient animation to the face, loose facial

muscles. She was drained of energy, and there was a dullness of her eyes. He did not prescribe medication in the light of her past history. Instead, he prescribed individual psychotherapy and group psychotherapy. He expressed the view that the plaintiff had "made a change for the better" since September 1983 but that she was still suffering from the disorder. He said she cannot work with that disorder for at least three reasons -

> "(1) Her mental confusion kept her from normal concentration, attention and organisation.
>
> (2) She is mentally withdrawn from people - becomes tired with contact and needs to lie down 2 or 3 hours per day because of back pain.
>
> (3) Lack of energy due to her depression - mental lethargy after a number of hours - particularly if she had to work day after day. She may be able to work for 5 hours or so, but not from day to day."

He said it was his opinion that she would never recover enough to be able to hold regular salaried employment. He continues to treat her because she is suffering; if he doesn't, she will become more withdrawn, confused and mentally disturbed. There would be a likelihood of psychiatric hospitalization in the future if she is not given some care. His treatment of her has caused subjective improvement but no significant objective change.

His evidence is that he made a connection between the plaintiff's illness, her present condition and the accident. From the history, her mental state changed when she was in the Valley Presbyterian Hospital. He said "It is evident in the examination - the discussions with her, and the emotions I see in those discussions, and the descriptions of her life before the accident, immediately after the accident and thereafter". From his tests, she is not malingering. The change was partly cosmetic and partly psychological. Most persons who are involved in motor vehicle accidents do not develop depression; persons with more severe injuries would more likely wind up being depressed, but in his experience he had come across persons who were involved in motor vehicle accidents and, as a result, had been depressed. He describes it as post traumatic stress.

He did not expect any great improvement in the plaintiff's condition over the next 6 months.

I accept the evidence of the plaintiff that she was twisted and thrown against the windscreen of the car at the time of the accident. She received injuries to her face and nose, and she suffered cervical strain and cerebral concussion. Her nasal bones were fractured and the septum (the division in the nasal passage) was also injured and this caused her difficulty in breathing. There were no fractures of either the cervical or lumbar vertebrae. Dr. Curtis has expressed the view that the plaintiff is experiencing real pain even now, and that it could be psycholigical and not physical. I doubt this. I find that the cervical strain caused her a good deal of pain initially, but having regard to the reports of Dr. Schoneberg and Dr. McNeil Smith, I am not convinced that the resulting pain has lasted up to this time. If the plaintiff is now suffering from back pain, I would find that it is not as a result of the accident. The agreed "Diagnosis and concurrent conditions" reports (Ex. 10) of Dr. Watson tell a tale. The cervical strain remains as a concurrent condition on those reports from the time of hospitalization up to March 29, 1982, and the last mention of that condition is reflected in the report of June 16, 1982. Her treatments at the Beverley Manor Convalescent Hospital ceased on July 16, 1982. No further mention is made of that condition until January 26, 1983 just before suit. Her visit to Dr. Schoneburg was on June 4, 1982 and he did not arrange any further appointments. I have already mentioned his impressions which I accept as the factual situation then and now.

The evidence as regards the cerebral concussion is very sketchy. Dr. Watson's reports show that he was treating the plaintiff for that condition up to August 3, 1982. She developed a headache immediately after the accident and, thereafter, she suffered from severe headaches for a year. After the nasal operation she got some relief but not complete relief.

The swelling to the face and to her nose lasted for some time after she left hospital, and the difficulty in breathing lasted

for about one year. I accept the evidence of Dr. Shaw that the fracture to the nose bones would have healed in 6 - 8 weeks. Thereafter, I can see no reason why the pain should persist.

The overall viva voce evidence and the agreed medical reports paint a picture of a woman in the autumn of her life, all battered and bruised in the face, in severe pain over a period of about 6 - 8 weeks and thereafter showing marked physical improvement. After a year all physical effects of the trauma had just about disappeared. However, her psychological condition did not improve with her physical condition, and I must now examine that aspect of the case.

