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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L.G. 016 OF 2001

BETWEEN	DEVON GORDON	PLAINTIFF
AND	KEITH ROY MORRIS	1ST DEFENDANT
AND	CLINTON STEWART	2ND DEFENDANT
AND	BASIL BERNARD	3RD DEFENDANT

Mrs. Sharon Gordon-Townsend for Plaintiff
First and Third Defendant Unrepresented

Heard April 17 and April 25, 2002

Sykes J (Ag)

The plaintiff is a labourer who works at Dovecot Memorial Park, that now famous burial ground at Green Acres, St. Catherine. On June 14, 1996 he was travelling in a taxi. That taxi was hit by Ford pick up truck. The usual Writ of Summons and statement of claim was filed but none of the defendants saw it fit to enter an appearance or even to file a defence. The plaintiff as he was entitled to do entered on interlocutory judgment in default of appearance against the first and third defendant. The issue of liability having been dispensed with the only outstanding matter is that of quantum of damages.

The plaintiff suffered these injuries:

1. injury to right hip;
2. a 3cm laceration to area anterior to right ear and a laceration of right lateral wall of nose;
3. pain in his head;
4. pain all over his body;
5. there was loss of consciousness for approximately three days.

The plaintiff says that since receiving the injuries he can no longer walk long distances as well as he could before the accident. When he walks long distances his right leg gets "heavy". He says further that since the injuries he cannot work in the sun without some kind of head gear that shelters his head from the burning rays of the sun. If he does not do this his head hurts. The plaintiff says that he was in pain for over two months after the accident. In support of his claim for general damages and special damages the plaintiff has put into evidence a number of receipts and two medical reports.

I will deal with the medical evidence first. The first report is dated January 13, 1999 and signed by Dr. Ediel Brown who describes himself in the report a Consultant ENT Surgeon. His report indicated that the plaintiff's major complaint was that he now suffers from headaches. The doctor says that his examination did not reveal any "obvious cosmetic or functional deformity." The plaintiff had an upper respiratory tract infection and was blind in one eye. Significantly the doctor found that the eye injury was there from childhood. The report says that the X-rays done on June 14, 1996 (the date of the accident) "confirms a fracture nasal bone with only minimal displacement." Dr. Ediel Brown adds that "[i]t is difficult to say if this headache is as a result of his accident."

The second medical report dated October 13, 1999 prepared by Dr. Paul Brown of the Spanish Town Hospital states that the "[x]-rays revealed no fractures." The report is silent on any complaint about headaches.

Was there a fracture? The doctors disagree. The medical evidence presented in the form of medical reports meant that the court was deprived of the benefit of viva voce evidence that may certainly have helped in clarifying this issue. There is nothing in the plaintiff's evidence to suggest that he experienced any sensation that would suggest any injury to his nose other than the laceration already referred to. Thus on a balance of probability this court cannot say that there probably was a fracture of the nose.

Dr. Ediel Brown says in the report that "[i]t is difficult to say if this headache is as a result of his accident." The plaintiff complains of headaches since the accident, a condition that he never had before. What the doctor says is that he can neither deny nor affirm that the accident caused the headaches. In other words he does not know if the accident caused the headache. This means that there is no medical evidence supporting the submission of counsel who asked me to say that the headaches were caused by the

accident. I cannot accede to this submission having regard to the report of the ENT specialist.

Neither of the medical reports speak to any permanent disability of the right leg which the plaintiff says gets "heavy" if he walks for a long distance. It is significant that one of the receipts (exhibit 3d dated March 18, 1998) from Eureka Medical Limited indicates that the money was paid for an X-ray of the plaintiff's hip. This was approximately nine months before the medical report of January 13, 1999. There is no mention in the report of any complaint about "heaviness" of the right leg or indeed any leg at all. In fact the report says that the major complaint was about headaches but as I have already indicated the doctor is unable to confirm that the headaches were linked to the accident. I do not therefore accept the plaintiff's claim that he is suffering from any disability in his right leg that can be attributed to the accident.

