

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. H. 128 OF 1992

|         |                                     |               |
|---------|-------------------------------------|---------------|
| BETWEEN | CECIL HENRY                         | PLAINTIFF     |
| A N D   | THE ATTORNEY GENERAL<br>FOR JAMAICA | 1ST DEFENDANT |
| A N D   | KEITH SCOTT                         | 2ND DEFENDANT |

Mr. David Henry & Ms. Suzette Moss  
for the Plaintiff

Mr. David Higgins instructed by  
Director of State Proceedings for Defendant

HEARD: 9 - 11.10.95

DELIVERED: 21.3.96

THEOBALDS J.

JUDGMENT

On or about the 30th day of July 1991 a most unfortunate accident took place on the Ewarton to Bog Walk Main Road in the parish of St. Catherine. The unchallenged facts are that between the hours of 8:30 to 9:30 a.m. on that date a Ford Escort motor car 8636 AK owned and driven by a police officer, the Plaintiff was being driven from Ewarton in the direction of Kingston. A Ministry of Health Ford Truck bearing registration No. 30-1276 owned by the Government of Jamaica and being driven at the time by the 2nd Defendant Keith Scott was proceeding in the opposite direction.

Keith Scott was at the time an employee of the Ministry of Health Blood Bank Division and was operating the unit in performance of his official duties.

I refer to this accident as unfortunate because in a road twenty-four feet wide whether with a broken or unbroken white centre line or no dividing line at all it was most unfortunate that two vehicles the width of a truck 7 feet 10 inches and a Ford Escort estimated to be about 5 feet wide were unable to pass each other in broad daylight without coming into a violent collision. This 5 feet estimate is the Plaintiff's and is not disputed by the defence. Tendered and admitted by consent Exhibit (1) a photograph of the damaged Ford Escort leaves one in a state of bewilderment as to how the driver could have emerged alive. In any event he suffered very serious personal injury and loss and his unit is a write off.

Let us look at the different versions of this accident and determine the issue of liability.

The Plaintiff's version

The Plaintiff, Cecil Henry is a Corporal of Police residing at Bailleston in the parish of Clarendon. He had up to the 19th October, 1995 twenty years service in the Police Force. On 30th July 1991 at about 9:30 a.m. he was driving his right hand drive Ford Escort from Ewarton in the direction of Kingston. He had just stopped at the Texaco Petrol Station in Ewarton. At a distance of about three chains from the station he saw a long line of traffic approaching him from the Kingston direction. A loaded truck was at the head of this line of traffic. While negotiating what he describes as a left hand corner and just as he was completing passing this loaded truck, a second truck driven by the defendant swerved from behind the first truck directly into the path of his car. His right front fender hit into the right bumper of the truck and his car was pushed back into the bank. His right front section and top were badly damaged, and he was trapped in his vehicle, and had to wait until equipment was brought to get him out. He denied the suggestions put to him in Cross Examination that he was on his incorrect half of the road, that he was doing 50 - 60 miles per hour, that the defendant's truck had completed the overtaking of the first truck, and got on its correct side of the road, that is on its left as one proceeds towards Ewarton, and that it was while there that his car slammed into the right front door of the truck and spun around and hit into the truck's right rear door.

The Defendant's version

This can already be substantially gleaned from the suggestions put to the Plaintiff in cross examination above. Additionally Mr. Keith Scott testified that on the morning in question he was going to Ocho Rios. He observed a slow moving truck ahead of him going up a little grade. He looked to see that it was clear, saw that it was clear blew his horn and overtook the truck, got back on his "left hand lane going up to a bend that is not Blind" when he was about to approach the bend he could see clearly. When he was about to approach this bend he saw the car coming towards him at a speed of 50 - 60 miles per hour. He was then doing about 30 miles per hour. According to Mr. Scott "it seem that he could not negotiate the corner, then he brake up and went into the right hand side of my right door".

