

NMCR

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. E-044/1998

BETWEEN	MICHAEL EDWARDS	PLAINTIFF
A N D	FERRON CLARKE	DEFENDANT

R.S. Pershadsingh Q.C. for Plaintiff.

Defendant not present and not represented.

Heard: May 17 & 25 2001

McDonald J. (Ag.)

There is no issue as to the defendant's liability herein.

Judgment has gone by default with damages to be assessed. Evidence has been given by the plaintiff and submissions made by Counsel on the question of the heads of damages applicable and the quantum of damages assessable.

I will first make reference to the claim for general damages. The particulars of injuries pleaded are as follows:-

- (a) Shock
- (b) Excruciating pains
- (c) Headaches
- (d) Cuts on outer and inner area of upper lip.
- (e) Face swollen and very painful.
- (f) Stiffness and pains in neck and back.
- (g) Whiplash Injury
- (h) Sprained Wrist
- (i) Difficulty in talking
- (j) Intermittent pains
- (k) Permanent Scar

The plaintiff testified that as a result of the accident he was severely shocked, received a cut to the inner and outer lip, which has left a permanent scar on his lip, his face was swollen and very painful. Further he felt pain and had headaches. There was stiffness to the neck and back, and he suffered a sprained wrist and had difficulty talking. He played football and sometimes cricket, he danced alot and was deprived of these pleasures because of intermittent pains to neck and back.

Medical report of Dr. W.W. Wilson admitted as Exhibit 1 reads as follows:-

".....medical report re Michael Edwards  
The abovenamed patient, age 27 years, was attended by me on 19.1.93 when he complained of back pain on long sitting and occasional pain and stiffness of the right side of the neck following a motor vehicle accident on 19.6.92, involving a bus in which he was a passenger.

He reportedly sustained injury to the left wrist, a laceration to the upper lip and injury to the neck and back at the time of the accident and had the wound sutured at Medical Associates Hospital. He also reported that he was unable to work for one month on account of pain, particularly in the neck. Examination showed a pleasant young man in good physical condition. There was a scar in the philtrum of the upper lip. There was also mild tenderness of the neck on the upper side with pain

at extreme of rotation to the left.

I am of the opinion that these findings are consistent with blunt injury and whiplash as a result of the accident. The whiplash injury appears to have been moderate to severe. He is therefore likely to suffer intermittent pain in the neck and back for several months, probably up to two years".

Two cases were cited to me in support of this head of damages. They are Pamella Francis v. Karel Nicholson C.L. 1985/F-128 Harrison's Revised Edition of Casenote No. 2 page 84 in which damages were assessed by W.A. James (Ag.) on the 31st May, 1991, and Paul Jobson v. Peter Singh et al C.L 1995/J-172 4 Khans Report page 169 in which damages were assessed by H.R. Marsh J (Ag.) on 3rd July, 1997.

In the former case the plaintiff had sustained:

- (a) blow in the forehead resulting in a whiplash injury.
- (b) accompanied by pain in the head, eyes, back and
- (c) bruises and pain in the chest wall and had to wear a cervical collar.

Spinal lumbar puncture done and chiropratic treatment administered.

He was awarded \$69,000 for pain and suffering and loss of amenities and \$3,500 for future medical care. Such an award i.e. \$69,000 would amount to \$500,688.50 today.

In the latter case, the plaintiff had sustained

- (1) unconsciousness
- (2) head injury
- (3) bruises to arms and legs
- (4) Pain to neck, down back and across shoulders.

He was admitted overnight to the Spanish Town Hospital where he had medication. After discharge he was seen by the doctor. He was left with recurrent intermittent pains and can no longer play football. He was awarded general damages of \$430,000 which sum would currently amount to \$558,388.58.

The case of Paul Jobson v. Peter Singh et al is not helpful in estimating an award, as the plaintiff in that case did not suffer whiplash injury.

