IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

AT COMMON LAW

SUIT NO. C.L. H-201/82

BETWEEN	MINELVA HENRY (By her next friend Timothy Henry)	PLAINTIFF
A N D	LEROY PHOENIX o/c Roy Augustus Phoenix	FIRST DEFENDANT
A N D	PRIESTNEL MILLER	SECOND DEFENDANT
A N D	CLARICE POWELL	THIRD DEFENDANT

B. J. Scott Q.C. with Mrs. M. Macaulay instructed by B. J. Scott and Company for Plaintiff.

Dr. A. Edwards for First and Second Defendants.

(The Third Defendant took part in the proceedings only as a witness for the Second Defendant).

September 20, 21, 26; October 3; December 3, 1984, February 18, 19; and June 19, 1985.

JUDGMENT

ALEXANDER, J:

On September 15, 1982, the plaintiff then aged seven years in the company of her brother Kirk Henry then aged eight years, and a sister Esther Henry then aged five years was crossing East Street in Kingston, on their way home from school, when the plaintiff came into collision with a motor car owned then by the first defendant, but driven that day by the second defendant.

She sustained injuries as a result and she now sues, by her next friend, Timothy Henry, her father, for damages.

Included, is a claim for Special Damages, which after amendments reads thus:

1.	X-Ray fees	$9.00
2.	Hospital fees - 113 days @ 50¢ per day and continuing	$66.50
3.	Operating fees	$10.00
4.	Twice daily visits by parents to the hospital by taxi from September 15, 1982, for 68 days @ $28 per day and continuing	$1,904.00

5.	Additional food and treats provided during stay in hospital for September 16, 1982 - 67 days @ $10 per day and continuing	$670.00
6.	School Books	200.00
7.	Toys	100.00
8.	Extra nighties and underwear and toilet articles	300.00
9.	Attendance at Ja. School for the Deaf $20 and to continue yearly;	
10.	Travelling to and from Dr. Williams in Montego Bay	150.00
11.	Fees for Dr. Williams	300.00

The Defence originally was a general denial of liability and no admission as to loss or damage but with Leave of the Court amended to include the following:

" The said collision was caused solely or in part by the said Minelva Henry.

Particulars:

a) Crossing the road without ascertaining it was safe to do so;

b) Walking into the path of the first defendant's motor car;

c) Failing to take sufficient care for her own safety.

Further or in the alternative, that the said collision was caused solely or in part by the negligence of the parent or guardian of Minelva Henry.

Particulars:

a) Allowing the said child to cross the road withour proper supervision;

b) Failing to take sufficient steps for the safety of the said child;

c) Failing to supervise properly or at all the said child crossing the road;

d) Failing to instruct the said child or her brother or sister as to how to cross the road safely".

Liability was clearly a very live issue, and it is to that area I will at first address my mind.

In relation to an eye-witness account of the incident, two witnesses testified on behalf of the plaintiff, Curtis Wallace,

Corporal of Police and Kirk Henry, ten year old brother of the plaintiff.

Corporal Wallace stated he was in a police land rover travelling south along East Street. He was in the left hand seat. He was not the driver. He continued:

> " ..... Reached intersection of East and North Streets where there is a stop light. It showed red. My land rover came to a stop as a result.
>
> The light then changed to green while these children were about ¾ across the street. The land rover moved off.
>
> About 3 yards below the stop light it came to a stop, so as to let the children cross the road. I then saw a Triumph motor car come on my left side. This car then hit one of the children, who was crossing the street. Car was going about 50 M.P.H. Can't recall Registration number.
>
> I took up the child. The car drove on about 4 yards and then stopped, dragging the child with it. I had taken the child from under the car - put her into it - and told driver to take her to Kingston Public Hospital. I went with them....."

Kirk Henry had this to say:

> " ..... Waiting for the cars to go and two cars stopped and told us to go across. We were going across the street - Minelva was in front. This car came from way behind in a speed and lick her down and draw her under the car and did not want to stop. A man ran from the other side of the road and lick the car, and the car stopped. The same man picked her up from under the car....."

