HAYLES

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEEN	EMANUEL HAYLES	PLAINTIFF
A N D	ACTING CPL. KEITH WILLIAMS	FIRST DEFENDANT
A N D	THE ATTORNEY GENERAL	SECOND DEFENDANT

Mr. Roy Stewart instructed by H. G. Bartholomew & Co. for the Plaintiff.

Miss A. Ferguson and Mrs. S. Reid-Jones for the Second Defendant instructed by The Director of State Proceedings.

Heard: November 4, 5, 1996 and January 31, 1997

HARRISON, J.

PARTIES

I begin by saying that this was a most unfortunate accident with the result that a fairly young man has lost a lower limb. Although he sued the actual tort-feasor and the Attorney General, he has proceeded to trial solely against the second defendant (The Attorney General). It would appear that the first defendant (the driver of the motor vehicle) was not served with the Writ of Summons, hence there is no judgment in default of appearance and/or defence against that defendant.

PLEADINGS

Statement of Claim

The plaintiff's cause of action lies in negligence and the pleadings state inter alia:

> "3. At all material times the first defendant was and is a member of the Jamaica Constabulary Force.....and as such a servant or agent of the Crown and acted or purported to act in the execution of his duty.
>
> 4. On or about the 19th day of May, 1992 while the Plaintiff was lawfully riding motor cycle along the Halse Hall main road in the Parish of Clarendon, the First Defendant being a member of the Jamaica Constabulary Force and/or Special Constables Force and as such a servant or agent of the Crown so negligently drove and/or operated motor vehicle.....the property of the Second Defendant and/or the Government of Jamaica that the same came violently into collision with the plaintiff.
>
> 6. .....the Plaintiff received severe personal injuries and suffered loss and damages."

On the 30th day of September, 1996 the Master of the Supreme court made an order granting the plaintiff leave to amend his statement of claim and for the second defendant to file and serve an amended defence is so advised. These orders were complied with and the result is that paragraph 6 of the Amended Statement of Claim reads as follows:

"6. Further and/or in the alternative, the Second Defendant was negligent in the custody and control of or over the said motor vehicle thereby causing or permitting the same to be driven by he First Defendant as aforesaid and/or without the knowledge or authority of the Second Defendant."

Particulars of Negligence were then alleged.

Defence

The second defendant's defence to this action states inter alia:

"3. Paragraph 3 of the Statement of Claim is admitted save and except for the allegations that the First named Defendant was driving the said motor vehicle registered 30 - 1816 at the material time as the servant or agent of the Crown, which is expressly denied.

It is specifically denied that the first defendant was driving the said motor vehicle at the material time for or on behalf of or, in the course of his employment.

The second defendant will say that the journey on which the first defendant was engaged at the time of the collision complained of, in the statement of claim was undertaken without the knowledge or authority (sic) and constituted such a substantial deviation from the first defendant's line of duty as to take it outside the scope of his employment.

Further or alternatively, the journey on which the said collision occurred was not one in which the second defendant had any interest, it having been undertaken by the first defendant either for his own purpose or that of others."

5. Paragraph 6 of the Statement of Claim together with the Particulars of Negligence of the Second Defendant is denied. Further and or in the alternative the Second Defendant will contend that paragraph 6 of the Statement of Claim together with the particulars of negligence therein dislcoses a fresh claim in respect of negligence against the second defendnat and is statute barred by virtue of section 2(1)(a) of the Public Authorities Act."

ISSUES

The action is proceeded against the Government of Jamaica in the name of the Attorney General, so the vital question for decision is whether the employer of Acting Corporal Keith Williams is vicariously liable for the injuries caused to this plaintiff. There is also the issue whether the claim at paragraph 6 of the statement of claim against the second defendant is statute barred by virtue of the provisions of section 2(1)(a) of the Public Authorities Protection Act.

THE PLAINTIFF'S CASE

The plaintiff testified thaton the 19th day of May, 1992 he was riding his motor cycle along the correct side of the Halse Hall main road, when he noticed a light approachig him some three chains away. When the light reached about 10 ft. away, a vehicle swerved towards him and in order to avoid collision he swerved further to his left but he was nevertheless, hit off the motor cycle.

He received serious injuries to his right leg and was hospitalized for two months. Whilst in hospital the leg was amputated below the knee. he was cross-examined by Counsel for the second defendant but his account as to how the accident occurred remained unchallenged.

