IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CL 1996/D 126

BETWEEN	SOUTHA DIXON	PLAINTIFF
AND	RALPH HOLNESS	FIRST DEFEDNDANT
AND	RAY HOLNESS	SECOND DEFENDANT

Janet P. Taylor instructed by Taylor, Deacon and James for the Plaintiff.

Ms. Suzette Wolfe, and Patricia Robertson-Brown instructed by Crafton Miller and Company for the Defendants.

Heard on 20th, 21st and 24th January 2003

Campbell J.

The Plaintiff, Southa Dixon, 42 year old, farm worker, was on the 11th April 1992, at about 10:30am, riding his Yamaha motorcycle, registered #2681C, along the Alpart main road, in the Parish of St Elizabeth.

He had a pillion passenger with him and the only other vehicle on that private road was "a red Datsun pick-up" that was travelling approximately ten feet ahead of him.

The Plaintiff testified that he put on his indicator and blew his horn as a preliminary action prior to overtaking the Datsun pick-up. The Plaintiff said that he started to go around the Datsun, but whilst alongside it, the pick-

up started to turn across the road. In an attempt to avoid the pick-up, he swerved to the right. The Plaintiff testified that 'the front of the pick-up bumper lick mi ankle and break it'. At the time he was overtaking the Datsun, the Plaintiff says that he was travelling at about 25 - 30 m.p.h. His unsuccessful attempt to escape collision with the pick-up had taken him completely off the main road. After the collision, the motorcycle catapulted into the air and fell in the road. The Plaintiff said he spoke to the Second Defendant (who had left his vehicle and was returning to it), asking "You are going to leave us here?" The Plaintiff said that the Second Defendant response was "What must I do to you" and denied that he had collided with the Plaintiff. A bystander said "me deh ya and see you lick the man dem off." The bystander, according to the Plaintiff, told the Second Defendant "take up the man dem and take dem go hospital." The Plaintiff said that the Second Defendant took him up as well as the pillion and transported them to a private doctor and then to the Mandeville Public Hospital.

The Second Defendant denies that he collided with the Plaintiff. He contends that the Plaintiff "passed him in a twinkling of an eye" after he, the Second Defendant, had come to a stop and indicated that he would be turning right. The Second Defendant said that the Plaintiff lost control of

the bike and crashed into a marl heap. There was no evidence as to what if anything could have contributed to such a lost of control of his motorcycle.

In support, the Defendants brought two witnesses, a police corporal, who was on duty at the Mandeville Hospital when the Plaintiff was taken there. Cpl. Young said that the Plaintiff called out to him that the Second Defendant, who was close by, had hit him off the bike with the bumper of his van. Cpl. Young said that he spoke to the Second Defendant about what the Plaintiff had said. The Second Defendant, according to Cpl. Young, took him outside and showed the officer the pick-up that, "it had no bumper."

The significance of the officer's testimony, to my mind, was that the Second Defendant tendered no account of his version that the Plaintiff's accident was a result of the Plaintiff's loss of control. Also of significance was the Plaintiff's insistence that the person who had carried him to the hospital was the cause of the accident. Was it that the Plaintiff was mistaken as to what happened, or was he deliberately lying. The Plaintiff could not have been mistaken if one accepts the account of the Second Defendant and his witness, Mr. Whitter, because on their account, the Plaintiff's motorcycle had passed some fourteen feet away from the Defendant's stationary vehicle.

I prefer the evidence of the Plaintiff that the pick-up hit his leg. I find that the action of the Defendant taking the two injured men to the private doctor and to the Mandeville Hospital and waiting at that hospital is consistent with his having been involved in an accident with them. I reject the testimony of the Second Defendant and his witness, Delroy Witter, that his vehicle remained stationary with its indicator on but did not turn. Their evidence appeared rehearsed, as demonstrated by the distance that they said the Plaintiff's motorcycle passed the Defendant's vehicle, which both recited as being fourteen feet, yet their demonstrations as to the actual distance on the ground evidenced that their concepts of fourteen feet differed widely. If the Defendant's account was true, on what basis could the Plaintiff, having passed the Second Defendant's stationary vehicle some fourteen feet away, immediately challenged him that the Second Defendant had collided with the Plaintiff. I reject the Defendant's evidence that he remained in his vehicle after the accident, but persons placed the injured men in the pick-up. I find that there was no incorrect overtaking procedure adopted by the Plaintiff, as particularised by the Defendants in their amended defence. There is no dispute that the Plaintiff had started his overtaking procedure prior to the Second Defendant's van coming to a stop and before the Second Defendant put his indicator on with a view to turning. The Plaintiff said,

"When I first saw him he was on the right side.....and that's when I cut my speed.... I checked my speed to check if someone was coming. Earlier on, when I glanced through the rear view mirror, he was very near on the right-hand side of the road."