It will be recalled that at the conclusion of the evidence I made certain strong comments on the issue of liability. There simply was no defence on that issue. I went so far as to assert that the defendant driver should have been charged criminally. It is clearly his style of driving that accounts for the terrible carnage and loss of life and property on our roads. At best his version of the incident is incapable of belief, at worst he makes himself by his own words totally at fault. To be driving a left hand drive truck estimated to be 27 feet long at a distance of 12½ to 13 feet behind another loaded truck estimated at 20 feet long from which position the defendant driver claimed to be able to see that the road ahead of that truck was clear is preposterous. It would be difficult enough to see ahead and beyond the loaded front truck if the road were straight or inclined to the left. It would be impossible if as is clearly the case here that road was either in or about to enter a right bend for the overtaking truck. In the defendant's own word he "was coming up into the corner." He uses the words "I could see around the truck that it was clear." The word around is significant. In spite of his seeing that the road was clear he found it necessary to "blow his horn". Although he insisted that "there was no unbroken white line where I overtook. Right now I can't recall where white line commences." One can take judicial notice and accept as a fact that unbroken white lines if put down at all are more likely to be put down on bends rather than on the straight. If he overtook on the straight no unbroken white line would have been there for him to see. If he was approaching a bend around which according to him the plaintiff's car came at a speed of 50 - 60 miles per hour then a white line would clearly have been on the driving surface. Under cross-examination the defendant driver said that prior to his overtaking nothing was coming. He was then about a distance pointed out and agreed at 25 feet from the truck ahead prior to overtaking. He was coming up into the corner. It took him about a half minute to overtake. Quite clearly and I so find the defendant driver would have been liable under the following particulars of negligence as set out in the plaintiff's statement of claim -

- (e) Overtaking on a corner
- (f) Overtaking at a time when and at a place where it was manifestly unsafe to do so.

- (g) Driving on to the incorrect side of the roadway and there colliding with the plaintiff's vehicle.
- (h) Driving into the path of the plaintiff's vehicle which was at all material times on its proper side of the roadway.
- (i) Failing to stop, slow down, swerve or in any other way so to manage or manoeuvre the said vehicle so as to avoid the said collision.

There are some aspects of the defendant's evidence which are of significance and which have not escaped my attention though not adverted to by counsel. The defendant was arrested and charged for Dangerous Driving. He has not said that his version of the accident that he gave at this Trial was ever told to the investigating officer. Indeed he has not even gone so far as to suggest to the officer in cross-examination that he so told him. Furthermore if he did in fact complete his overtaking exercise before the impact with the approaching car that laden slow-moving truck would have been behind the defendant's truck when the collision occurred. Since the defendant's 27 feet long truck completely blocked the left side of the driving surface and more one would expect to have heard an account as to (i) how did that loaded truck get past eventually or (ii) why its driver was not called as a witness for the Defence as he would have had a grandstand view of the proceedings. I find the defendant driver to be an untruthful witness and I reject his version.

The plaintiff suffered serious personal injury. Dr. Geddes Dundas Orthopaedic Surgeon and Consultant who treated him gave evidence the relevant portions of which are as follows:

"I examine plaintiff on 1.8.91. St. Joseph's Hospital. Surgery on 7.8.91 he had open reduction and fixation of right elbow fracture. Also fixation of double fracture involving neck and shaft of right femur. In hospital to 13.9.91 and attended as out-patient.