THE SECOND DEFENDANT'S CASE

Counsel for the second defendant in her opening, agreed that an accident did occur between the plaintiff and a police vehicle whereby the plaintiff received injuries resulting in amputation of the right leg. She stated that a presumption had been raised that the driver of the police vehicle, Acting Corporal Keith Williams, was acting in the course of his employment at the material time. It was her contention however, that the second defendant ought not to be held responsible for the accident as the evidence would show that this police officer was not acting as a servant or agent of the Crown at the time of the accident. She called two witnesses in support of her case.

Desmond McLean, Sgt. of Police attached to May Pen Police Station, was the first witness called. He recalled that in May 1992 he was stationed at Hayes, Clarendon, and that he was one of the sub-officers on duty at Lionel Town Police Station during May, 1992. He could not recall any date in May, 1992 that he performed duties at Lionel Town Station but he remembered however, that he worked there about four times during the month of May, 1992. Being the sub-officer he was in charge of police officers at the station, prisoners, and all government properties which included motor vehicles. To his recollection, the first defendant was stationed at LIonel Town during May, 1992.

Sgt. McLean's evidence also revealed that the duty book and station diary kept at the station record when a police officer was on duty. The station diary would also indicate in whose custody a police vehicle was assigned if it was not on the station compound. according to McLean, the sub-officer for the station would have possession of all keys for the motor vehicles during his tour of duty. Furthermore, a request had to be made of that officer if a service vehicle had to be used by the officer on mobile duty. His evidence further revealed that when an officer goes out on mobile duty an entry must be made in the station diary. The entry would indicate the type of vehicle used, the location it left to, the type of duty, the time the vehicle left the station and the number of policemen dispatched for duty.

He further testifed that a police officer could not remove the vehicle from the station unless he received permission from the sub-officer person in charge.

He stated that on the four occasions that he performed duties at Lionel Town he did not give Acting Corporal Williams permission to take any vehicle from the station compound. He knew that Williams was a uniformed police officer and that such officers ought not to be in civilian clothes whilst on duty. He recalled however, that on one of the four occasions he performed duties at Lionel Town Station, he did see Williams on duty in plain clothes.

The Sergeant was not cross-examined by Counsel for the plaintiff.

District Constable Dennis Davis also gave evidence on behalf of the second-named defendant. In May 1992 he was attached to Lionel Town Police Station. He recalled that in the month of May he performed station guard duties and that on the 19th whilst he was on duty he saw Acting Corporal Williams dressed in plain clothes at the station. According to him, Sgt. McLean was the sub-officer in charge of the station on this date. When he saw Williams at about 7:00 p.m., Williams told him tht he would soon be back and he drove out a service vehicle. Williams did not tell him whee he was going.

He also testified that on the 19th day of May, 1992, he did a roll call as customary, at about 9:00 p.m, and and an entry concerning that roll call was made by him in the station diary. The roll call showed who were the police personnel onduty at the station and those police officers who were off duty or on leave. The entry was admitted as Exhibit 3. It revealed the following:

> Davis and McLean (duty sub-officer) at station. Sgt. Walters - vacation leave. Sgt. Mullings, Cpl. Miller, Cpl. Wright, Woman Acting Cpl. Campbell, Acting Cpl. Williams, Cons. Young and Woman Cons. Campbell - all on day off. Cons. Rose awaiting duty and Acting Cpl. Francis - the duty sub-officer who had handed over to Sgt. McLean.

Dennis further testified that Acting Cpl. Williams who came to the station on the 19th was the same person referred to in the station diary on day off. He said he saw Williams again that night at about 11:00 p.m. He reported to him that he was involved in an accident and that Williams made an entry in the station diary. There was no evidence concerning the contents of that diary.

Cross-examination of this witness revealed that the sub-officer for the station would be in possession of all keys for the motor vehicles. That officer would know the policemen who were on duty as well as those off duty. He did not ask Williams where he was going when he told him he would soon be back. He knew that Acting Cpl. Williams was not on duty and further more that he should not be driving the service vehicle whilst he was off duty. He further said that sometime after Williams left, Sgt. McLean had asked him where was the vehicle. Having told him that Williams was in possession of the vehicle, he observed when the Sgt. made an entry int he station diary. It was to his knowledge at at 7:00 p.m. when

Williams drove out, Sgt. McLean should have had the keys for that vehicle since he had taken over duty as sub-officer at 4:00 p.m.