The driver of the car, second named defendant had this to say:

> " ..... I crossed the intersection on the green. I was then going 15 - 20 M.P.H. No vehicles moving ahead of me. I saw a land rover on the right hand side, parked beside a bar. I saw one man in the land rover. I was in the middle lane coming down. This was after I crossed North Street.
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> While going down my lane, and while passing the land rover, I saw Kirk in the middle and a girl in front and one behind him. They were holding each other. They ran across the front of the jeep. They came right in my car's right hand fender.
>
> While the car hit the girl, the front of the car go over her....."

Clarice Powell third named defendant originally had this to say:

> " ..... I saw a lorry parked between a bar and an open lot a little down more to the bar. One person in jeep, with a blue shirt. I saw a little girl in a uniform. She ran across from before the parked vehicle and right into the right fender of my vehicle.
>
> Same time Miller drew brakes and stopped. The man that was in jeep came out and said drive the vehicle....."

Looking at both versions, what is patently clear, is that each side is placing responsibility for the collision on the other side.

This is the normal pattern in cases of this nature. This led to lengthy and very detailed cross-examination by both sides, as each tried to project their version.

Discrepancies were numerous, and both sides in their respective addresses highlighted most of if not all of them.

What, however, is not in dispute, is that the plaintiff was hit while crossing the road, having emerged from in front of a vehicle which had stopped along that road.

Corporal Wallace stated that the vehicle he was in stopped somewhere within the left lane as one proceeded south along East Street, and his vehicle stopped for the specific purpose of allowing the plaintiff and her brother and sister to complete crossing the road, as, according to him, they had already started to do so before his vehicle came to the stop he spoke of.

It was while he was in this position that the defendant's vehicle, passing between the left side of his vehicle and the left sidewalk, proceeded to hit down the plaintiff.

That area of East Street, was given as 27 feet wide.

There was some evidence that the police vehicle and the defendant's car were both approximately 5 ft. wide.

If the police vehicle bearing all these measurements in mind, had stopped where Corporal Wallace said it had stopped, at most the defendant would have had roughly 8½ feet of driving space between the police vehicle and the sidewalk. Indeed Corporal Wallace in cross-examination had this to say:

" ..... Admit East Street has two lanes....."

" ..... A center line divides the lanes. I can't say how far my vehicle was from this line. The land rover was about 3 yards from the left curb wall. That Lane is about 5 yards wide....."

What is abundantly clear, if Corporal Wallace is to be believed, is that a stationary vehicle in the position he had placed his, ought, at the very least to make any vehicle coming behind his and especially in the same left lane, to proceed with great caution if at all.

If the defendant/driver had done this, the only reasonable inference that can be drawn is that the collision would not have occurred at all, if Wallace is to be believed.

Young Kirk Henry spoke of two cars coming to a stop, to allow his sisters and himself to cross the road, and it was at that time that another vehicle came down and hit his sister, the plaintiff.

Here again there is evidence of vehicles stopping at positions along the road, which ought to put a motorist on approaching, on his alert, at least.

It is therefore not surprising to me that the defence has painted a somewhat different picture. They have placed the police vehicle in the right hand lane, parked in front of bar, or near to it.

Having seen a vehicle parked, presumably at the bar, the inference must be that there was no cause or reason to pay any particular attention to it. There is nothing in that to alert a motorist, and if in those circumstances a child attempts to cross the road without more as this plaintiff did and thereby collides with another vehicle, as the defendant is alleging, then that motorist ought to be blameless or at worst, only partially at fault.

Despite the discrepancies in the plaintiff's case, what emerges from it is that a vehicle or vehicles had stopped at a point or place to have alerted any other motorist travelling in the same direction to either do likewise, or at least to proceed with great caution.

The second defendant, on the plaintiff's case, did neither.

A careful look at the testimony of the defendant/driver reveals that before he had passed the police vehicle, or to put it in his own words, while passing the land rover, he saw the three children. They were then in front of the land rover or in other words had not yet cleared the land rover and so had not placed themselves directly into his path.

He was able to say that there were three of them, two girls and a boy, and that they were each holding the hand of the other, that they were in a line, and that Kirk was in the middle.

How is it, I ask myself, was he able to observe all this, if from what he is also saying the children, or in particular the plaintiff suddenly emrged from in front of the land rover and into his path, at a time when he could do nothing to prevent the collision. At what stage was he able to observe all this. He said it was while he was "passing the land rover".

It could not be at a time when from where he was in relation to the land rover, he could see what was in front of the land rover, for at that point, even at 15 M.P.H. he would have passed before there was any chance of a collision. He therefore had to be further back.