Disabilities -- he will require further treatment as implants are in his body and will have to be removed. This will disable him completely for a period cost thereof in region of \$25,000 - \$30,000 and hospital stay \$25,000 - \$30,000 and \$12,000 - \$15,000 for anaesthetic. \$8,000 overall and disabled for about three months. One week in bed. Four to six weeks on crutches. Three months before work resumption. Range 46° - 86° without bending neck, cannot get to his mouth or put hand in pocket. He will definitely be restricted as batsman or bowler. Knee 123° flexion. Can't squat or stoop fully. 150° is normal. Only 10° toe movement. Inability to stand related to muscles rather than bones. Implants may cause pain to some patients. Indication of commencement of arthritic degeneration and this does not usually improve with time from early tingling noted in finger, damage to ulnar nerve behind elbow damage effected only the component sensation so no residue of weakness associated with it. Climbing stairs - not enough restriction to effect his ability to climb, but the pain aspect cannot be quantified. On stress of joint he will have pain. Straightening leg after sitting now may result in pain but no ample evidence to account for it. Totally disabled till February '93 approximate one year and seven months after accident. During '93, '94 and '95 records show May 24 to June 14, '93. In 19.9.94 no disabling complaints presented. Plaintiff is not expected to return to full police duties.

Ability to defend himself and others limited -  
prevented from running or pivoting quickly.

If he is given sedentary occupation he might  
function effectively. Arthritis will require  
medication and/or physical therapy and even  
surgery. Medication most likely and also  
physical therapy. Age 2.7.59. \$5.80 to  
\$55.00 per day, 5 to 10 years post injury  
usually.

Plaintiff is beginning to show signs".

There has been no evidence called to contradict or challenge his findings and  
prognosis. Dr. Dundas does however under cross-examination establish two things

(1) Unfavourable to the plaintiff -

that the plaintiff was not being truth-  
ful when he testified that "he had never  
suffered a fall or tell any doctor so at  
anytime".

(2) Favourable to the plaintiff - that he

(Dr. Dundas) "does not at present re-  
commend removal of implants.

This is relevant in that in his evidence quoted above the Doctor had said that  
implants may cause pain to some patients.

Another aspect of the case which must attract some comment is the total  
absence of a dragmark from the plaintiff's vehicle. The defendant's evidence is  
that the plaintiff was approaching at a speed of 50 - 60 miles per hour, failed  
to negotiate the bend applied his brake and crashed into the right hand side of  
his right door. The defendant claims that he was then doing about 30 miles per  
hour and says nothing about applying his brakes. Since there were no drag marks  
and no brake lights to see the defendant is obviously assuming that the plaintiff  
applied his brakes. He could not know. The failure to negotiate the bend could  
not be attributable to an application of brakes as the former preceded the latter.  
This would mean that the impact took place at between 80 - 90 miles per hour, the  
combined speed of the two vehicles.

The plaintiff's version is more capable of belief. He estimates his speed at 15 - 20 miles per hour and the defendant's truck's speed as about 15 miles per hour coming up. Somewhat on the conservative side for an overtaking vehicle. The whole incident has the stamp of suddenness to it. The plaintiff said -

"Just as reaching the end of 1st truck  
defendant came out from behind. It happen  
so suddenly. I was about 4 feet from  
defendant's truck when I first saw it",

Allowing for thinking distance there would have been no opportunity to apply brakes effectively or at all hence no drag marks. The combined speed here would have been a total of no less than 45 - 50 miles per hour and the heavier vehicle would have pushed the Escort car backwards on to its left bank. No likelihood of the truck being pushed across the road as the defendant claimed.

Finally on liability the Investigating Officer's evidence shows clearly that the defendant's truck was on its incorrect half of the driving surface 5 feet 6 inches from the centre line and in the bend. His method of ascertaining the point of impact by reference to broken glass, debris and metal is fully in accordance with established practice.

There will be judgment for the plaintiff against both defendants. Special Damages awarded as follows:

|                                       |    |            |
|---------------------------------------|----|------------|
| Seiko wrist watch                     | -  | \$1,000.00 |
| Clothes damaged                       | -- | 400.00     |
| Cassette player                       | -  | 2,500.00   |
| Travelling bag                        | -  | 250.00     |
| Equalizer                             | -  | 1,300.00   |
| Lug tool                              | -  | 450.00     |
| Four (4) Video cassettes              | -  | 1,280.00   |
| Audio cassettes                       | -  | 1,280.00   |
| Spare tyre and rim                    | -  | 1,300.00   |
| Two (2) Tweeters                      | -  | 300.00     |
| Transportation costs                  | -  | 9,480.00   |
| Costs of accommodation<br>in Kingston | -  | 5,250.00   |
| Nurse (Practical)                     | -  | 2,500.00   |
| Physiotherapy                         | -  | 5,120.00   |
| Handicap on the Labour market         | -  | 75,000.00  |
| Cost of future surgery                | -  | 80,000.00  |

