

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L.H. 002 OF 1988

BETWEEN	ALFRED HINDS	PLAINTIFF
AND	ERIC SMITH t/as CASH RENT-A-CAR	FIRST DEFENDANT
AND	DERRICK LATTY	SECOND DEFENDANT
AND	ERIC SMITH t/as CASH RENT-A-CAR	1ST THIRD PARTY
AND	KEY INSURANCE CO. LTD.	2ND THIRD PARTY

Ainsworth Campbell for Plaintiff
Alton Morgan and Robin Sykes for first defendant and first and third party
Dennis Goffe, Q.C., Paul Dennis and Mrs. Minette Palmer for second defendant
Alton Morgan for second and third party

Heard: July 12, 13, 14, 15, 16, November 9, 10, 11, 12, 1993 &
December 12, 1996.

CHESTER ORR, J.

In this action the plaintiff seeks damages for negligence as a result of an accident involving a motor cycle ridden by the plaintiff and a car driven by the second defendant, which occurred on the 15th November, 1987.

The plaintiff claimed against the first defendant as the owner of the car driven by the second defendant, and alleged that the first defendant negligently failed to have a policy of insurance issued to protect the plaintiff in respect of injury caused by the negligent driving of the second defendant. In addition, it was alleged that the first defendant delivered a motor car with defective tyres to be driven on the road.

The second defendant claimed indemnity from the third parties.

PLAINTIFF'S CASE

At about 12.45 p.m. the plaintiff, a farmer and vendor of ice cream and other commodities was riding his motor cycle on the main road leading from Free Town to Lionel Town in Clarendon in the direction of Lionel Town. At a point in his journey he went across the road to his right to effect a sale. While there a van came from behind him and went across to the middle of the road. The driver spoke with him and then left

towards Lionel Town. The road here is straight for some two chains in the direction of Lionel Town. He positioned himself in the gateway of premises and sat on the motor cycle. About three to four minutes after the van had left, a car driven by the second defendant Mr. Latty approached from the direction of Lionel Town. It negotiated a left hand corner on its correct side of the road at a fast rate of speed about 70 - 80 miles per hour. When it was about half a chain from him it suddenly swerved across the road and collided with him. He lost consciousness. He regained consciousness in the Lionel Town Hospital at about 4.00 p.m. later that day. He suffered severe injuries and the motor cycle was damaged. He remained in hospital until the 21st November, 1987. While there Latty visited him on two occasions. On the first Latty expressed sorrow at the incident and promised to ensure that he recover his motor cycle and offered compensation. He gave him his business card and promised to pay his expenses.

On the second visit Latty assured him that everything was alright as he had reported the matter to the Insurance Company.

As a result of the injuries he received, the plaintiff was unable to resume his farming or sale of his ice cream. He was 60 years of age at the time of the accident and now walks with a limp and can only walk for a short distance. He suffers from giddiness and headaches. It was his contention that the van did not contribute to the accident.

He called one witness, his brother Weston Williams, who gave evidence as to the situation of the premises and his observations. He stated that the premises was not in a corner but on a straight portion of the road.

DEFENCE

The second defendant Latty gave evidence that he was driving a Starlet motor car which he had rented from the first defendant. He was driving in the direction of Free Town at a speed of 30 - 35 miles per hour. As he negotiated a slight left hand corner, an approaching van swung over to his Latty's left side of the road and then swung back to its left side, it was some 50 - 60 feet from him and next to the plaintiff, sitting on his motor cycle. It appeared that there would be a head-on collision. He reduced his speed and applied his brakes and swung as close as possible to his left, but the van collided with the right front section of the car, the right bumper of the van hit his right

front head lamp and fender. The car which was then about 10 feet from the plaintiff went further left and hit him. The left side of the car hit a light post which was behind the motorcycle, the car moved to the side and he realised that the right front tyre had burst. The van did not stop.

With other persons he assisted the plaintiff who was complaining about his leg. The plaintiff was taken from the scene and he Latty changed the tyre, straightened the fender and later drove to Lionel Town.

The van was about 60 ft. away when he first saw it and its speed was about 35 miles per hour. It hit the car when he had just come around the elbow of the corner. The accident did not occur on the straight stretch of the road.

He visited the plaintiff in the Lionel Town Hospital twice. On the first occasion the plaintiff enquired if he had caught the driver of the van. He said he had not, at which the plaintiff expressed regret. He Latty gave him his business card but did not promise to ensure that he was compensated nor did he guarantee his expenses. On the second visit the plaintiff stated that he needed money to assist his family and he gave him \$300.00 and said he would assist him in whatever way he could.

He called one witness his daughter Ingrid Latty.

Paul White an employee of the first defendant company gave evidence as to the damage to the car. He made a note of the damage shortly after the accident, but the note was not available and he spoke from memory. He last saw the note some four years before the trial. the damage was as follows:

“Right side of car crushed in. Damage from left front fender to rear along the side. Right head lamp broken, fender crumpled, chassis leg crumpled, right side of bonnet extensively damaged, also grille and bumper. Right wheel blown out and rim bent. Radiator destroyed. Left front fender squeezed in extensively to left front and rear doors. Battery broken. Park light and indicator light on front left fender damaged.”

FINDINGS

Neither side has been truthful in this issue. I find that the van went across the road and swung back to his left. The second defendant Latty approached from the direction of Lionel town, that he negotiated the corner at too fast a speed, in the circumstances, and not on his correct hand. He swung further to his left and the vehicles collided and the car hit the plaintiff, who was stationary on his motor cycle.

I find that the collision did not occur in the corner but after the defendant's car had negotiated the corner. I find that there was no inevitable accident. I do not accept the evidence of Paul White, in its entirety, as to the damage of the car. He spoke from memory after some four years. It is Mr. Latty's evidence that he was able to drive the car after the accident. I find that the second defendant was negligent.