Further cross-examination of this witness revealed that no radio messages were sent out to other stations in the Parish concerning Williams' use of the vehicle.

ADDRESSES

On the issue of liability, Mr. Stewart submitted that the court has to consider two questions, viz:

1. Was Acting Cpl. Williams on a frolic of his own.
2. Was there negligence on the part of the sub-officer and station guard at Lionel Town Police Station.

He admitted that there was no direct evidence as to what was the purpose of Williams' journey. However, having regard to the evidence relating to custody of govrnment's property and the person in whom possession of the keys for motor vehicles is vested, there would be a presumption that Williams was driving the vehicle in the course of his duty.

According to Mr. Stewart, section 13 of the Constabulary Force Act prescribes the duties of police officers. That section provides inter alia, that the duties of a Constable shall be to keep watch by day and by night. He submitted that there is no provision as to the time when a policeman is off duty and that even if he is on a day off he can still perform duties of a police officer. Furthermore, he submitted that the Defence had not adduced any evidence to show that Williams was not performing duties as a police officer, hence the presumption that he was acting as a police officer at the time of the accident had not been rebutted.

Mr. Stewart further submitted that no report was made by either Sgt. McLean or District Cons. Davis that Williams had obtained possession of the keys for the vehicle improperly. He argued that there is silence as to the contents of the entry in station diary made by Sgt. McLean when he was told by Davis that Williams had driven out the vehicle. Furthermore, having regard to the non-action on the part of McLean and Davis in sending out radio messages to other stations, it was reasonable to conclude that Sgt. McLean did not do so because he had given Williams the key to drive the vehicle in order to perform some duty as a police officer.

In the alternative, it was submitted by Mr. Stewart that the conduct of Sgt. McLean and to a lesser extent Dist. Cons. Davis, showed that they were both negligent in their care and control of the service vehicle. He argued that the

amended statement of claim was done with leave of the Master of the Supreme Court and that in no way was the amendment in violation of the period of limitation.

So far as general damages were concerned, Mr. Stewart referred the court to the case of Abraham Sinclair v. Milford Baker & Anor. C.L.1991/S122 judgment delivered by Walker J. on the 27th day of March, 1992. In that case the plaintiff had suffered a similar fate, that is, amputation of the lower limb and was awarded the sum of $545,000.00 in respect of pain and suffering and loss of amenities. He submitted tht if one were to use the September, 1996 consumer price index of 1989, that sum now values $1,515,336. He referred also to the case of Green v. Goshen Block Factory. The plaintiff in that case had his left leg crushed which had to be amputated below the knee. He was awarded $160,000.00 on the 20th April, 1990. That award would value $1,155,036.40 today.

Miss Ferguson submitted on the other hand that althought it was not disposed that Cpl. Williams was the driver of the police vehicle and that there is a presumption that he was acting in the course of his employment as servant of the Crown, that presumption had been rebutted when one looks at the evidence of the defendant's witnesses and in particular, the entry in the station diary, which which showed that the officer was off duty on the 19th May, 1992. She also submitted that the plaintiff had not adduced any evidence to rebut the evidence contained in the station diary extract and furthermore that there was no evidence in the case to show that Acting Cpl. Williams was acting in the course of duty on the 19th May, 1992.

It was also contended by Miss Ferguson that the amendment at paragraph 6 of the Statement of Claim amounted to a new cause of action being alleged against the second defendant and it would be caught by section 2(1)(a) of the Public Authorities Protection Act which made it statute barred.

On the issue of general damages, Mrs. Reid-Jones submitted that the case of Hart v. Smith reported at page 14 of Khan's Vol. 2 on Personal Injury Awards in the Supreme Court, would be a proper guide. In that case the plaintiff was awarded $44,000.00 for a below the knee amputation. That award would now value $977,891.75 if one used the September 1996 consumer price index of 989. She further submitted that the plaintiff had failed to prove loss of earnings, repairs to motor cycle, travelling expenses, hospital fee, medical report and clothes destroyed under the head of special damages. She was of the view however, that the cost of the prosthesis ($3,500.00) was proved.