B/F

\$186,910

**Particulars of Special Damage**

**Medical Expenses (and continuing)**

|   |   |                  |
|---|---|------------------|
| A) St. Joseph's Hospital:   |   |                  |
| Receipt #32564 dated 3/8/92   | - | \$4,000.00       |
| Receipt #32857 dated 14/8/91  | - | 6,000.00         |
| Receipt dated 23/8/91   | - | 1,200.00         |
| Receipt #34473 dated 11/10/91   | - | 2,506.31         |
| Receipt No. 35454 dated 17/1/92   | - | 2,673.76         |
| Receipt No. 35455 dated 17/1/92   | - | 1,226.24         |
| Dr. Rainford Wilks  | - | 3,700.00         |
| B) i) Dr. Dundas - 9/12/92  |   | 100.00           |
| ii) Dr. Dundas Medical Report 3/2/92  | - | 500.00           |
| C) Physiotherapy (and continuing)   |   |                  |
| Receipt dated 12/8/92<br>St. Joseph's Hospital  |   | 350.00           |
| Receipt dated 23/8/91   |   | 360.00           |
| Receipt dated 3/2/91<br>(Mandeville Hospital)   |   | 960.00           |
| D) Ambulance (1/8/91)   |   | 200.00           |
| E) X-ray 9/12/91  |   | 202.00           |
| F) Medical (and continuing)   |   |                  |
| York Pharmacy   | - | 177.60           |
| Villa Pharmacy  | - | 327.80           |
| K's Pharmacy  | - | 184.29           |
| G) Dressings Aug. 13 - Sept. 7, 1991  | - | 630.00           |
| H) Extra Nourishment  | - | 1,200.00         |
| 2) Transportation Costs (and continuing)  |   |                  |
| (Period - 21/8/91 - 17/1/92)  |   | 12,450.00        |
| 3) Cost for Estimate of Repairs   | - | 400.00           |
| 4) Wrecker (From Ewarton Police Station<br>to Kingston)                                   |   | 1,200.00         |
| 9) Lost of Earnings   |   |                  |
| September 1991 - May 1992<br>8 months @ \$4,658.75<br>(and continuing)                    |   | 37,270.00        |
| 10) Car damaged ... full particulars will<br>be provided as soon as same are<br>available |   |                  |
|   |   | <u>83,800.00</u> |
|   |   | \$348,528.00     |



On loss of earnings I find myself quite unable from the jumble of figures presented to arrive at any specific figure and therefore apply the principle in *Murphy v. Mills* (1976) 14 J.L.R. 119 and make no award. General Damages including pain, suffering and loss of amenities based on a 14% impairment of the whole person I make an award of \$1,250,000.00. Cost to plaintiff to be taxed if not agreed.

At the conclusion of the evidence herein on the 11th October 1995 it will be recalled that I reserved judgment principally for the purpose of computing the figures in order to arrive at the appropriate quantum of damages to be awarded the plaintiff. It was my intention then that the adjournment would be for a short time but due to pressure of other duties it will be a full month and now some months before judgment. Since the event complained of occurred over four years ago and the injury and loss suffered by the plaintiff were serious, I regret that the matter has taken me so long. With an upcoming country Circuit another three weeks could be added to the delay. Additionally the original draft judgment and the relevant Note Book were mislaid for some time.

Interest on special damages. at 3% per annum from 29.9.92 to 21.3.96.

Interest on general damages at 3% per annum from 30.7.91 to 21.3.96.

Special damages \$348,528.00.