RE DAMAGES

Dr. Mena examined the plaintiff and found the following injuries.

1. A segmented fracture of the mid-shaft of the right tibia.
2. A segmented fracture of the mid-shaft of the right fibula.
3. The left knee was tender over the medial aspect of the knee joint and the ligament were lax.
4. Laceration to distal end of the left leg, the ankle.
5. Small abrasion to the left ear.
6. Left shoulder was tender over the medial aspect with laxity and haematoma resulting in 5% - 7% partial disability to the left upper limb.

A plaster cast was applied to the left lower limb. The plaintiff, however, developed a delayed union of the fracture and the cast was not finally removed until June 1988. Thereafter, the plaintiff was advised to use crutches and was referred for physiotherapy. In January 1989, the fracture was completely healed, but there was a resultant deformity. The right leg is half inch shorter, the plaintiff walks with a limp, there is anterior bowing of the leg. The cumulative disability is about 20% of the whole person.

Dr. John Hall a specialist neurologist examined the plaintiff on the 4th December, 1990. He performed an electro encephalogram otherwise called an e.e.g. which is an electronic test of brain wave function. He concluded that certain areas of the brain had been scarred and damaged as a result of the accident in 1987. That the plaintiff had a closed head injury as a result of trauma to the skull. He found loss of consciousness with retrograde amnesia. It was his opinion that it was probable that as a result of the head injury the plaintiff would suffer from epilepsy, alzheimer dementia and post traumatic Parkinson's disease.

He found that there was hearing loss as a result of the head injury.

Dr. Cheeks, a specialist in neurological surgery examined the plaintiff on the 19th June, 1991. He had a Computerised Axial Tomographic scan of the brain - a cat scan carried out. This is a very highly accurate computerised x-ray of the brain. He concluded that there was nothing to suggest that structural brain injury had occurred. He did not perform an e.e.g. because he considered the cat scan to be better suited to detect brain injury. It was his opinion that the plaintiff was unlikely to suffer from epilepsy, Alzheimer's or Parkinson's disease in the future. He attributed the headaches to emotional stress. He detected a sensori-neural hearing loss and referred the plaintiff to an E.N.T. surgeon, Dr. Barbara Harper, who confirmed that there was bilateral sensori-neural hearing loss worse on the left than on the right, which amounts to an impairment of 29% of the whole person. He was of the opinion that the accident could have been one of the causes of the hearing loss.

I prefer the evidence of Dr. Cheeks where it conflicts with that of Dr. Hall. I find that the plaintiff suffered head injury, but there was no resultant brain damage. There is no likelihood of the plaintiff suffering from epilepsy, Alzheimer's or Parkinson's disease in the future. I find that the hearing loss occurred as a result of the head injury.

DAMAGES

General Damages

Pain and Suffering.

Injuries to lower limb

Of the various cases cited, I consider as most relevant Edwards v. Browning at P.238 of Vol. 3 of Khan's Recent Personal Awards.

The injuries to the leg were similar and the Award of \$150,000.00 in December 1990 using the latest Consumer Price Index for September 1996 of 989.0 revalues at \$893,000.00.

For the injury to the ankle Wilks v. Phillips & anor in Harrison's Case Note Issue 2 at 70 is relevant. Award on 14th January, 1992 of \$30,000.00 for injuries to ankle and leg - revalues at \$94,000.00.

There were no comparable cases in respect of injuries to the shoulder and rear.

I make a global award of \$1,300,000.00 for pain and suffering.

Loss of future earnings

The plaintiff was 66 years of age at the date of trial. I am satisfied that he will be unable to resume his occupation as a farmer and ice cream vendor. I allow 3 years at a rate of \$3,000.00 per week - $\$3,000.00 \times 52 \times 3 = \$468,000.00$.

Total General Damages - \$1,768,000.00.

SPECIAL DAMAGES

I award damages as pleaded and amended with a deduction for item - loss of goods - \$500.00. Loss of motor cycle agreed at \$6,000.00 instead of \$9,000.00.

Total Special Damages - \$516,489.00

There was no evidence to support the claim against the first defendant.

The third party proceedings were settled by consent on the 14th July, 1993 as follows: THAT

1. There be a declaration that the 2nd Defendant is entitled to an indemnity from the 2nd Third Party against liability, if any, in

respect of the Plaintiff's claim and costs, up to the limit of the policy of insurance.

2. There be judgment against 2nd Third Party, for the amount, if any, that may be found due from the Second Defendant to the Plaintiff up to the Policy limit of \$750,000.00.
3. There be judgment against the 2nd Third Party, for the amount of any costs the Second Defendant may be adjudged to pay to the Plaintiff and for the amount of the Second Defendant's own costs incidental to the Defence and proceedings against the Third Parties on an Attorney-at-Law and own client basis.

There will therefore be judgment for the plaintiff against the second defendant as follows:-

General Damages

Pain and suffering and loss of amenities	-	\$1,300,000.00
Loss of future earnings	-	<u>468,000.00</u>
		\$1,768,000.00

<u>Special Damages</u>	\$ 516,489.00
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Costs to the plaintiff to be taxed if not agreed.

Costs to second defendant against second third party in third party proceedings and first third party's cost in third party proceedings to be borne by the second third party.

Interest on General damages of \$1,300,000.00 at 3% from 16th January, 1988 to 1st December, 1996.

Interest on special damages at 3% from 15th November, 1987 to 12th December, 1996.

Stay of execution granted for 6 weeks from the date hereof.

Finally let me offer my profound apologies for the delay in the delivery of this judgment