IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C. L. D008/2001

BETWEEN	VINNETTA DOUGLAS	PLAINTIFF
AND	PERMANENT SECRETARY OF MINISTRY OF LABOUR	1ST DEFENDANT
AND	KEVIN HARVEY	2ND DEFENDANT
AND	ATTORNEY GENERAL	3RD DEFENDANT

Mr. Ainsworth Campbell for plaintiff
Mr. Kevin Page for the third defendant

Heard July 10, 2002 and July 18, 2002

ASSESSMENT OF DAMAGES

Sykes J (Ag)

1. There is no issue of liability. The special damages have been agreed at $12,400.00. Interest should be paid at 6% from December 9, 2000 to July 18, 2002. I now have to assess general damages.

THE FACTS

2. The facts and circumstances of the injury can be stated quite briefly. On December 9, 2000 the

plaintiff (Mrs. Vannetta Douglas) and her husband were driving in a car owned and driven by the husband in the garden parish of St. Ann the birth place of The Right Excellent Marcus Garvey, National Hero. They were in Colegate district, a few minutes away from the tourist mecca of Ocho Rios.

3. A garbage truck owned by the first defendant and driven by the second defendant rammed into the back of the car.
4. The plaintiff who was sitting in the left front seat injured her left knee, back and leg. Such was the force of the impact that the back of the seat on which she was sitting broke. Not unnaturally she was frightened. She felt pain all over her body.
5. She says she was examined by Dr. Mossop who practices in Linstead, St. Catherine. He gave her medication. She says that whenever she climbs a stair case she experiences pain in the left knee. If she picks up any relatively weighty object she experiences pain in her lower back. There is a medical report from Dr. Mossop.
6. The plaintiff then went to Dr. Bullock who was said to be the family doctor. He was treating her for the lower back pain. She last saw him two months ago. It does seem quite remarkable that she did not ask him for a medical report. No reason was given why she did not do this. It does seem odd that she receives a medical report from Dr. Mossop in 2002 and did not even bother to ask this Dr. Bullock the family doctor for a report. This is the doctor who was treating her for an injury which as will be seen prevented her from working for the past year and a half.

7. According to Mrs. Douglas she no longer enjoys sexual relations with her husband as much as she did before. The lower back pains are blamed for this.
8. She says that she is no longer working. She is forty five years old. She earned $2,500.00 per week before the accident.
9. In cross-examination she said that she began walking after three weeks but had pain in the left leg at the knee and calf.
10. If her evidence is to be believed that the injury to her back has prevented her from working it is some what surprising that there is no claim for loss earnings as an item of special damages. In any event the damages have already been agreed at $12,400.00. Neither was there any evidence of the kind suggested by ***Gravesandy v Moore*** (1986) 40 W.I.R. 222 to raise even the possibility of an award for loss of earning capacity.

MEDICAL REPORT OF DR. MOSSOP

11. The report is dated January 10, 2002. It says that Mrs. Douglas sustained the following injuries:

    (a) trauma to the back resulting in severe pain and swelling and inability to walk for two weeks;

    (b) trauma to lower left leg resulting in severe swelling of the leg and difficulty in movement of the leg for three weeks.

12. The report ends by saying that she has been treated by the doctor for the injury.

13. I cannot help but note that the particulars of injury in the statement of claim speak to whiplash and trauma to right thigh that became discoloured and black and blue. The medical report does not speak to any whiplash injury or any injury to lower left leg. Also her evidence speaks to injury to left leg.

14. It is indeed regrettable that there is no report from Dr. Bullock. It would have helped to know if the back pain can be cured. The more I consider the evidence the greater the doubts I have about this alleged back injury that has prevented her from working. How can it be that there is such a debilitating injury and not even a request from the family doctor for a report? This was not foreshadowed in the pleadings. The report of Dr. Mossop was silent on whether this injury may affect her in the future.

15. I must say that I do not accept her evidence that she has this lower back injury that has thrown her out of work to this day.

GENERAL DAMAGES

16. Mr. Campbell was extremely optimistic when he suggested the figure of $1m.

17. Mr. Page with a greater sense of realism submitted that an award of $75,000.00 would be appropriate would be having regard to her complaint of lower back pains and discomfort during sexual intercourse. As I have said I do not accept the evidence of the lower back pain.

18. He relied on ***Carmen Smith v Mervin Reid*** [Suit No. C.L. 1984/S320], Harrison & Harrison, *Assessment of Damages for Personal Injury*, at page 362. The assessment was done on February 8, 1991. The sum awarded was $4,000.00. The consumer price index then was 170.6. The May 2002 cpi is 1480. The current value is $34,701.05.

19. I believe that she should be awarded $80,000.00 for pain and suffering and loss of amenities. Interest from February 15, 2000 to July 18, 2002 at 6%.

20. **TOTAL AWARD IS**

Special damages as agreed at $12,400.00 at 6% from 6% from December 9, 2000 to July 18, 2002.

General damages for pain and suffering and loss of amenities is $80,000.00 at 6% interest from February 15, 2000 to July 18, 2002.

Costs should be awarded on the scale applicable to actions in the Resident Magistrate's Court since this action should really have been brought there. It was within the monetary limit of that court.