It is fair to say that this case has proceeded on the assumption that the depressed condition which the plaintiff developed was a direct result of the accident. The evidence clearly establishes that the plaintiff has been suffering from a positive psychiatric illness since the time of the accident. Dr. Curtis describes the illness as a "disorder known as major depression". So serious is this illness that the doctor has expressed the opinion that she will never recover enough to be able to hold regular salaried employment. Damages will flow from all such cases of serious personal injuries.

Lord Bridge of Harwich, in his speech in the recent case of McLaughlin v. O'Brian & Ors [1982] W.L.R. 982 when dealing with the question of psychiatric illness had this to say: (at page 999)

> "The common law gives no damages for the emotional distress which any normal person experiences when someone he loves is killed or injured. Anxiety and depression are normal emotions. Yet an anxiety neurosis or a reactive depression may be recognisable psychiatric illnesses, with or without psychosomatic symptoms".

(and at p. 1000)

> "No judge who has spent any length of time trying personal injury claims in recent years would doubt that physical injuries can give rise not only to organic but also to psychiatric disorders. The sufferings of the patient from the latter are no less real and frequently no less painful and disabling than from the former".

I adopt the views of Lord Bridge. I accept the evidence of

Dr. Curtis that the physical trauma suffered by the plaintiff as a result of the accident is the cause of the plaintiff's depression. Before the accident she was a very outgoing person with no history of any psychological abnormality - now she is genuinely depressed and is quite unable to summon up interest in those persons and those things she held so dear to her before the accident. Her whole life style has changed completely. She cannot now carry on her former occupation and I find that she is not malingering. It may even be that if she is now suffering from back pain, she may well believe that it is as a result of the accident.

I must now consider the question of how long the depression is likely to last, and this is no easy task. This condition has persisted since February 1982, and the evidence is that there has been no significant change overall. Anti-depressants have not helped. Psychotherapy, so far, has not resulted in any marked improvement, though it could with the passage of time. Dr. Curtis thinks she must receive treatment twice weekly for the next 3 years at least. His view is that the fact that this case is pending has some effect on her depression, but he could not say if when litigation is all over, it will have the effect of improving her condition, but he says it probably means that she will not worsen. She is now 59 years old, and she seems quite fearful and nervous of the future. From her evidence, she has tried to get back into the life style she enjoyed before the accident, but has failed miserably. Such failure, it seems to me, cannot help her condition. I accept Dr. Curtis' evidence that she will never recover enough to be able to hold regular salaried employment. Her condition may improve after the end of litigation, but not to any significant degree. She presented a sorry sight in the witness box, and I would be surprised should her condition improve in the near future.

I will now consider the assessment of damages to which the plaintiff is clearly entitled as fair compensation for the loss and injuries suffered by her. This is never an easy task having regard to

the elements of uncertainty and speculation involved. The fact that the plaintiff has suffered a psychological disorder adds to the difficulties. Pearson J. sets out clearly these difficulties when in Tuckey v. Green & Silley Weir Ltd. [1955] 2 Lloyd's Rep. 619, 630 he said:

> "The real trouble in assessing damages in this case - I will say it quite frankly is this: it is very easy to be very wrong either way. If one gives a very large sum, the man may recover in a very short time and go back to full work. On the other hand, if one gives a very small sum, the man may not recover and will lose a great deal of future wages, and suffer a great deal of pain and suffering, and the sum may be much too small. So in those circumstances one can only do one's best".

The particulars of special damages (as amended) contains 16 items, and since the plaintiff is resident in the U.S.A., all but one item is expressed in U.S. dollars. Mr. Vacianna has not challenged the following 6 items:

1.	Charges of Valley Presbyterian Hospital	- US$7,100.50
2.	" " Dr. J. Edison Price	- US$2,750.00
3.	" " Physical Therapist	- US$3,430.00
4.	" " Dr. Robert Watson	- US$ 830.00
5.	" " Dr. Landman	- US$ 95.00
6.	" " Dr. Thomas Curtis	- US$7,895.00

Mr. Vacianna pointed out that the plaintiff had two operations performed on her whilst in the Glendale Adventist Hospital, one of which is quite unrelated to the accident, and submits that only one-half of the costs of hospitalization should be allowed. Looking at the bill (Ex. 2) it is not possible to separate the charges. In the circumstances, I agree with the submission and, accordingly, I award one-half of the amount claimed i.e. US$3,461.32.