I find that the Defendants were totally liable for the accident.

On General Damages, the Plaintiff had lacerations to the left knee and left elbow and a swollen left ankle. There was a displaced fracture of the distal left fibula. His condition was improved three weeks later, and an ankle brace was recommended. We were referred to *Harrison's Casenotes*, Gwendolyn Johnson v Headley Thomas [Suit No. C.L 1988/J158 (Cor: Smith J.) damages assessed January 10, 1991] page 362, **Injuries** – fracture of both the medial and lateral malleoli of the left lower limb resulting in tenderness and swelling in the ankle. Pain over the left and posterior aspects of the neck and in the left shoulder. She was treated at hospital and sent home. The foot was x-rayed and put in plaster of paris and remained so for two months. Thereafter she was on crutches for sometime. General damages – Pain and suffering, etc. .....$15,000. Updated that award is $139,830 and Mabel Satahoo v Milton Johnson & Ors. [Suit No. C.L. 1987/S208 (Cor: Harrison J.) damages assessed January 23, 1992] **Injuries** – fracture of the condyle of the left tibia with severe pain. **Disabilities** –

There was total disability of the left leg for nine weeks and partial disability of the said limb for a further three weeks. **General damages** - Pain and suffering and loss of amenities.....$17,500. Updated this is $86,922. Base on these authorities, it was submitted that an award of $100,000 is reasonable.

The Plaintiff referred us to Gladstone White v Dorrington Ellis and Aston Nairne, Khan's Personal Injuries Awards, Vol. 5 at page 11 where an award of $3,000,000 was made. The Plaintiff had;

(A) Arms, leg, chest, neck and right hip injured
Right arm fractured.
Right leg fractured.

(B) He was hospitalized for two months and had surgery to his right arm and right leg.

(C) He had to learn to write with his left hand. He was unable to bend his right knee, had difficulty in climbing stairs and had problems sitting because of severe pains in his back and right hip. He told the Court that he was sometimes depressed, angry, and frustrated. That because of his injuries he had difficulty disciplining his children, the oldest of which was 18 years old. He now walked with a pronounced limp and wore specially adjusted shoes. His sexual relationship with his wife was affected by the injuries.

We got absolutely no assistance from that case. The case of Cecil Gentles v Artwell's Transport Co. Ltd. & Joslyn Chambers (Khan, Personal Injuries Award, page 60), where the Plaintiff suffered (A) Bimalleolar fracture of left ankle. (B) He was treated Despite the fact that the Plaintiff

therein was hospitalized from 27th August 1995 to 9th September 1995, and he could not walk without aid until 14th December 1995 and his likelihood of developing arthritis, nonetheless, Counsel submitted that the instant Plaintiff injuries were more aggravated. We derived assistance from the case of Egbert Campbell v Leggern Parkes and Janroy Ltd., *Harrison's Casenotes*, page 374; Suit No. C.L. 1991/C08. The Plaintiff suffered undisplaced bimalleolar fracture of the left ankle which resulted in swelling and pain. He had weakness and numbness in and abrasions to left leg and ankle. In September 1991, the Plaintiff was awarded $50,000 for pain and suffering and loss of amenities. That award would equate to $330,679.89. There is no weakness and numbness in the instant case. I would therefore make an award of $300,000 for pain and suffering. Interest on General Damages from 5th September 1996 to 24th January 2003 at 6%.

In respect of Special Damages, the Award is as follows: -

For loss of earnings, the Plaintiff was unable to perform his duties as an overseas farm labourer in 1992. He exercised his options in the succeeding years to take alternate employment at Alpart. He is awarded CDN$6,200 and J$38,000 made up as follows: CDN$6,000 for loss of income. Transportation $23,000, Cost of Repair to the motorcycle $15,000. Loss of one Seiko watch CDN$120.00. One pair Bally CDN$80. Interest on

Special Damages from 11th April 1992 to 24th January 2003 at 6%. Cost to the Plaintiff in accordance with Schedule A.