If he was further back, and if, as he says the land rover was parked on the right hand side of the road about 2 ft. from the right hand sidewalk, and further that the land rover was about 5 ft. wide, then his vision would have been blocked by the land rover to a distance of approximately 7 ft. towards the middle of the road and he ought not to be able to see anything that was taking place within that area. The only time he ought to be able to see all that he said about the children had to be after they had passed that 7 ft. area. But according to him, the collision occurred just as the plaintiff had emerged from in front of the land rover, which in my view, would have been insufficient time for him to notice how many children there were, their sexes and their formation. This probability must therefore be ruled out. My view on a balance of probabilities is:

1. That the land rover had to be some distance away from the right hand sidewalk, sufficiently enough to allow a motorist coming behind it to clearly see what was happening in front of but to the right of the land rover, in other words that space between the right side of the land rover and the right hand sidewalk.

This brings me to the discrepancy between Corporal Wallace and young Kirk Henry, for I must remind myself that Wallace speaks of two vehicles only, being on the road at the time of the incident, his and the second defendant's while Kirk speaks of two cars stopping, a third coming along hitting the plaintiff and sometime afterwards a police vehicle arriving on the scene.

Dr. Edwards in his address to the Court laid great emphasis on this, and rightly so.

Looking at the versions by the second defendant and his witness each of them stated, like Corporal Wallace, that there were only two vehicles on the road at the time, theirs and the police jeep. Reminding myself further that Kirk was ten years old when he testified having been born in July '74, and therefore was just past his eighth birthdate at the time of the incident, I accept the version given by Wallace and the defence, as the more probable, in relation to the number of vehicles on the road at the time;

2. That the second defendant did see what was happening, and what he saw was the three children in the formation he described;

3. That having seen them at that stage, he decided either that he could pass the land rover before the children or any of them had gotten into his path, or that they would have stopped at a point in front of the jeep, observe at that point whether or not it was safe to continue crossing, before they crossed, and he continued down East Street and collided with the plaintiff when none of his expectations was realised;

4. That the jeep stopped specifically to allow the children to cross the road.

It is perhaps convenient at this stage to look at the case of Gough vs. Thorne, 1966 1W.L.R. at page 1387:

> " On July 13, 1962, the infant plaintiff a girl thirteen and a half (13½) was standing with her two brothers aged seventeen (17) and ten (10) respectively, on the pavement waiting to cross a busy main road at a place where it formed a junction with another road. A lorry which had turned out of the other road, stopped in the main road to allow the children to cross. Its off-side front wheel was about 5 feet from a bollard in the middle of the road. The lorry driver held out his right arm to warn traffic coming from the east along the main road and with his left arm beckoned to the infant plaintiff and her brothers to cross the road. They did so. They had just passed the front of the lorry when the defendant drove his car through the gap between the lorry and the bollard and struck and injured the plaintiff. In an action for damages for personal injuries, she alleged that the accident was caused by the negligence of the defendant, who denied liability and alleged that the accident was caused by, or contributed to by the negligence of the plaintiff. The trial judge found that the defendant was negligent in driving too fast and in failing to observe the lorry driver's signal, but that the plaintiff was one-third liable for the accident by advancing past the lorry into the open road, without pausing to see whether there was any traffic coming from her right.
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> On appeal by the plaintiff:-
>
> Held (1) that a very young child could not be guilty of contributory negligence, although an older child might be, depending on the circumstances, that a judge should only find a child guilty of contributory negligence if he or she was of such an age as to be expected to take precautions for his or her own safety and should only make such a finding if blame could be attached to him or her;
>
> (2) that bearing in mind the fact that a child had not the road sense or the experience of older people, no blame could be attributed to the plaintiff in the circumstances of the present case since she had been beckoned by the lorry driver to cross the road and a child of 13½ could not reasonably be expected to lean forward to see whether any traffic was approaching. Accordingly the judge was wrong in attributing any contributory negligence to her and the appeal must be allowed. "

In the light of my findings there is no basis for me to find that the plaintiff was the sole cause of the accident.

The similarities between the instant case and Gough's case are so numerous that I feel compelled to apply the principles in Gough's case to the instant one.

