

# **JAMAICA**

## **IN THE COURT OF APPEAL**

### **SUPREME COURT CIVIL APPEAL NO. 83 /02**

**BEFORE: THE HON. MR. JUSTICE PANTON, J.A.  
THE HON. MR. JUSTICE SMITH, J.A.  
THE HON. MR. JUSTICE K. HARRISON, J.A.**

**BETWEEN: VEROL GORDON                      1<sup>ST</sup> DEFENDANT/APPELLANT  
                 RUPERT STEWART                    2<sup>ND</sup> DEFENDANT/APPELLANT**

**AND:                      BARRINGTON NEWTON              PLAINTIFF/RESPONDENT**

Mr. Maurice Manning, instructed by Nunes, Scholefield, DeLeon & Co., for the First Defendant/Appellant.

Mr. Christopher Samuda, instructed by Piper and Samuda, for the Second Defendant/Appellant.

Mr. Ainsworth Campbell, for the Plaintiff/Respondent.

**September 25 and 27, 2006**

**PANTON, J.A.**

In this matter, the appellants have challenged the finding that the injury to the respondent's eye was as a result of the accident. It is to be noted that liability in respect of the accident was conceded, and the case proceeded before Wesley James, J. as an assessment of damages.

The respondent had alleged in his amended statement of claim that the appellants had so negligently managed the vehicles they were driving that an accident resulted and he, while being driven in one of the vehicles, was seriously injured in his left eye.

The evidence discloses that the respondent while seated in a bus was flung backwards and his head hit on a fixed piece of iron standing upright in the bus. He badly hurt his head and neck and became unconscious. Four days after this trauma, he started having blurred vision and "flashes of light" in the left eye. His situation was serious because his right eye had been removed sometime before.

He was treated and operated on by Dr. Hugh Ludlow Vaughan who specializes in ophthalmology. He diagnosed a detached retina, surgically removed the dislocated lens and reattached the retina. This condition, he found, to have been consistent with severe traumatic damage. The vision, having been thus permanently damaged, is unlikely to improve and Dr. Vaughan estimated that he has lost about 85% of his vision.

The appellants, through Mr. Manning and Mr. Samuda, have submitted that in January 1996 the respondent's vision had started to pale, so there is nothing to say that the injury to the eye had not been from then. In that situation, they

argued, they would not be responsible for the detached retina. The flaw in this argument is that it ignores the following:

1. the respondent had reasonably good vision, though somewhat pale, prior to the accident in May 1996;
2. there was trauma to the head at the time of the accident;
3. the respondent began having blurred vision four days after the accident;
4. Dr. Vaughan has concluded that the injury to the eye was due to trauma as described by the respondent.

In the circumstances, the learned trial judge had sufficient material from which he could base his finding that the injury to the eye was as a result of the accident.

There was also a challenge to the special damages awarded to the respondent. Having examined what was pleaded, and the evidence given, we are satisfied that the award was justified save for \$10,000.00 medical expenses allegedly paid by the respondent. It is not known to whom and when this was paid and certainly a receipt would have been issued. In the absence of any evidence thereon, that sum is disallowed. I would therefore dismiss the appeal save for that variation.

**Smith, J.A.**

I agree.

**Harrison, J.A.**

I agree.

**ORDER**

The appeal is dismissed. The order of the Court below is affirmed save that the sum awarded as special damages is varied to One Hundred and Thirty-Three Thousand, Seven Hundred and Fifty Dollars (\$133,750.00). The costs of the appeal are to be the respondent's, such costs to be agreed or taxed.