Mr. Vacianna, although he did not challenge the charges of Dr. Price for the nasal surgery, nevertheless submitted that the hospitalization charges should not to be allowed as the plaintiff had not acted reasonably. She failed to seek immediate and proper medical attention at the time of the accident, and that resulted in later unnecessary treatment. He further submitted that the failure

of the doctor to operate and correct the fractured nose while she was in hospital for the first time may be viewed as an intervening cause which rendered a second hospitalization necessary. I do not agree with these submissions. Dr. Shaw's evidence is to the effect that, generally speaking, an E.N.T. surgeon would wait for 14 days before taking steps to correct fractured nasal bones, apparently to allow the swelling to subside. The plaintiff remained in hospital in the first instance for 17 days, but the evidence is that her nose was still swollen when she left hospital and, whilst in hospital, she had been seen by an E.N.T. specialist who must have decided against an operation at that time. The plaintiff ought not to be blamed for following the decision of a qualified professional.

The plaintiff claims US$9,000 as the charges of Dr. William R. Flynn. She has not tendered his bill, but she said he has been sending her regular bills and she is obliged to pay him. Mr. Vacianna has submitted that there is no evidence of the number of visits the plaintiff made to this doctor, and that there is no proof that the amount is owing.

The plaintiff's evidence is that she visited Dr. Flynn about three times weekly over a period of one year and three months. From Dr. Curtis' evidence, I gather that a psychiatrist charges US$100 per hour for each visit. The plaintiff is under a legal liability to pay the doctor. I hold that the amount claimed is reasonable and payable, and I will allow it; US$9,800.00.

The plaintiff made numerous trips to the various doctors and for physiotherapy, driven by her sister most times; she seldom drove herself. She has claimed US$646.80 travelling expenses for all those trips. Mr. Vacianna submitted that the plaintiff is not entitled to recover any amount for travelling expenses on those occasions when her sister drove her. He relied on the judgment of Diplock J. in Gage v. King [1961] 1 Q.B. 188 who considered it as an essential condition that a plaintiff should be under a legal liability to pay the expenses to a third party before he could recover such expenses. In Schneider v. Eisovitch, [1960] 2 Q.B. 430, Paull J.

took the view that such expenses incurred by a third party could be recovered if the plaintiff shows:-

> "first that the services rendered were reasonably necessary as a consequence of the tortfeasor's tort; secondly that the out of pocket expenses of the friend or friends who rendered these services are reasonable, bearing in mind all the circumstances including whether expenses would have been incurred had the friend or friends not assisted, and thirdly, that the plaintiff undertakes to pay the sum awarded to the friend or friends".

Mr. Vacianna further submitted that there is no evidence of the times the plaintiff drove herself or of what portion of the claim is attributable to those times. He said no award should be made for an uncertain sum. I agree with the submissions. The plaintiff's sister must have transported her on a friendly basis with no consideration whatever of being refunded her expenses. There is no evidence of the expenses incurred by the plaintiff herself, but I realise that she must have incurred some travelling expenses, albeit quite small. Consequently, I will not allow the amount claimed or any portion thereof.

There is no evidence to support the claim of US$186 for Medicines, and this amount is disallowed.

The claim for the charges of Dr. McNeil Smith was not contested and I allow the amount - Ja. $470.00.

