IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. G. 026 OF 1981

BETWEEN	LURLINE GRANT	PLAINTIFF
A N D	ORBIT INDUSTRIES LTD.	DEFENDANT

Dr. Lloyd Barnett and Miss Hilary Phillips, instructed by Messrs. Perkins, Tomlinson, Grant, Stewart, for the plaintiff.

Dennis Goffe and Norman Davis for the defendant.

HEARD: 13th, 14th & 15th July, 1987
and 18th December, 1987

PANTON, J.

The plaintiff, now aged 47 years, was employed in the spraying department of the defendant's company which manufactures and assembles baths, basins, water heaters, bathroom fixtures and fittings. Her main duty was to roll the substance that is used in spraying. Normally, she did not work on a Saturday. However, on Saturday, November 22, 1975, she reported for work at the request of the Personnel Officer who told her that she was needed to spray as the person who usually performed that duty was unreliable so far as attendance on a Saturday was concerned.

The spraying is done by means of a mechanical spray gun. It is connected to a machine which has a "pipe cock". When this cock is turned on, air pressure builds up to enable the spraying to be done.

On that Saturday morning, the plaintiff turned on the pipe cock. She noticed fluid dripping from it so she turned it off. Following what she had previously seen done in a similar situation, she got hold of a wrench and a washer. She then used the wrench to unserew the pipe cock. The chemical spewed violently from out of the pipe cock into the face of the plaintiff. Her right eye was particularly affected by this eruption. She has lost about 40% of her total vision, as the vision in the right eye is significantly impaired. According to Mr. Hugh Vaughan, consultant opthalmologist, the plaintiff's

condition cannot be corrected. She is now permanently handicapped so far as sewing, assembling electronic parts and such related work are concerned.

In my judgment, the liability of the defendant company has been clearly established. The system of work was faulty. On that Saturday, the plaintiff was like a lamb to the slaughter. The management had assigned her duties for which she had not been trained; to add insult to injury, she was under no supervision. She may have been unwise to have allowed herself to have been so used, but that does not mean that she had voluntarily assumed any risk. Spraying was her job for the day and, according to the operations of the plant previously, the person who sprayed would do repairs to the malfunctioning pipe cock when necessary. Apparently, this was often. The employer should have had in operation proper safety measures for such eventualities. That it did not means it is fully responsible for the injury to the plaintiff. Incidentally, the defendant called no evidence.

This brings me to the quantum of damages. Mr. Goffe has conceded in relation to the special damages. The total claimed was a mere $842. It did not include an amount for loss of earnings as there was no such loss. Interest at 3% is awarded on the amount of $842 from November 22, 1975, to the present.

Issue was joined so far as certain areas of general damages were concerned.

There can be no dispute that the plaintiff is entitled to compensation for the pain, suffering and discomfort that she endured. She is also entitled to compensation for the fact that she has been facing life, and will continue to do so, with one eye only; and that the total loss to her vision is about 40%. In this regard, I have considered the awards in several unreported comparative cases including Nicholson v. Universal Fencing Ltd. (C.L. 1982 N.001) where an award

of $40,000.00 was made for the loss of an eye (reversed on appeal on the question of liability).

Brown v. Tropical Tours Ltd. and Thompson (C.L. 1982 B117) where the sum of $15,000 was awarded to a 34 year old bus driver for partial loss of vision in one eye,

Farquharson v. Noble (C.L. 1982 F.124) where an award of $15,000 was made to a 74 year old farmer for the total loss of an eye, and

Clarke v. Subratie Engineers Ltd. (C.L. 1984 C.014) where the sum of $30,000 was awarded to a 40 year old plumber who had lost an eye.

I think that the sum of $40,000 is a just amount in the circumstances.

I shall now turn to the loss of earning capacity. I do so because submissions were made by the learned attorneys-at-law for the parties in relation to loss of earnings and loss of earning capacity. As I said earlier, there was no evidence of loss of earnings. I do not propose to set out the submissions in detail. However, on the basis of Dr. Barnett's submissions, the plaintiff would be entitled to an amount in excess of $100,000 for loss of earning capacity. On the basis of Mr. Goffe's submissions, she would be entitled to approximately $30,000. Mr. Goffe described this as a generous figure. I agree with him.

In calculating loss of earning capacity, the amount is arrived at by taking the figure of the plaintiff's present annual earnings less the amount, if any, which she can now earn annually, and multiplying this by a figure which is based on the number of years during which the loss of earning power will last (see para. 1164, McGregor on Damages 14th ed.).

In calculating the multiplicand, the starting point is the amount that the plaintiff would have been earning at the date of the trial had she not been injured (see para. 1168, McGregor on Damages, 14th ed.).

The plaintiff has no earnings. There is also no evidence as to what she can now earn. It is therefore impossible to calculate her earning capacity in the conventional way.

The plaintiff's job history presents a haphazard picture. Her first job was at age 22 or 23 when she worked in a dress shop in Montego Bay. She did so for a year. Her next job was as a domestic helper. She resigned to become a hemmer. She left that job after a year. Her next stop was at a factory where she operated a sewing machine. She remained there for a couple of months then moved on to another factory where she remained for a similar period of time. From there, she went to Newport West, then finally to the defendant company in April 1975.

When she ceased working with the defendant company, she was earning $72 per week. According to her, if she were operating a serging machine she would have been getting $150 per week. When her co-worker, Miss Treasure, resigned in 1981, she (Miss Treasure) was earning $140 per week. The plaintiff'd departure in 1977 from the defendant company was unrelated to her injury as she lost her job due to problems between the company and her union.

The plaintiff claims that she has tried to get a job but has been unsuccessful since 1977. I was convinced by her evidence and her demeanour that she did not seriously try to get a job. It is remarkable that she has been able to survive for 10 years without doing a scrap of work. Her evidence is that she applied "to the agency for a position as nursemaid in a small island". One wonders whether she is still waiting on that job although she has agreed that "there are things I could do in an office. I could do filing, office maid, messenger, receptionist".

In my judgment, although there is no evidence on which an award for loss of earning capacity may be made, the Court should not overlook the fact that the plaintiff will be restricted or

handicapped so far as the labour market is concerned - if she decides to seek employment. With that in mind, I consider that a sum of $12,000 would be just compensation.

Judgment is therefore entered for the plaintiff as follows -

Special damages: $842.00 plus interest at 3% from 22nd November, 1975.

General damages: $52,000.

Interest on $40,000 at 3% from the date of the service of the writ.

Costs of the action are to be agreed or taxed.