

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. F124 OF 1985

BETWEEN	OWEN FRANCIS	PLAINTIFF
AND	CORPORAL BAKER	FIRST DEFENDANT
AND	CONSTABLE BENTLEY	SECOND DEFENDANT
AND	ATTORNEY GENERAL	THIRD DEFENDANT

Gordon Robinson, Bert Samuels and Norman Harrison for Plaintiff

Frank Williams of Attorney General's Chambers for Third Defendant.

Heard: February 26, June 6, & July 31, 1991

LANGRIN, J.

ORAL JUDGMENT

This matter comes up before me for assessment of damages, the first defendant having accepted liability for assault upon the plaintiff.

The Third Defendant is being sued by virtue of the Crown Proceedings Act.

The plaintiff at the material time was and still is a Telephone Operator, 30 years old employed to the Jamaica Defence Force and resides at 32 Harcourt Road, Kingston 16 in the parish of St. Andrew.

The incident in which the plaintiff sustained his injuries occurred on June 16, 1985 while he was fixing his antenna on his roof. A car stopped at his gate and men dressed in civilian clothes started shooting at him. He descended from the roof top and told them that he lived on the premises. He was shot. He was admitted to the Kingston Public Hospital where the injuries he sustained were:-

- (1) Gunshot wound to left chest at the left costal margin in the anterior axillary line.
- (2) Damage to his left kidney, spleen, left hemi-diaphragm, left lung and plura and small intestines.
- (3) Blood in the peritoneal cavity
- (4) Paraplegia and loss of sensation below the sensory level of L2

He was resuscitated and subjected to a laparotomy under general anaesthesia. At surgery the left kidney was found to be shattered and removed. The spleen was also removed and there were numerous holes in the small bowel. There was a traumatic paraplegia at the level between the 12th thoracic and first lumbar vertebrae on the left side and at a level of the fifth lumbar vertebrae on the right side.

The plaintiff was totally disabled from the time of the injury until the end of September 1985. At the end of 10 days after surgery he was transferred to Mona Rehabilitation Centre. He was discharged from Rehabilitation Centre on 7/8/85 but attended again on the 17th September 1985.

Dr. Lawson Douglas, Consultant Urological Surgeon who had examined the plaintiff opined that the gunshot wound has interfered with the nerve supply to the bladder and although his symptoms may improve it is unlikely that he will again have entirely normal bladder function. The nerves controlling sexual function, have also been damaged and although his symptoms may improve with time it is unlikely that his sexual function will ever be entirely normal.

Dr. Charles Thesiger, Consultant Psychiatrist, saw the plaintiff on the 10th August, 1989 and found that he was still showing signs of a reactive depressive state as a result of the trauma. Until he is able to regain adequate physical function his psychological recovery is unlikely to be complete.

A final medical Report was done on February 25, 1991 in which Dr. John Golding, Consultant and Professor of Orthopaedics assessed that the plaintiff has a whole person disability of 35%, taking into account the paralysis of the left lower extremity, the weakness of the right lower extremity and the difficulty with micturition and sexual disfunction.

General Damages

1. Pain & Suffering and Loss of Amenities

Mr. Robinson submitted that an award of \$750,000.00 under this head was reasonable. He referred to the unreported case of Kiskimo Limited v. Deborah Salmon (1991) Supreme Court Civil Appeal No. 61/89 in which an award of \$500,000.00 was made. According to him the injuries sustained in that case was less serious than the instant case. Mr. Williams on the other hand

submitted that the injuries in the instant case are far less serious and the award should be in the region of \$130,000.00.

I find some similarity of the instant case with the case of Donald Gray v. The Attorney General & Constable Mills reported at p.151 of Vol.3 of Khan's Personal Injury Awards. The permanent disability of the total bodily function was 60% while the instant case was assessed at 35%. The award in that case was \$352,000.00. The plaintiff used to play football, badminton, visited the gym, participated in athletics and swimming.

In my judgment an award of \$400,000 under this head would represent a reasonable compensation to the plaintiff.

(2) Loss of Earning Capacity

Mr. Robinson submitted that I should make an award of \$300,000.00 for loss of future earnings.

The evidence is that the plaintiff went to Marcus Garvey Secondary School. He did not sit any G.C.E because they were not offered but he acquired a School Leaving Certificate. There was an intention on the part of the plaintiff to study for 8 years in order to obtain the degree of Masters of business Administration. He applied to the College of the Cayman Islands in 1983 for a Catalogue. He admitted not having the funds to pursue the courses at an estimated cost of US\$800 per course but expected to be assisted by a relative. Indeed, it is uncertain whether he would have been accepted as a student.

In the well known case of S.S. Singleton Abbey vs. S.S. Paludina (1927) AC. 16 it was decided that the plaintiff must show that a particular item of damage is not too remote before he can recover for it.

It is usually the case that in young children damages for loss of earning capacity are recoverable. See Jones v. Lawrence (1969) 3 AER 267.

Mr. Williams submitted that I make no award because it would be too speculative. I find no credible evidence for making an award under this head.

The plaintiff may however, be handicapped in finding good paying jobs in the field of his choice due to the lack of facilities arranged for his kind of disability. In the circumstances I make an award of \$40,000.00 for handicap on the labour market.

Loss of future care

The plaintiff at the date of trial was 30 years old and with only one kidney which according to Dr. Trevor McCartney, Consultant Surgeon, would put his life in great jeopardy. I consider a multiplier of 12 to be reasonable and adequate. From the evidence before me I find that the plaintiff would require as under:-

Helper - \$150 per week x 52	= \$7800
Medication - \$500 per annum	500
Transportation - \$120 per week x 52	6240
Kidney treatment - \$400 per annum	400
Total	<u>\$14940</u>

With a multiplicand of \$14940.00 and a multiplier of 12 the total yield under this head would be \$179,280.00.

I make an award of \$27,000.00 for the cost of a wheel chair.

Aggravated Damages

There is no evidence before me as to why the Police fired on the plaintiff but a reasonable inference for such conduct appears to be that the Police was too caught up in the pursuit of serious crime. There was a definite failure to carry out any significant investigation before opening gunfire on the plaintiff. I make an award of \$20,000.00 under this head.

Special Damages

I allow the following items of special damages:

1. Travelling expenses to and from hospital	\$160.00
2. Items of clothing lost	55.00
3. Cost of medical Reports	1000.00
4. Cost of household Helper	<u>1400.00</u>
Total	<u>\$2615.00</u>

The Award

In the light of the foregoing there will be judgment for the plaintiff against the 3rd defendant as under.

Special Damages: \$2615.00 with interest at 3% from 16/6/85 to today.

General Damages: \$666,280.00 made up as follows:-

Pain & Suffering & Loss of amenities	\$400,000.00
Handicap on Labour Market	40,000.00
Loss of Future care	179,280.00
Cost of wheel chair	27,000.00
Aggravated Damages	20,000.00
Total	<u>\$666,280.00</u>

with interest at 3% on \$400,000 from the date of the service of the writ, 5/2/86 to today.

The defendant must pay the plaintiff's cost to be taxed, if not agreed.