I come now to the claim for loss of earnings. The plaintiff's evidence as to her earnings from her employment at the time of the accident may be summarised thus:

1. Gross salary US$950 per month = US$11,400 per annum
2. Gifts in value $5,000 per annum (maybe)
3. Open Expense a/c
4. Raise of pay each year in March 10% - 15%

Her evidence is that she has not been able to work at her job since the time of the accident. At first she was hospitalized, and her physical injuries prevented her from working. Had her physical injuries been purely organic, then surely there would have been no necessity for her to remain off her job up to now; her employers

hold the post open for her. However, she developed a major depression which it is admitted is a direct consequence of the injuries sustained by her. I will, therefore, consider whether this psychiatric illness is such as would render it impossible for her to resume working. I have examined her own evidence as to her subjective feelings, the report of Dr. William Flynn, and the evidence of Dr. Curtis. From her evidence she has lost interest in life, she is reclusive. She has given up all her social activities; she no longer plays golf, and she has sold her club membership. At home she does "very little household duties"; she does not sleep well. She can no longer cope with her job.

Dr. Flynn and Dr. Curtis have confirmed that her depression is real, and Dr. Curtis expressed the opinion that she will never recover enough to be able to hold regular salaried employment. He gave three reasons why he says that she cannot work with the disorder and I have already referred to those reasons. On a balance of probabilities I find that the plaintiff was not able to carry on her occupation from the time of the accident up to the present time due to the physical injuries she received and the psychological disorders that developed as a result of those injuries. I find, further, taking into consideration her age, that the plaintiff will never recover enough to be able to return to her job or, indeed, "to hold a salaried job" before she is 65 years of age, the age of retirement. She is, therefore, to be fully compensated for her loss of earnings up to the time of this judgment. I will calculate the raise of pay at 12½ per centum per annum, and allow the following net amounts as claimed -

1. Loss of earnings for 12 months March 1982 - February, 1983 - US$11,488.08

2. Loss of earnings for 12 months March 1983 - February, 1984 - US$12,913.08

3. Loss of earnings for 5 months March, 1984 - July, 1984 @ $1,210.60 per month - - US$6,053.00

The plaintiff's evidence is that very often she would

receive expensive gifts such as brooches and other items of jewellery from the tourists with whom she toured. Rarely did she receive money. She said the gifts would amount to "maybe US$5,000 per year" in value. She claims special damages itemized as "tips, gifts for 2¼ years @ US$5,000 per year - US$11,500" and it appears that she considers this loss as pecuniary, and in the nature of loss of earnings. Mr. Vacianna submitted that nothing should be awarded in respect of this item. There was no certainty she would get gifts; it was too speculative.

Whatever amount that may be recoverable under this head cannot be considered as "loss of earnings". I would think that "earnings" in this regard means the pecuniary reward which the plaintiff is entitled to receive in return for the due performance of her contract of employment. I am well aware that some classes of workers, in the course of their employment, receive "tips" in cash or kind. In some cases, cash "tips" are sanctioned by the employers and actually form a part of the employee's remuneration. In other cases, in lieu of cash tips, gifts are given in kind, and given so frequently and with such notoriety that their value can be estimated and ought to be taken into account in assessing damages. Where it is possible to calculate the value of the loss of such gifts over any given period of time up to the date of trial, special damages may be awarded in respect thereof. Where, however, the value of such gifts fluctuates from time to time, the court will have to estimate the plaintiff's loss and award general damages instead. If I am correct in this principle, then it follows that Mr. Vacianna's submission must be rejected. Undoubtedly, the nature of the plaintiff's job was such that she would be given gifts in kind by satisfied tourists, and when one bears in mind the affluence of those with whom she toured, it can be assumed that such gifts would be frequently given and would be valuable. I will therefore estimate, as best as I can, what amount will be sufficient to compensate the plaintiff for her past and prospective loss in respect of those gifts, and will take such sum into account in awarding general damages.

The final item under the heading "Particulars of Special Damages" reads:

> "Benefit of open Expenses a/c estimated at US$3,000 per annum for 2¼ years - $6,750.00".

The evidence in support of this item came from the plaintiff and I quote:

> "I enjoyed an open expense account including hotel, food, transportation, all incidental expenses - entertainment. I could do what I wanted but it was subject to audit - I was never questioned".