I find therefore that the sole cause of the accident was the second defendant's manner of driving, that is to say, showing total disregard for other users of the road, and in particular the plaintiff, a child, who he knew intended then to cross the road and who he saw at a time to enable him to avoid a collision with her.

What then is the position of the first defendant. Although he filed the necessary pleadings, he did not appear at the trial.

Dr. Edwards was announced as appearing for him, but no evidence was led as to any connection he may have had with the incident..

A look at the pleadings filed on his behalf reveals only an admission by him that the vehicle being driven by the second defendant at the time of the collision was owned by him.

Is an admission in his pleadings as to the ownership of a vehicle by a defendant, without more, sufficient to fix vicarious liability on such a defendant; if that is what the plaintiff is seeking.

I sought assistance from some authorities. In Rambarran v. Gurrucharran reported in 1970, 1 All E.R. at page 749, a decision by the Privy Council, it was held:

> " Although ownership of a motor car (which at the time of the accident is being driven by another for his own purposes and without the knowledge of the owner) is prima facie evidence that the driver was the agent or servant of the owner and that the owner is therefore liable for the negligence of the driver, that inference may be displaced by evidence that the driver had the general permission of the owner to use the vehicle for his own purposes the question of service or agency on the part of the driver, being ultimately a question of fact".

In that case, the appellant, a chicken farmer, in Guyana, in 1965, owned a motor car PL.799. On 14th November 1965, this car was being driven by his son, Leslie. Due to Leslie's negligent driving, the car collided with another motor car, PN.904, owned by the respondent, and caused considerable damage to it. The appellant himself

had no direct responsibility for the accident. The respondent nevertheless brought an action in the High Court of the Supreme Court of Judicature in Guyana alleging that on the occasion in question Leslie was driving PL.799 as the appellant's servant or agent and that the appellant was thus vicariously liable to pay damage for the loss sustained by the respondent.

At the trial, judgment was given to the appellant as the trial judge dismissed the action with costs.

The respondent appealed to the Court of Appeal of the Supreme Court of Judicature in Guyana (Sir Kenneth Stoby C, Persaud and Cummings JJA) who gave judgment allowing the appeal, (Cummings J.A. dissenting).

It was against that decision, the appellant appealed to the Board. Their Lordships carefully examined the various stages of the case and the authorities cited therein and concluded per Lord Donovan thus:

> " In the present case it is clear that any inference, based solely on the appellant's ownership of the car, that Leslie was driving as the appellant's servant or agent on the day of the accident would be displaced by the appellant's own evidence provided it were accepted by the trial judge which it was. Leslie had a general permission to use the car. Accordingly it is impossible to assert, merely because the appellant owned the car, that Leslie was not using it for his own purposes as he was entitled to do. The occasion was not one of those specified by the appellant as being an occasion when for one of the appellant's own purposes a son would drive it for him.
>
> He was ignorant of the fact that the son had taken out the car that day; and he did not hear of the accident until a fortnight after it happened. In the face of this evidence the respondent clearly did not establish that Leslie was driving as the appellant's servant or agent. He had to overcome the evidence of the appellant which raised a strong inference to the contrary. The burden of doing this remained on the respondent and the trial judge held that he had failed to discharge it. His conclusion on this point was one of fact and he had ample evidence to support it. In the Court of Appeal, Sir Kenneth Stoby C said that to rebut the prima facie evidence of service or agency, the defendant who alone knows the facts must give evidence of the true fact, and Persaud J.A. commented that - the court is left without further information in the sense that the [appellant] has not given any evidence as to the journey which was being made at the time of the accident.

These passages in the judgment of the majority of the Court of Appeal would seem to endorse one of the respondent's grounds of appeal namely that the appellant - 'Failed to lead any evidence whatever to show the circumstances in which his motor car No. PL.799 was being used at the time of the accident, and that such matters must be peculiarly within the knowledge of himself and his family and his servant and/or agents'.

