

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. G.271 OF 1987

BETWEEN	STANFORD GARWOOD	PLAINTIFF
A N D	MICHAEL SCOTT	FIRST DEFENDANT
A N D	W. WILLIAMS	SECOND DEFENDANT
A N D	NEVILLE BROWN	THIRD DEFENDANT

Ainsworth Campbell for Plaintiff

C. Samuda for First and Second Defendants

Third Defendant is unrepresented.

HEARD: 17/3.94, 18/3/94, 24/3/94,
15/2/95, 16/2/95 & March 10, 1995.

LANGRIN, J.

In this action the Plaintiff Stanford Garwood was a passenger on Motor Bus licensed PP.5505 along the Constant Spring main road, St. Andrew when it collided with a motor vehicle licensed 1732 AC.

In his amended Statement of Claim the Plaintiff averred that the defendants drove or controlled their motor vehicle in such a manner that both vehicle collided along the road causing him to sustain bodily injuries and to suffer pain, damages and loss.

The particulars of negligence are stated as under:

Particulars of Negligence of
First and Second Defendants

- (a) Speeding in all the circumstances.
- (b) Failing to keep any or any sufficient look out.
- (c) Cutting across the path of another vehicle.
- (d) Failing to have any or any sufficient regard
for other users of the road including the Plaintiff.

Particulars of Negligence of Third
Defendant's Negligence

- (a) Failing to have any or any proper look out.
- (b) Failing to have any or any sufficient regard
for other users of the road including the plaintiff.

- (c) Colliding with the First and Second Defendant's vehicle.
- (d) Speeding in all the circumstances.
- (e) Failing to brake, stop, slow down, swerve or otherwise manoeuvre to avoid the collision.

The Plaintiff's Case

Stanford Garwood testified that while seated in the left front of the bus which was travelling approximately 40 m.p.h. down the Constant Spring Road on July 1, 1987 about 10:30p.m. it collided and overturned.

On this three lane one-way road, the bus was travelling in the left lane when it suddenly swung sharp to its right. He heard an impact to the right side of the bus near to the rear. He felt the bus lifted off the road and overturned near to the Gas Station. He saw no vehicle travelling before the bus at the time it swung across the road. However, he could not say whether any vehicle was travelling behind the bus at the material time.

The Defendant's Case

The Third Defendant did not participate in the trial and was absent from the proceedings. An interlocutory judgment was entered against him prior to the time.

Henry Hutchinson, the driver of the bus at the material time testified that he was proceeding in the right lane along Constant Spring Road while in the act of turning to his right in a Gas Station he felt an impact on the left hand side of the bus to his rear bumper and tail light. The bus overturned on its left side.

Under cross-examination by Counsel for the Plaintiff he said when he came out of the bus it was the first time he was seeing the Land Rover which collided with the bus.

Legal Issues

It is common ground that there was an impact to the rear of the bus and that it was caused by a Land Rover driven by the third defendant. In addition it is also common ground that the Plaintiff vehicle was turning right.

It is evident that while the driver of the bus was turning right he did not see the vehicle which collided with the bus. On his own account the first time he saw the Land Rover was when he alighted from the bus.

I accept the evidence of the Plaintiff that the driver of the bus while travelling in the left lane swung across to the right with the intention of going into the gas station.

The fact that the driver did not get the name of the driver of the Land Rover at the scene of the accident gives more force to the suggestion by the Plaintiff that the second defendant's driver was blameworthy. A fortiori, it was the Plaintiff who joined the third defendant as a party.

I find as a fact that the driver of the second defendant was driving in the left lane, turned right across the road to the gas station when the third defendant's vehicle travelling down the road collided with it.

Mr. Samuda Counsel for First and Second defendants, relied on the case of Jungnickel v. Laing and Others (1967) Vol. III. The Solicitors' Journal but that case can easily be distinguished from the instant case.

Both drivers failed to keep a proper look-out and I find them equally to blame for the accident. The liability for the collision is apportioned equally between the drivers of both vehicles.

Damages

The particulars of injuries pleaded are as follows:

Particulars of Injuries

- (i) Comminuted compound fracture of the left upper limb.
- (ii) Deformity of the left upper limb.
- (iii) Serious burns on both lower limbs.
- (iv) Laceration burns on both lower limbs.
- (v) Trauma to the chest.
- (vi) Laceration on the inner right elbow.
- (vii) One hundred percent (100%) permanent partial disability of the left upper limb.

The plaintiff a 37 year old man testified that after the bus overturned it was on top of him. The bus had to be lifted before he was taken up. Blood was all over his face, his hand was injured and there were burns over his foot and thigh. His left hand was completely smashed and he sustained a cut over his eye. After admission to the Kingston Public Hospital he was operated on immediately. He did not know himself for three days, and experienced considerable pains for over one month. He was hospitalized for two months and seven days. When he was discharged from hospital both legs and hand were in plaster paris. While at home in this same condition for six months he had to be lifted around.