That is all the evidence in the case in this regard.

In Liffen v. Watson /1940/ 1 K.B. 556, Slesser L.J. stated the general principle of law in this way:

> "..... there is no reason why in the assessment of damages, the loss of board and lodging should not stand on the same footing as the loss in cash of the wages. If, since the plaintiff's discharge from hospital, her father has provided her with board and lodging in his house, that is no reason why she should not be heard to say that her loss of the board and lodging previously provided by her employer was as much a loss to her as if she had lost the actual sum in money. It has been said that there is no authority on this matter. None is needed. It is a matter of general principle, but I would observe that in Banco de Portugal v. Waterlow & Sons Ltd. there is to be found expressed the general principle that a wrongdoer must recompense a plaintiff for all damages which naturally flows from the wrongdoing".

The plaintiff's evidence is that she went on as many as eight tours each year, and it seems to me that the open expense account enjoyed by her on each tour must have been part of the terms of her employment. The monetary value of those benefits may be claimed as a part of her pecuniary loss. But on the question of the quantum of special damages, I am at a loss to see how the amount claimed is arrived at. I adopt the words of Lord Goddard C.J. in Bonham-Carter v. Hyde Park Hotel Ltd. [1948] 64 T.L.R. 177 at 178:

> "On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down the particulars and, so to speak, throw them at the head of the court saying: 'This is what I have lost; I ask you to give me these damages'. They have to prove it

There is no proof of the monetary value of these open expense accounts and, accordingly, I will not make an award under this head.

It remains for me to consider the question of general damages. I have already outlined the nature of the physical injuries sustained by the plaintiff. There is no doubt that her pain and suffering must have been severe for some time following the accident. However, they were not permanent, and it is fair to say that after approximately one year she had made a full recovery from her physical injuries. Perhaps surgery could have been done to correct the fracture to the nasal bones before the time it was done. That would have relieved her of a great amount of pain at an earlier date.

The recovery from her physical injuries did not end the problems of the plaintiff. By then she was suffering from the psychiatric illness, and this has had a more serious effect on her well-being than the physical injuries. She is now just a shadow of her old self with no hope of regaining her former life style or of returning to her usual employment before she attains the age of retirement. She is now 59 years old, and she has lost the enjoyment of life. Her present condition can only be stabilised with proper therapy; it will not subside and is unlikely to improve. The conclusion of this case will not have the effect of improving her condition significantly. I accept the opinion of Dr. Curtis that she will never be able to hold regular salaried employment again. Indeed, it does not appear that she will be able to work again - certainly not before she reaches the time of retirement.

In considering what sum ought to be awarded for pain and suffering and loss of amenities, I have been referred to comparable English decisions that may be of some assistance to me as to the kind of figure which is appropriate. The circumstances in those cases were similar to this, but my view is that the purchasing power of money in England differs so much from what it is in Jamaica that a judge must view those awards with caution. Having carefully considered all the evidence, and in the light of the authorities, in my judgment

the sum of $40,000 is the correct amount to be awarded for pain and suffering and loss of amenities.

The evidence of Dr. Curtis, which I accept, is that the plaintiff requires psychiatric care twice weekly for the next 3 years and it is estimated that the cost of such care will be US$10,400 per annum. There is some evidence to suggest that the settlement of this action may cause some insignificant improvement in the plaintiff's condition, and Mr. Vacianna has asked me to bear this in mind and to make a deduction of 20% - 25%. I agree that a discount should be made for receipt of a lump sum, and that various future contingencies must be taken into account. It appears from the evidence of Dr. Curtis that the plaintiff will not require psychiatric care after the next ensuing 3 years; apparently her hopeless condition would have stabilised by then. It may be that this may happen before that. Taking all probabilities into account, I award the sum of US$20,800 for the future psychiatric care of the plaintiff.