THE LAW

It seems to me, that there are two separate instances in which it is alleged that the Second Defendant is said to be vicariously liable in this action. Firstly, it is being alleged that liability arises due to some act of negligence on the part of the First Defendant whereby the plaintiff was injured as result of a motor vehicle accident between the plaintiff and a police vehicle driven by the first defendant on the 19th May, 1992. Secondly, by virtue of an order dated the 30th day of September, 1996 granting an amendment to the statement of claim, it is being alleged that the second defendant was negligent "in the custody and control of or over the said motor vehicle thereby causing or permitting the same to be driven by the First Defendant as aforesaid and/or without the knowledge or authority of the Second Defendant." In the first situation, the second defendant has denied that the first defendant was acting in the course of duty at the material time. In the second situation, it is being denied that the second defendnt was negligent. It has also been pleaded that further and or in the alternative, that this claim of negligence is statute barred. It is my considered view therefore, that I should deal with these issues at this stage.

Let me deal first of all with the issue relating to the allegation against the first defendant that he was negligent and was acting as a servant or agent of the Crown at the material time.

It is a rule of law that an employer, though guilty of no fault himself, is liable for damage done by the fault or negligence of his servant acting in the course of his employment: Per Lord Reid Staveley Iron Co. Ltd. v. Jones [1956] AC 627.

This rule of law is also stated in Salmond on Torts 6th Edition at p.100. It reads as follows:

> "A master is not responsible for a wrongful act done by his servant unless it is done in the course of his employment. It is deemed to be so done if it is either (a) a wrongful act authorized by the Master or (b) a wrongful and unauthorized mode of doing some act authorized by the master."

If the servant is on a frolic of his own, without being at all on his master's business, the master will not be liable: See Joel v. Morison (1834) 6 C & P 501.

The question then is whether the driver was acting in the execution of his duty at the material time or was he using the vehicle for his own purposes?

What are the implications of law in relation to the amendments? It has been pleaded that the claim of negligence is "further and/or in the alternative"

to the original cause of action pleaded. The questions to ask are whether the act complained of in paragraph 6 of the statement of claim is a fresh claim and whether it falls within the protection of section 2(1)(a) of the Public Authorities Protection Act. The Act seeks only to protect acts done in pursuance, or execution, or intended execution of any law, or public duty, or authority. Carey J.A. did point out in the case of Lemuel Gordon (Administrator Desmond Gordon, dec'd) v. The Attorney General that:

> "The Crown is not responsible for acts of his servants unless the servant is acting as such and an action under the Crown Proceedings Act could not be otherwise maintained against the Attorney General....There are two situations when an action is taken against the Crown, either the servant or agent is in fact acting as an agent of the Crown in executing some public duty or in the pursuance of some authority or he was acting in his private capacity. If the former is the case, then the action must be commenced within twelve months if the latter the Crown has no liability and the Public Authorities Protection Act necessarily plays no part....."

It is readily seen therefore from the above extract that the Public Authorities Protection Act may only properly be invoked by the Attorney General where the servant can be said to be acting within the scope of his authority.

Findings

It was strongly argued by counsel for the plaintiff, that since Sgt. McLean and District Constable Davis did not alert other police stations within the parish that the first defendant had driven away the vehicle, it was reasonable to conlcude that Sgt. McLean had given the first defendant the keys for the vehicle in order to perform some duty as a police officer. I find this argument most unattractive. Counsel had every opportunity to have cross-examined this Sergeant but he refrained from doing so. The Sergeant did give evidence that he did not give the first defendant permission to take any vehicle from the station compound on the four occasions during the month of May, 1992 that he performed duties as a sub-officer at Lionel Town Police Station. This evidence has remained unchallenged and uncontradicted at the end of the day.

Exhibit 3, the entry in the station diary, has also remained uncontradicted at the end of the day. That entry shows where the first defendant was in fact on day off on the day of the accident. This evidence has been substantiated by Dist. Cons. Davis who testified that he knew that the first defendant was off duty. It is strange however that he knew that an officer who is off duty should not be driving a service vehicle, yet he allowed the first defendant to drive out the vehicle. Perhaps, the question of rank played a role, hence the District Constable kept his place.

Having carefully examined the evidence and bearing in mind the demeanour of the plaintiff and the witnesses called on behalf of the second defendant, I find on a balance of probabilities the following facts:

1. That an accident did occur on the 19th day of May, 1992 involving a police vehicle driven by the first defendant and the plaintiff who was riding his motor cycle, whereby the plaintiff received serious injuries.

