

CA. Personal Injuries - Damages - Infant ^{8 years old} hit down and seriously injured by motor car - Accident 1977 - Trial 1985 - Award \$90,000
with interest - Appeal dismissed - Judges comments
on delay - "justice delay is justice denied"
Case referred to : Minelva Henry (b. of Timothy Henry) v Henry
Phoenix and others - decided by Alexander J in 1985
JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 1/86

COR: THE HON. MR. JUSTICE CAREY, P. (AG.)
THE HON. MR. JUSTICE GORDON, J.A.
THE HON. MR. JUSTICE WOLFE, J.A.

BETWEEN

RAPHAEL HERNANDEZ

DEFENDANT/APPELLANT

A N D

PAULETTE GAYLE (AN
INFANT BY BERNICE
GAYLE HER NEXT FRIEND)

PLAINTIFF/RESPONDENT

Miss Nancy Anderson for Appellant

Dennis Morrison for Respondent

March 29, 1993

CAREY P. (AG.):

This is an appeal against a judgment of Mr. Justice Downer, given on the 13th of December 1985, whereby he found in favour of the plaintiff, an infant, and entered judgment in the amount of \$246.20, representing special damages with interest thereon at 3% from the 21st of August 1973 and general damages at \$90,000.00 with interest at 3% from 16th of April, 1973.

The facts in the case are fairly straightforward. On the evening of the 21st of August 1973, the plaintiff then, nothing more than a baby of eight years, was hit down while she was standing on the piazza of a shop, along the Waltham Park Road. The accident was serious because she was dragged beneath the motor vehicle for some distance.

The defence was that the defendant said that the girl ran across the road. These were two contrasting stories and the learned judge had to decide one. He was in the best position. He had the advantage of seeing and hearing the witnesses which we have been denied. Miss Anderson endeavoured to argue the question of liability but frankly conceded after some vain efforts that there was not much she could put forward.

Having failed in that regard, Miss Anderson endeavoured to argue the question of the award of damages which she thought, unreasonable. By that, she must be understood as meaning inordinately high. She brought to our attention a case called Minelva Henry (b.n.f.) Timothy Henry v. Leroy Phoenix and Others decided by the late Mr. Justice Alexander in 1985. That case also concerned injuries to an infant, but the injuries in that case were much less severe than occurred in this case.

The injuries which this little girl received were as follows:

- "1. Friction burns of abdomen and right side, the front of the chest over the right breast.
2. Loss of the right breast nipple.
3. Deep and circular defect 13/4" x 1 1/4" of the skin and muscle over the right shoulder joint.
4. Small laceration of the left loin.
5. Abrasions of both thighs, the right shin and the upper surface of the right foot.
6. Multiple grazes and wheels of the left hand.
7. Upper half of the right ear torn away from the scalp and was badly lacerated.
8. One quarter (1/4) the ear lost in its upper portion.
9. The remaining three quarters (3/4) of ear badly bruised.
10. Deep and gaping scalp laceration at the back of the head.

11. Complete loss of a large area of scalp above and behind the right ear, which displayed a gaping wound on the right side of the head and exposed the deeper tissues attached to the skull.
12. Large and deep abrasion of the adjacent area of the right cheek in front of the ear.
13. Upper one third of right ear is only half the width of its normal counterpart.
14. The circumference of the right ear is less than that of the left. Right ear $3\frac{3}{4}$ " and left ear $4\frac{1}{4}$ "
15. The upper half of the right ear is more attached to the scalp than is the left ear.
16. An ovoid scar on the back of head measuring $1\frac{3}{4}$ " x $1\frac{3}{8}$ ".
17. Large bald patch on the right side of the head above and behind the right ear.
18. Skin graft to right cheek has healed a darker colour than the surrounding normal skin.
19. Oblique area of scar and skin graft $5\frac{1}{2}$ " long, extend from right shoulder to the right breast.
20. Healed abrasions and healed donor sites of the skin grafts.
21. Several re-constructive surgical procedures will be necessary to re-construct the hairline of the right side of the head to restore hair bearing scalp to the bald patches.
22. The right ear will always be deformed in comparison to its normal counterpart.
23. The areola of the right nipple will need to be re-constructed two or three years after the child has entered puberty.
24. Plaintiff will have to be followed up until her first pregnancy (if any) as she will encounter problems with lactation in the right breast from which she will be unable to express milk.

- "25. She will be unable to breast feed a nursing infant from the right breast.
26. Should she deliver a child, she will need medication which will suppress lactation in both breasts."

By any standards, these were most serious and grievous injuries received and an amount of \$90,000.00 which was awarded seems to us, without much argument, to be a very conservative assessment and we certainly would not be minded to interfere with that award. Far from it, if there was an appeal on behalf of the plaintiff suggesting the contrary, we would have been moved to increase that award.

For other reasons, the case is a most disturbing one. It is distressing at the very least, because it illustrates quite vividly that justice delayed is justice denied. It was denied this plaintiff who is now a young woman we understand - of some twenty-eight years, of the fruits of the damages she was awarded. She has never received any part of the award at the interest rate relevant (and this is no reflection on the judge) it is the appellant who stands to benefit. As must be clear, the accident took place when she was eight and the trial did not begin until some ten years later. It then took two years to wind itself through the trial process alone and it has taken a further eight years for the appeal to come on for hearing. This is more than distressing: it is a tragedy. It is quite disgraceful.

Having said that, it is pretty obvious that the appeal must be dismissed. The judgment of the Court is affirmed and the respondent is entitled to the costs of the appeal which are to be taxed if not agreed.

GORDON J.A.:

I agree.

WOLFE J.A.:

I agree.