The argument based on this assertion was misconceived. The appellant, it is true, could not except at his peril, leave the court without any other knowledge than that the car belonged to him. But he could repel any inference, based on this fact, that the driver was his servant or agent in either of two ways. One, by giving or calling evidence as to Leslie's object in making the journey in question, and establishing that it served no purpose of the appellant. Two, by simply asserting that the car was not being driven for any purpose of the appellant, and proving that assertion by means of such supporting evidence as was available to him. If this supporting evidence was sufficiently cogent and credible to be accepted, it is not to be over-thrown simply because the appellant chose this way of defeating the respondent's case instead of the other. Once he had thus proved that Leslie was not driving as his servant or agent, then the actual purpose of Leslie on that day was irrelevant. In any event the complaint that the appellant led no positive evidence of the purpose of Leslie's journey comes strangely from the respondent who could have found it out by making Leslie co-defendant and administering interrogatories, or compelled his attendance as a witness and asked him questions about it. He did none of these things.

In his dissenting judgment, Cummings J.A. said:

'In the instant case as in Hewitt v. Bovin the Court was not as in Barnard v. Sully without information. There was ample information to justify the inference drawn by the learned trial judge and his conclusion that the respondent had failed to establish the requirements as laid down in Hewitt v. Bonvin. Indeed I am myself unable to draw any different inference or arrive at any other conclusion'.

There Lordships take the same view, and while out of respect for the learned judges of the Court of Appeal who took a different view, they have gone into this case in some detail, they can nevertheless summarise their conclusion by repeating that the question of service or agency on the part of the appellant's son Leslie was ultimately a question of fact; and that there was ample evidence on which the trial judge could find as he did. They will therefore humbly advise Her Majesty that the appeal should be allowed. The respondent must pay the costs here and below".

In my view what seems to be abundantly clear from what has been stated in that case is that the fact of ownership of a motor vehicle raises a presumption that the driver is servant or agent of

the owner which the owner can dispel in any given circumstances, by putting the necessary evidence before the Court.

In Morgans and Launchbury and others 1973 A.C. page 127, a decision by the House of Lords, it was held:

> " That to fix vicarious liability on the owner of a motor car in a case as the present it must be shown that the driver was using it for the owner's purposes under delegation of a task or duty; that the owner's interest in or concern for the safety of the car or its occupants was not sufficient, and that on the facts it was impossible to hold that C had been the wife's agent in driving the husband about as he had been doing at the time of the accident".

The Facts:

A motor car was owned by and registered and insured in the name of a wife but was regarded by her and her husband as "our car". The husband used it to go to work, the wife for shopping at the weekends. The husband told the wife that if ever he was unfit to drive through drink he would get a sober friend to drive him or else telephoned for her to come and fetch him. On the day in question the husband telephoned the wife after work and told her that he was going out with friends. He visited a number of public houses and had drinks. At some stage he realised that he was unable to drive safely and asked a friend, C, to drive. C drove them to other public houses. After the last had been visited C offered the three respondents a lift and they got in together with the husband, who was in a soporific condition. C then proceeded at his own suggestion, to drive in a direction away from the husband's home to have a meal. On the way, due to C's negligent driving, an accident occurred which the husband and C were killed and the respondents injured. The respondents brought an action against the wife both in her personal capacity and as administratrix of the husband's estate. Sterling J. gave judgment for the respondents. The Court of Appeal (McGaw L.J. dissenting) dismissed an appeal by the wife in her personal capacity, holding that she was vicariously liable for the negligent driving of C, Lord Denning M.R., saying that the principle of vicarious liability was to put responsibility on to the person, namely, in the case of a motor car, the owner, who ought in

justice to bear it, and that in the case of a "family car" the owner was responsible for the use of it by the other spouse.

The owner of the car was vindicated. However, what seems overwhelmingly clear to me is that an "evidential burden" had been placed on the wife/owner that is to say, she had to give clear, detailed and cogent evidence in relation to the general arrangements between herself and her husband as to the use of the car by either or both and then go on to the particular fateful journey from which the cause of action sprung.

It seems to me that the owner must put forward evidence, to indicate that either in general terms or in the particular circumstances he could not be vicariously liable, and it is at that stage that the plaintiff must dispel that, if he can.

Applying these principles to the matter before me, a defendant who in his pleadings admits to ownership of the motor vehicle and does nothing more has not discharged this evidential burden.

Having failed to do so and in the light of my findings as to liability my only recourse is to find that the first defendant is also liable on the basis of vicarious liability.

Damages a) General

On September 15, 1982, the day of the accident, the plaintiff was seen by Walter Marlow-Gibson, Registered Medical Practitioner, M.B.B.S. and Specialist in Ear, Nose and Throat. He found the following injuries:

1) Laceration in the post auricular area;

2) Laceration in the super auricular area; that is above and behind the right ear.