2. That the accident did take place on the plaintiff's correct side of the main road at Halse Hall, Clarendon.

3. That Sgt. Desmond McLean was the sub-officer on duty at Lionel Town Police Station on the 19th day of May, 1992.

4. That District Constable Davis was the station guard on duty on the said date.

5. That the first defendant was on day off on the 19th day of May, 1992.

6. That he was never given permission to drive motor vehicle registered 30-1816 (the vehicle involved in the accident) at the material time of the accident.

7. That he was not assigned to perform any duty on that date by Sgt. McLean and Dist. Cons. Davis or any other officer and neither was he authorised to drive the aforesaid motor vehicle in the purported performance of any duty.

8. That he was not given the keys for the vehicle by Sgt. McLean nor Dist. Cons. Davis, the station guard. Rather, he got possession of the said keys by some other means and having done so he told the District Constable that he would soon be back.

9. That immediately the Sergeant was told upon enquiry as to the whereabouts of the vehicle, he made an entry in the station diary.

10. That because the first defendant had other reasons for using that vehicle he made an entry himself in the station diary on his return to the station, again by-passing District Constable Davis the station guard on duty.

CONCLUSIONS

It is my considered view therefore, that the first defendant was indeed on a frolic of his own hence, the second defendant cannot be held vicariously liable for any negligence on the part of the first defendant as he was not performing any public duty at the material time and neither was he purportedly acting in the execution of any duty.

Let me now deal with the additional claim in the amended statement of claim. As I have indicated earlier, the Crown can only be liable in respect of an omission or wrong committed by its servant or agent acting in the course of duty.

Paragraph 6 of the statement of claim seeks to blame the second defendant by saying that this defendant was negligent in the custody and control of the vehicle and thereby caused or permitted the same to be driven by the first defendant and/or without the authority of the second defendant. However, Counsel for the plaintiff in addressing the Court did say that it was the conduct of Sgt. McLean and to a lesser extent that of Davis which showed that they were both negligent in thier care and control of the vehicle. It is therefore obvious although it has not been expressly stated in the statement of claim, that an officer or officers were negligent in the custody, control and care of the vehicle.

Section 259 of the Judicature (Civil Procedure Code) Law states as follows:-

> "The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend indorsements or pleadings in such manner, and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties."

What is the effect of an amendment? It does not take effect from the date when the amendment is made, but from the date of the original document which it amends. Thus, when an amendment is made to the writ for example, the amendment dates back to the date of the original issue of the writ. In this case, the records disclose that the statement of claim was filed in the Registry of the Supreme Court on the 2nd day of December, 1992. The order for the amended statement of claim was made onthe 30th day of September, 1996.

It has been observed where the second defendant was represented at the hearing before the Master when the amendment was granted. I do not know whether or not there were any arguments on the date of the application but, upon filing the amended defence, the second defendant did raise the issue that the additional claim of negligence and particulars of negligence, constituted a fresh claim which was statute barred. No reply was filed to that defence.

The question must be asked, "Is this afresh cause of action and if so, is it barred by statute? It is my considered view that it would amount to a new cause of action. It is, in my opinion a different head or claim in negligence to the negligence originally alleged against the first defendant.

In Attorney General & Ors. v. Richard (unreported) SCCA 39/88 delivered on the 9th March, 1987 the Court of Appeal had said:

> "The statutes of limitations provide legal defences and so we would ask what greater injustice could

> be done to a defendant than to find himself liable to defend a suit which is brought or continued contrary to the prevailing statute of limitation?"

In Charlton v. Reid [1960] 3 WIR 33 McGregor C.J. pointed to a number of authorities which showed that the court has always refused to allow a cause of action to be added where, if it were allowed, the defence of a limitation statute would be defeated.

Order 20 Rule 5 (R.S.C.) U.K. provide inter alia:

> "....Where an application to the Court for leave to make an amendment mentioned in paragraphs (3) (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.."

There is no similar provision in the Judicature (Civil Procedure Code) Law. So, can it be imposed in this jurisdiction by virtue of the provisions of section 686 of the Code? That question was answered in the negative in the case of JMM Atlantic Line Ltd. (unreported) SCCA 79/87 delivered December 1, 1988. Carey P. Ag. had this to say:

> ".....Lopez v. Geddes Refrigeration Ltd. [1968] 10 JLR would be authority against that approach. That case also demonstrates the care with which editions of the Supreme Court Practice (The White Book) should be relied on in purported compliance with section 686 of the Civil Procedure Code."