In my opinion the injury suffered by the plaintiff in Pamella Francis v Karel Nicholson is more serious than those suffered by the plaintiff in the present case. There is no evidence of the plaintiff in this case having to wear a cervical collar or having chiropratic treatment.

Some assistance in the calculation of the award can be obtained from the cases of Saunders v. Nugent C.L. 1990/S-255 assessed by Patterson J on 16.10.91 Harrisons Revised Edition of Casenote No. 2 page 58 and Lucilda Clarke v. Alfred Fowler and Rohan Graham C.L. 1986 C-024 assessed on 11.11.97 by Morgan J.3 Khans Report page 193.

In the case of Saunders v. Nugent, injuries were as follows:- head injury resulting in a whiplash, lacerations to the right upper arm, right thigh and right hand and abrasions to the back. General Damages for pain and suffering and loss of amenities in the sum of \$30,000 was made in October, 1991. Such award would amount to \$159,611.64 today.

The plaintiff in Lucilda Clarke v. Alfred Fowler and Rohan Graham sustained the following injuries:- back of head bruised and battered, stiffness of neck, shoulder and spine, pain in neck, shoulder and back, whiplash, multiple cuts on left arm and right leg.

Residual disability - ugly keloid scars, scarring on left elbow, wrist and right leg, pains in head, shoulder and spine. General damages were awarded in the sum of \$25,000. This sum would currently amount to an award of \$354,188.2 (based on the CPI for December 1987).

Although the Court has not had the benefit of a recent medical report soon after the accident, I have given due consideration to Dr. Wilson's medical report describing his findings on examination of the plaintiff on 19.1.93, seven months after the accident.

The plaintiff has given evidence that his body is not feeling "too bad" but up to a year or two after the accident he had to stop dancing and cut down on football because of pains.

In the present case the plaintiff suffered injury to the left wrist, laceration to upper lip, scar in philtrum of upper lip, whiplash injury, injury to back, and intermittent pains up to one to two years after the accident.

The injuries in Lucilda Clarke v. Alfred Fowler and Rohan Graham are more serious than those suffered by the plaintiff. The plaintiff has no history of stiffness and pain in the spine or of having ugly keloid scars and scarring to elbow, wrist and legs. There is no evidence of any resultant disability in the present case.

In my view an award ranging between \$159,611.64 and \$354,188.2 would be appropriate.

Based on the evidence pertaining to pain and suffering and loss of amenities I make an award of \$300,000.00.

I now turn to the head of special damages. Special damages were particularized as follows:-

(a) Medical Expenses including certificate	\$ 3045.00
(b) Hospital bill	445.00
(c) Prescription, Medication and Ointment	785.00

(d)	Transporation	520.00
(e)	Loss of Earnings as Partime Salesman \$600 per week for 12 weeks	7,200.00
(f)	Amount lost by way of Promotion to Excise officer - officer II CR (v) at 254.79 per week for 365 weeks and continuing	92,998.35
(g)	Extra help at \$350 per week for 12 weeks	4,200.00
(h)	Property Damage (1 watch lost)	<u>1,650.00</u>
		\$110,843.00

I will first address the claim for loss of earnings as part-time salesman - \$600 per week for 12 weeks.

The plaintiff testified that he sold T-shirts in the lunch-time one day per week, Wednesdays, on the work compound and had the permission of the Customs Supervisor at the Excise and Customs Department to do so.

The plaintiff was a Civil servant at the time of the accident and is still so employed. As a public officer he is subject to the orders, rules and regulations which govern public servants. Section 3.7(a) of the Staff Orders for the Public Service of Jamaica prohibits the engagement in work by public officers.

Section 3.7 reads:-

"Public officers are forbidden:-

- (a) to undertake any private work for payment or engage in trade or employ themselves in any commercial or agricultural undertaking without the consent of the appropriate service commission".

There is no evidence before the Court that the plaintiff obtained the consent of the Public Service Commission. This head is therefore disallowed.