He had physiotherapy for the hand which had a big sore on its back. He wore a plaster paris for the entire forearm. There was a skin graft done to the back of the left hand. The whole hand is now paralysed. He went back to work in 1992 but only worked for six months. He can only drive a standard change vehicle with straight up gear stick.

Dr. Aston S. Young M.D., Orthopaedic Surgeon at the Kingston Public Hospital gave evidence that he examined the plaintiff on 2/7/87 but never saw any burns. He performed surgery. There were two medical reports of Dr. Young dated April 27, 1988 and February 19, 1990 respectively which were admitted in evidence.

The reports read as follows:

(1) "Re: Stanford Garwood"

Patient who was admitted to the Orthopaedics Ward on July 2, 1987 for injuries sustained after allegedly being involved in a motor vehicle accident on the evening of July 1, 1987.

Examination revealed:-

1. Crush injury to the palm and dorsal aspect of the left hand.
2. Laceration to the left elbow with the distal end of the humerus protruding.
3. Abrasion to the lower limbs.
4. Laceration above the left eye.

X-rays revealed:-

1. Fractures of the bones of the left hand

2. Dislocation of the left elbow.

He had surgery for cleaning and suturing of the wound on the day of admission. Subsequent treatment consisted of analgesics and antibiotics. The wounds of the injured hand healed well despite some amount of infection and on July 28, 1987 he had skin grafting of the left hand.

He was discharged on August 10, 1987 with follow-up as an out patient. He has had four visits to the fracture clinic where examination has revealed - 1. That the skin graft has taken up to 90%. 2. The joints of the left hand have become stiff. 3. The left elbow is also stiff.

X-rays showed:

1. Decrease space at the left elbow joint
2. Mal-union of the joints of the first, second and third digits. These disabilities are permanent".

(2) "Re: Stanford Garwood, Docket No.32-07-50

This is a follow-up to our report dated 27th April, 1988. Mr. Garwood had been booked on several occasions to have surgery to correct his disabled left (L) hand, but due to various reasons his operation has had to be cancelled.

When last seen on the 27th January, 1990 it was assessed that he had one hundred (100) percent permanent disability. He was subsequently discharged."

It was the Doctors' opinion that the plaintiff suffers 100% disability of the left hand and 90% disability of whole upper limb.

Both parties cited the cases of C.L. 1990/V005 Virgo v. Hill Farms Limited etal, and C.L. 1990/S233 Smith v. Rose Hill Farms Ltd. etal. In the latter case there was an award of \$200,000.00 which when converted to the money of today amounts to \$400,000.00.

Based on these awards I make an award in this case of \$600,000.00 for Pain and Suffering and Loss of Amenities.

Loss of Future Earnings

The plaintiff is now 38 years of age and at the time of the accident was earning \$700 per month. I consider a multiplier of 12 to be appropriate. Award - $\$700 \times 52 \times 12 = \underline{\underline{\$436,800.00}}$

Loss of Future Help

The minimum wage for helpers is \$500 per week. A multiplier of 15 seems appropriate in these circumstances.

Award - $15 \times \$500 \times 52 = \underline{\underline{\$390,000.00}}$

SPECIAL DAMAGES

1.	Loss of Earnings for 390 weeks at \$700 per week from 1/7/87 to 6/2/95. Less 26 weeks when he worked as a driver.	\$255,500.00
2.	Loss of Pants	140.00
3.	Loss of Shirt	95.00
4.	Loss of Shoes	440.00
5.	Medical Bills	675.00
6.	Taxi Fares	235.00
7.	Extra help for 390 weeks at \$100 per week	39,000.00
8.	Costs of servicing and maintaining Plaintiff's vehicle (which servicing and maintenance used to be done by the Plaintiff before accident) from 1/7/87 to the 28/2/90 at \$330 per week.	44,220.00
	Costs	4,000.00
10.	Costs of employing driver for PPV motor vehicle that would have been done by Plaintiff	9,000.00
11.	Physiotherapy treatment	1,300.00
		<u>\$354,605.00</u>

Summary

A.	<u>General Damages</u>	
1.	Pain & Suffering and Loss of Amenities	\$600,000.00
2.	Loss of Future Earnings	436,800.00
3.	Loss of Future Help	390,000.00
B.	Special Damages:	354,605.00

Judgment is accordingly entered for the Plaintiff against the Defendants, as indicated in the summary. Liability apportioned as follows: 50% to 1st and 2nd Defendants and 50% to 3rd Defendant with interest awarded on general damages at 3% from the date of service of writ to date of judgment.

Interest awarded on the Special Damages at 3% from 1/7/87 to date of judgment.

Costs granted to the plaintiff to be agreed or taxed.