The evidence demonstrates quite clearly that both Sgt. McLean and Dist. Cons. Davis were on duty on the 19th May, 1992 at Lionel Town Police Station when the vehicle was removed from the station compound without authority. As I have said before, the allegations contained in paragraph 6 of the Statement of Claim would constitute a fresh cause of action. Once the evidence shows that the servant or agent of the Crown is acting in the course of the duty the second defendant could therefore rely on the provisions of section 2(1)(a) of the Public Authorities Protection Act. There is evidence to show that both McLean and Davis was lawfully executing their duties on the 19th day of May, 1992 at Lionel Town Police Station. It could never be argued otherwise.

The writ of summons and statement of claim were filed in 1992, hence section 2(1)(a) of the Public Authorities Protection Act prior to 1995 would be quite relevant to the facts of this case. Since the repeal has no retrospective effect, the relevant provision state inter alia:

> "....whereby if any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance, or execution, or intended execution of any law or of any public duty or

> authority the action, prosecution or proceeding, shall not lie or be instituted unless it is commenced within one year next after the act, neglect, or default complained of....."

I hold therefore, that since more than one year would have elapsed from the act and/or neglect complained of, the introduction of a new cause of action by way of an amendment on the 30th day of September, 1996, would be statute barred by virtue of section 2(1)(a) of the Public Authorities Protection Act. To hold otherwise would be to deprive the defendant of a legal defence that he is entitled to avail himself of.

In the circumstances, the second defendant would be entitled to judgment. There have been no default proceedings taken against the first defendant so I am unable to assess damages againt that defendant.

In the event that I am incorrect in my findings of the facts and the application of the relevant law and authorities, in so far as the liability of the second defendant is concerned, I would have made the following awards:

General Damages

The medical report, Exhibit 1, disclosed that when the plaintiff's leg was X-Rayed, radiological examination showed a fracture of the right femur and right metatarsal bones which resulted in amputation of that limb. Dr. R. Collins was of the view that the plaintiff was quite disabled after the operation and would probably need a prosthesis to regain some use of the rest of the limb. At the time of trial he was fitted with a prosthesis but he was experiencing some discomfort.

Learned Counsel for the plaintiff relied upon the awards in the cases of Abraham Sinclair v. Milford Baker & Anor. (supra) and Green v. Goshen Block Factory (supra) as guides for the court to make its award and submitted that an appropriate award should range between $1,515,336.00 and $1,155,036.40.

Learned Counsel for the second defendant submitted however that an award of $977,891.75 would be reasonable having regard to the award made in Hart's case (supra).

The plaintiff in the instant case is 32 years of age, and is married with two children. The plaintiff Hart on the other hand was 59 years old at the time of trial. His marital status is not stated. Initially, I would think that Hart did sustain more serious injuries than the plaintiff in this case, but both had to have amputations in the end. The former remained in hospital for $3\frac{1}{2}$ months whereas this plaintiff remained for 2 months. Hart was unable to walk for long distances and he was unable to do his swimming and had intermittent pains in the

back. This plaintiff can no longer play football and cricket and he no longer goes to the beach. He constantly gets chafes at the point where the prosthesis meets the severed limb and it burns him.

Although Green and Sinclair cases (supra) both deal with amputation of the lower limb I have very little information as to the details of the disabilities and loss of amenities suffered by those plaintiffs.

Having regard to the age of the plaintiff in this case, I would believe that the loss of amenities of life is of more significance than the 59 year old Hart. I have every reason to believe that the plaintiff's pain and suffering were also great. I would therefore have awarded him a figure not less than $1,300,000.00.

Special Damages

I do agree with the submissions raised by Mrs. Jones that apart from the item concerning the cost of $4000.00 for the prosthesis, the other items of special damages have not been specifically proved.

Conclusion

In view of the findings and conclusions that I have arrived at above, I have no choice but to give judgment in favour of the second defendant. I would strongly recommend however, that Government considers making an ex-gratia award to the plaintiff.

There shall be judgment for the second defendant with costs to be taxed if not agreed.