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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. CL. E043/95

BETWEEN HOPETON ELSON PLAINTIFF
AND ATTORNEY GENERAL DEFENDANT

D. Daley Q. C. instructed by Daley, Thwaites, Campbell for the plaintiff.

N. Hamaty instructed by Director of State Proceedings for the defendant.

HEARD: 7TH & 8TH AND 17TH MAY, 2001

BESWICK, J. (Ag.)

The plaintiff contends that on July 8, 1994, at a fair being held at Gordon Hill School, a man was wielding a knife amidst the crowd that was attending. A police officer, Cpl. Brown, accosted him and the plaintiff who was part of the crowd, noticed District Constable Wright pull a firearm, point it at the man with the knife, and fire a shot.

The plaintiff felt a stinging and cramps and realized that he had been shot by the bullet which had been directed towards the knife man.

He filed suit against the Attorney General by virtue of the Crown Proceedings Act to recover damages for assault and negligence by District Constable Wright.

The plaintiff gave evidence that as a result of the shooting his knee was injured and he was hospitalized for three (3) days, that even now he suffers from cramps intermittently and sometimes is unable to walk.

The evidence further is that the plaintiff was a farmer who had for years gone on the U.S.A. Farm Work programme and expected to continue doing so for 1994 and 1995. He had each year previously earned US \$13,000 gross and had saved over U.S. \$5,000. He expected his financial situation for the years 1994 and 1995 to be the same as in those previous years.

The plaintiff also gave evidence that he farmed locally and that his income from that venture was about J\$120,000.00 annually and that the income he has lost from the date of injury to date of trial is about J \$800,000.00.

He testified further that he paid J\$1300 for Doctor's fees and J\$500 for the medical report concerning his injury.

The plaintiff's evidence of special damages was unsupported by documentary or other evidence.

The defence called no witnesses. Defence Counsel urged the Court to find that the situation at the fair was threatening not only to the police officer who

faced the knife-wielding man, but also to the patrons who were present. The Court should find that the District Constable had to discharge his firearm in order to defend his colleague and the public and therefore enter judgment for the defendant.

He relied on Byfield v Attorney General [1980] 17 JLR 243 where a police officer was found to be justified and not negligent in shooting the plaintiff therein, although the shooting was in fact aimed at gunmen.

Counsel for the plaintiff submitted that an award of \$300,000.00 for general damages would be appropriate. For this he relied on Cunningham v Maximum Investigators C.I 1991/C579 where the award given when updated was \$500,000.00. There the plaintiff had been unable to walk for more than a mile and suffered 2% permanent partial disability.

Defence Counsel argued that if the Court found the defendant liable, damages should be in the amount of \$60,000 based on South v Ergos CI 1997/S333 where the plaintiff suffered a swollen knee and was temporarily disabled for about 3 months and was awarded a sum which when updated amounts to \$79,174.

The medical certificate tendered in evidence confirms that the plaintiff received gunshot injury to the knee and states further that there are two wounds on the knee and that bullet fragments are embedded in the knee.

I accept this evidence as reflecting the plaintiff's medical condition resulting from the incident.

There is no medical evidence to support the plaintiff's evidence that he still suffers intermittently from the injury to the extent where sometimes he cannot walk. Nonetheless, I believe his evidence in this regard. There is no evidence of permanent disability.

The first question to be determined is that of liability. I do not accept that a policeman must discharge his firearm at a knife-wielding person, moreso when persons are in the vicinity of such a person. The District Constable is fortunate that the damage was not greater and more extensive. He had a duty to exercise care but instead displayed negligence in discharging his firearm, and is liable for the injuries which his action caused to the plaintiff.

I therefore give judgment for the plaintiff.

There was no challenge to the evidence concerning special damages. I accept the plaintiff's evidence.

Counsel for the plaintiff had submitted that the amount of U.S. \$5000.00 which was the plaintiff's annual savings, should represent his loss of income for each year away from the Farm Work programme. However, I find that the loss of income must relate to his loss of earnings which he may choose to convert as he wishes, whether in savings or otherwise.

The evidence is that there was loss of earnings from the U.S.A. Farm Work programme for 1994 and 1995 at U.S \$13,000 per year, totalling U.S. \$26,000.

Counsel for the plaintiff submitted that the appropriate award for this portion of the Special Damages would be U.S. \$5,000 for 1994 as well as for 1995, converted at the exchange rate of J\$40 to U.S. \$1, which was in existence in 1994.

The Court accepts the plaintiff's evidence. However, there was no evidence of income tax or deductions which the plaintiff would have had to meet. The Court will therefore make a reasonable discount of 25% thereby awarding U.S. \$19,500.00 for loss of income.

The plaintiff's evidence of loss of local income amounting to J\$800,000.00 was unchallenged. I accept this amount as being accurate and discount it by 25% to represent taxes and deductions, thereby awarding J\$600,000.00. Doctor's fees of J\$1300 and medical report of J\$500 amount to J\$1800.

The total award for special damages is therefore J\$601,800 and U.S. \$19,500 to be converted at today's weighted average selling rate supplied by the Bank of Jamaica. Interest granted at the rate of 6% per annum on this award from July 8, 1994 to today.

I have considered the evidence and the authorities submitted and I award for general damages for pain and suffering, the amount of \$250,000.00. Interest at the rate of 6% per annum granted on this award from the date of service of writ, agreed

by Counsel to be May 12, 1995, to today. Costs to the plaintiff to be agreed or taxed.