The plaintiff asserted that he expended \$3,045.00 on medical expenses including cost of a certificate. In the course of the trial at Mr. Pershadsingh's request the particulars of Special Damages were amended to delete items (b) and (c) as these amounts had been included in item (a). In respect of item (a) - Exhibit 2 substantiates expenditure of \$2,375.70. I therefore allow \$2,375.70 for medical expenses including cost of a certificate.

The plaintiff claims \$520 for transportation.

Rowe P in the case of Hepburn Harris v. Carlton Walker  
C A 40/90 states:-

"Plaintiffs ought not to be encouraged to throw figures at trial judges, make no effort to substantiate them by even their own books of account and to rely on logical argument to say that specific sums must have been earned."

The Plaintiff testified that this amount was expended for transportation to Medical Associates and to home. He took taxi twice and bus on several occasions. He gave no evidence as to the cost per trip.

Although the plaintiff has not specifically proved he had expended this sum, I am of the opinion that it would have been necessary for him to have attended Medical Associates Hospital to receive medical treatment and therefore I would allow him \$250.

I allow claim for watch lost at the time of the accident in the sum of \$1,650.

The Plaintiff testifies that before the accident he was able to do his own domestic chores, but after the accident he had to get special help for twelve (12) weeks to wash and iron. This cost \$350 per week amounting to \$4,200. Doctor Wilson's report states that the plaintiff reported<sup>that</sup> he was unable to work for one month on account of

pain particularly in the neck. However, in light of the fact that the Doctor's report states that the plaintiff was likely to suffer intermittent pains for several months probably up to two (2) years I allow claim for extra help for twelve (12) weeks at \$350 per week.

The plaintiff has claimed at item (f) of the Particulars of Special Damage - \$92,998.35 as the amount lost by way of promotion to Excise Officer 11 (CRV) at \$245.79 per week for 365 weeks and continuing.

At the conclusion of the plaintiff's case Mr. Pershadsingh submitted that the period of 365 weeks is not sustainable and that a period of two (2) years would be reasonable in the circumstances. The plaintiff tendered a letter Exhibit 4 dated August 17, 1992 titled "TO WHOM IT MAY CONCERN" and signed by one Miss B. Gordon, Personnel Officer.

It reads inter alia:-

"During the period of his illness we were urgently in need of an officer to be assigned the duties of an Excise Officer 11 (CR V) in the Rum Stores Division of the General Consumption Tax Department ..... Mr. Edwards was the first person to be considered for the post because of his knowledge and experience having acted before in the post. However, because of his absence from work we had to reconsider the situation."

The plaintiff explained on oath that he tried to locate witnesses to substantiate the contents of the letter but was unable to do so as the personnel department in Customs has changed and the Customs and Excise department have separated.



He is unable to locate Miss Gordon

I am of the opinion that: The letter is a totally inadequate basis on which the Court could rely to make an award.

There are many variables involved in getting promotion and appointment. Factors such as ability, knowledge, performance on the job, educational qualifications, conduct, work attitude, health, the duration of the vacancy, the existence of a clear vacancy, the creation of a new post are just some of the possible considerations. In addition the plaintiff gave evidence that the Excise and Customs Department have separated. No date was given as to this separation and as to whether or not this had any effect on staff compliment and classification of workers.

There is no evidence before me on which I could base an award under this head.

Damages are assessed as follows:-

General Damages

Pain and suffering and loss of amenities - \$300,000.00

Special Damages

Medical Expenses (including Certificate) - 2,375.00

Transportation - 250.00

Extra Help - 4,200.00

loss of watch - 1,650.00

Judgment for the plaintiff in sum of \$308,475.00 being general damages for pain and suffering and loss of amenities in the sum of \$300,000.00 with interest thereon at rate of 6% per annum from the date of service of writ to 25.5.2001 and special damages of \$8,475.00 with interest thereon at rate of 6% per annum

from 19th June, 1992 to 25.5.2001.

Costs to the plaintiff to be agreed or taxed.