I turn now to consider the question of prospective loss of earnings. The plaintiff would probably have worked for the next 6 years but now she cannot. But for the accident, at the present time, her salary, after tax, would have been US$14,527.50 per annum. Here again, due regard must be had to the various contingencies and all things must be taken into consideration and dealt with. All sorts of things could happen. The plaintiff said that she had intended opening up her own travel agency to take single persons on tours. She said she was extremely optimistic about the future, but who can predict what would have happened had she embarked on such a course of action? Would it have reduced or improved her earnings? There is a likelihood that the plaintiff will obtain disability benefits under the U.S.A. Social Security Scheme and Mr. Vacianna has asked me to take this into account. In my judgment, the sum of US$12,000 per annum is the fair and reasonable estimate for the purpose of calculating the future loss of earnings of the plaintiff. Given the duration of the incapacity to be 6 years up to the age of retirement,

I consider the multiplier necessary to convert the annual rate into a capital sum over this period to be 2½. Therefore, the award for loss of future earnings will be US$30,000.

I return now to the question of gifts and "tips". There seems to be no firm basis on which the value of either the past or prospective loss can be calculated. The plaintiff's evidence of $5,000 per annum "maybe", seems extremely tenuous. Having regard to the many contingencies and the uncertainties, doing the best I can, I award a global figure of US$8,000 as a proper amount to compensate the plaintiff for her loss under this item.

Of necessity, certain amounts awarded have been expressed in United States of America dollars. I intend to convert these amounts into Jamaican dollars using the sum of U.S. $1 = J$4.00, which is the current official rate of exchange. It is a rule of practice that damages for non-economic loss are to be assessed by reference to the value of money at the date of trial and not at some other and lower sum calculated by reference to an earlier and higher value of the dollar (Walker v. John McLean & Sons Ltd. [1979] 2 All E.R. 965.).

Section 3 of the Law Reform (Miscellaneous Provisions) Act confers on the court power to award interest on damages at such rate as it thinks fit on the whole or any part of the damage for the whole or any part of the period between the date when the cause of action arose and the date of the judgment. This court in the past, in exercise of its discretion, has followed the guidelines as to the appropriate dates of interest, and the dates from which interest should be awarded, which were laid down in Jefford v. Gee [1970] 1 All E.R. 1202, and has been awarding between 3% to 4% per annum on special damages and 6% to 8% on general damages. Lord Diplock, in a most carefully considered speech in Wright v. British Railways Board [1983] 2 All E.R., laid down "two routes by which the judge's task of arriving at the appropriate conventional rate of interest to be applied to the damages (for non-economic loss)

so assessed can be approached". The headnote of the report sums it up this way:

> "Having regard to the current high rate of inflation the appropriate rate of interest which the court ought normally to award, in the exercise of its discretion under S. 3 of the Law Reform (Miscellaneous Provisions) Act 1934, when making an award of damages for non-economic loss, i.e. damages for pain and suffering and loss of amenities, is, at least for the time being, a conventional award of 2% interest on those damages from the date of the service of the writ to the date of judgment".

I have already warned myself about adopting and acting on English decisions regarding the quantum of monetary awards without due caution. However, not only in England but also in Jamaica, the rate of inflation has been high; one may even say that in Jamaica, there has been an astronomical rate of inflation over the past few years. There is no indication of a change in the near future. It would seem, therefore, that the rule of practice enunciated in Wright v. British Railways Board (supra) ought to be followed by this court, and the appropriate rate of interest on the damages for pain and suffering and loss of amenities should be a conventional award of 2% on those damages from the date of the service of the writ to the date of judgment.

The end result is that the total amount of the Special damages is $263,733.92, and the general damages is $275,200.00 of which $152,000 is for loss of future earnings and the loss for gifts and tips, which will not attract an award of interest.

The damages are assessed in the sum of $263,733.92 special damages with interest thereon at the rate of 3% per annum from the 19th February, 1982 to the 31st July, 1984 and $275,200.00 general damages with interest on $123,200.00 at 2% per annum from the 13th April, 1983 to the 31st July, 1984.