The two medical reports issued at least two years after the accident do not confirm the existence of any such complaint. Surely if the plaintiff was suffering from this malady one would expect that it would have been addressed by the reports especially since one of his visits to Eureka was specifically for an X-ray of the hip. Another receipt (exhibit 3e dated December 12, 1998) from Eureka indicates that the plaintiff went for an "office visit", a mere five weeks before the report dated January 13, 1999, yet no mention of any complaint about his leg.

Having dealt with the medical evidence I am now able to assess the quantum of damages to which the plaintiff is entitled.

SPECIAL DAMAGES

It is well known that special damages have to be specifically pleaded and strictly proved. The plaintiff was hospitalised at the Spanish Town Hospital and after his discharge he made several visits to the Kingston Public Hospital and Eureka Medical Limited for follow up treatment. During the hearing of this matter counsel for the plaintiff applied to amend the statement of claim to add two items of special damages namely the cost of the police report and the cost of the medical report from the Spanish Town Hospital. These amendments were not allowed. The plaintiff claimed for the loss

of his shoes, gold tooth, gold chain and a pair of trousers. I do not believe that these items are recoverable. It has not been proved that the loss of these items flowed directly from the accident. All that the evidence establishes is that these items could not be found when the plaintiff regained consciousness.

The plaintiff has pleaded and proved the following items:

1. Cost medical visits, treatment and consultation at Eureka Medical Limited - $10,245.00.
2. Cost of transportation from home to the Kingston Public Hospital - $3,000.00.
3. Cost of visit to see doctor at Spanish Town Hospital - $250.00.
4. Loss of earnings for the period June 14, 1996 to September 30, 1996 @ $650.00 per day for a five day work week. The statement of claim has the figure of $42,250.00 as the total claim for sixty five days. My calculation is that the total number of days is seventy six and not sixty five as stated by the plaintiff. This would mean that the loss of earning is $49,400.00. Despite this difference the plaintiff can recover the higher amount because he set out the precise time period for which he was claiming as well as the amount per day. The arithmetical error should not deprive the plaintiff of his claim.

The plaintiff is awarded $62,895.00 at six percent interest from the date of the accident to April 25, 2002.

GENERAL DAMAGES

Based upon my examination of the medical evidence as well as the other evidence presented to me I conclude that the plaintiff is not entitled to any award for loss of earning capacity or loss of future earnings. Since the injury he received a wage increase. There is no evidence to suggest that there is any real risk that the plaintiff will lose his present job or if he did that he would be less able to compete with other workers who did

not suffer in the way that he did. There is no question in this case of a loss of future earnings.

It would seem to me that the plaintiff is entitled to an award for pain and suffering and loss of amenities. Counsel cited the cases of:

1. *Beverly Griffiths & another v Leroy Campbell* Suit No. C.L.1996 123G (***Khan, Ursula***, *Recent Personal Injury Awards Made in the Supreme Court of Judicature of Jamaica*, , Volume 4 at page153);
2. *Donna Perry v Napthis Thompson and others* Suit No. C.L. 1992 P 156 (supra at page 155).

In the first case the adult plaintiff suffered loss of consciousness, a superficial injury to her left foot and headaches. After the accident she was treated and sent home. The court accepted that she had recurrent headaches. Though the report is silent it would seem that the court accepted that the headaches were caused by the accident. No special damages were awarded. She received general damages of $110,000.00 at six percent interest.

In the second case the adult plaintiff suffered a 3cm laceration at left forehead, abrasion over her nose, swollen inner aspect of lower lip, her left knee was slightly tender and swollen and a fractured nasal bone. She was awarded general damages of $150,000.00 at three percent.

As I have said there is no support for the plaintiff's claim that his headaches resulted from the accident. The fact that one event follows another does not mean that it was caused by previous event. There is no reliable evidence concerning the fracture of his nasal bone.

I believe that the sum of $280,000.00 is an appropriate amount. Interest on this amount is at the rate of six percent from the date of service of the Writ to April 25, 2002. Costs to the plaintiff pursuant to Schedule A of the Rules of the Supreme Court (Attorneys-at-Law's Costs) Rules, 2000.