The injuries were 3 c.m. and 1 c.m. respestively.

His view was that the most important injury was the pinna or auricle of the external ear, which was completely severed from the rest of the head.

The only connection to the head was a small thread-like bit of skin which had been twisted, which means that the pinna was completely devitalised and devoid of blood supply.

The plaintiff was admitted and taken to the operating theatre. This was at the Children's Hospital. The operation was not successful as several days later, the ear mummified and sloughed off that is to say, died.

The doctor's records show that the plaintiff was hospitalised continuously until November 24, 1982, but concedes that she could still have been hospitalised beyond that, but November 24, was the last date he had seen her.

The doctor observed, up to then, no psychological effects. He went on to explain the function of the external ear. It is involved in the collection of sound waves and their deflection into the external auditory canal. Without the external ear, this function would be lowered. There is also the cosmetic effect which, in his view, would be the more important of the two.

His view was that the conductive part of her hearing could be affected to a small extent. There was nothing wrong with the inner ear.

In October 1983, the plaintiff was seen and examined by Geoffrey Dale-Williams, Pastic Surgeon. He found a complete loss of the right ear with severe scarring in the area of the ear and surrounding areas. The only portion of the ear present was cartilage at the front, referred to as tragus.

He describes the injury as severe and presents one of the most difficult reconstructive problems in Plastic Surgery history. Cosmetically it is an obvious injury which causes imbalance in the facial features.

His view is that there could be quite a psychological problem as the injury is quite obvious.

Corrective Measures:

This can be done only in stages, as it is complex. It is compounded by the fact that the skin in the immediate area is badly scarred and will have to be replaced before reconstruction can take place. To reconstruct the ear, the frame-work must be provided, which

is made of cartilage and two skin coverings:

1) anteriorily; and

2) posteriorily.

The cartilage has to be harvested from another site of the body.

The area normally used is the area of the ribs - the front - which has cartilage present.

The surgeon is of the view that because the skin is so badly scarred, a further precaution will have to be taken in the plaintiff's case that is to provide adequate coverage of the cartilage.

Reconstructive surgery will require a minimum of three operations. Each is a major operation. The surgeon feels that because each operation is a major one and coupled with the area of the donor site, all stages will be quite painful.

There is a waiting period for healing to take place of 3 - 4 months, and so the whole process should last about one year.

There will be scarring of the chest, because of the removal of the cartilage in that area.

The cost of all this, he feels, is in the region of $80 - 90,000. The doctor conceded that the plaintiff could get very adequate corrective surgery in a public hospital for a very minimal cost, admitting that the estimate he gave was on the assumption that it would have been done in a private hospital.

It seems to me, that as far as her ability to hear is concerned, the injury has not affected that in a substantial way.

It is the cosmetic aspect of it that is of much more significance and in my view should lead to psychological problems.

I can't imagine anyone feeling very comfortable moving around people who have two ears, and that person having one only.

It is in my view compounded by the fact that the victim is female. It is in attempting to correct this that the plaintiff will be subjected to further pain and suffering, expenses, inconvenience, and scarring in the area of the front ribs.

The plaintiff, whether or not Corrective Surgery is done, or if done, successfully or not, will never be the same again.

In addition to that she was hospitalised for approximately 113 days, during which she underwent an operation which unfortunately was unsuccessful.

Taking all the circumstances into account I award the sum of $70,000 for General Damages.

b) Special Damages

1.	X-Ray fees	5.00
2.	Hospital fees for 113 days @ 50¢ per day	56.50
3.	Operating fees	10.00
4.	Visits to hospital by parents	1,500.00
5.	Additional food	1,000.00
6.	School books	100.00
7.	Toys	100.00
8.	Extra nighties, underwear and toilet articles	300.00
9.	Attendance at Ja. School for the Deaf to test ears	20.00
10.	Travelling to and from Dr. Williams in Montego Bay	No Award
11.	Fees for Dr. Williams	No Award

The total award for Special Damages is therefore $3,091.50.

There will be judgment for the plaintiff against the first and second defendants as follows:

General Damages - $70,000 with interest @ 3% from the date of the filing of the writ.

Special Damages - $3,091.50 with interest @ 3% from 15th September, 1982.

Costs to be agreed or taxed.