

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. H.077/1987

BETWEEN

MICHAEL HUGHES

PLAINTIFF

HAZEL JARRETT

FIRST DEFENDANT

VICTOR JARRETT

SECOND DEFENDANT

Mr. Ainsworth Campbell for Plaintiff

Mr. Braham instructed by Livingston, Alexander and Levy for Defendants

Heard:- March 9, 10, 11, 12, 1993 and 13 June 1997

G.G. JAMES J.

The Plaintiff sues to recover damages as a result of injuries which he suffered when he was hit by a motor vehicle driven by the Second Defendant.

The case for the Plaintiff was that on September 5, 1986 he was walking along Long Lane in St. Andrew and going towards Stony Hill. Plaintiff had entered Long Lane from Orange Grove Road. According to the Plaintiff, he was walking on the left hand side of the road, he was proceeding to a bus stop which was on the same side of the road on which he was walking. The Plaintiff said that as he was walking along he got a hit from behind, he was about two chains from the bus stop at the time he was hit. He said that he was hit unto the road bank on the left hand side, that is, the same side of the road on which he was walking.

In his evidence, the Plaintiff said that after he was hit the car that hit him went up the road and returned to where he was. This was just after 8 p.m.

According to the Plaintiff he was as close as possible to the road bank when he was hit. He denied that just before the impact he had suddenly gone at least five feet out into the road.

The Plaintiff said that after the impact he tried to get up but that his right leg could not support him. He also said that he suffered a wound to the back of his head.

Plaintiff was taken to the Kingston Public Hospital by the Second Defendant in Second Defendant's car, he was admitted and he remained in the hospital for three months. When he was discharged Plaintiff said that he went

home on a pair of crutches.

The Second Defendant hereinafter referred to as the Defendant, gave evidence on his own behalf. He said he was driving the car on his correct side of the road travelling at about 25 - 30 miles per hour. He was travelling up Long Lane. Defendant said that he was travelling behind a motor car when, in his own words, "I came abreast of this pedestrian and about to pass, he stepped out into the road in front of my vehicle. I swerved to avoid hitting him but he collided with the bottom part of the left hand fender of my car" he then went on to say that he applied his brakes, alighted and went to look at the pedestrian.

Defendant said that he observed the pedestrian about a chain ahead, he formed the impression that the pedestrian was about two feet from the road bank. At the point of impact the pedestrian was four to five feet from the left road bank. In his evidence Defendant further said that he saw when the Plaintiff first moved and he swerved to the right about two feet before the collision. When Plaintiff made his first move, Defendant said that he drove about three yards before the collision took place. He admitted that he did not sound his horn as he did not consider it necessary at that time of night. According to Defendant he did not hit the Plaintiff from behind.

In considering the evidence I make the following findings of fact:

- (1) The left front fender of Defendant's car collided with Plaintiff's right side - hence the injury to the right lower limb.
- (2) Defendant neither applied his brakes nor sounded his horn prior to the impact, bearing in mind that at the time of impact he was travelling at only 25 miles per hour.
- (3) Plaintiff stepped out into the road towards the path of Defendant's vehicle.
- (4) Defendant swerved his vehicle to the right in an effort to avoid hitting the Plaintiff.

I find on a balance of probabilities that the Defendant did not exercise sufficient care in relation to the Plaintiff. He failed to do all he could to avoid a collision with the Plaintiff. I find also that the

Plaintiff owed a duty of care both to himself and to other users of the road, accordingly I hold that the Plaintiff was contributorily negligent. The Plaintiff was partly to blame for his injuries to the extent of 50 per cent.

The medical evidence is that Plaintiff sustained a closed fracture of the distal third of the right femur and a compound fracture of the right tibia and fibula. The fracture of the femur was treated by skeletal traction and the fractured tibia and fibula manipulated and a plaster of paris cast applied.

The fractured tibia and fibula showed evidence of delayed healing and open reduction plating and bone grafting performed.

Plaintiff was discharged from hospital on November 29, 1986 walking with the aid of crutches and the right leg in a plaster of paris cast. He was seen on several occasions as an out patient.

The plaster of paris cast was removed on February 9, 1987, a wound infection persisted. On October 26, 1987 a plate and screws which had been fitted were removed.

When the Plaintiff was examined by the late Professor Golding on February 27, 1991 he was diagnosed as having a disability amounting to 25% of the function of his right lower extremity taking into account the shortening of the femur and the tibia combined with the external femoral torsion and stiffening of the subtalar joint and ankle.

On the question of damages, a number of cases were cited by Mr. Braham and Mr. Campbell.

Plaintiff was a drummer in a band, he earned \$700 per week, he said that after the accident he could not play the drum. After the accident he began working as a watchman in February, 1989, he was paid \$150 per week, he was also provided with meals. The Plaintiff said, that he did the watchman's job for about one year and he did no other work thereafter because of the injury to his leg. I am of the view that Plaintiff exaggerated his inability to pursue gainful employment.

The Plaintiff is now 35 years old.

I award the sum of \$117,285 as claimed in respect of Special Damages. This is a reasonable sum having regard to all the circumstances. This sum will

be reduced by 50% due to contributory negligence, the final award under this head is therefore \$58642.50

In assessing General Damages I use the case of Eglon Anderson v Noel Tulsie C.L.1982 A077 as a guide. This case was before Patterson, J, as he then was, on April 21 and 22 1986. In that case the sum of \$24000 was awarded for Pain and Suffering and Loss of Amenities. This sum translates to about \$284,000 in today's money. The injuries in the instant case are slightly more serious, I therefore award a sum of \$300,000 for Pain and Suffering and Loss of Amenities. Since the Plaintiff is 50% Contributorily Negligent the actual sum awarded is \$150,000.

In respect of Loss of Earning, Capacity I award a sum of \$100,000 reduced by 50% to \$50,000.

I accordingly give Judgment for the Plaintiff in the sum of \$258,642.50.

Comprising Special Damages	\$ 58,642.50
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General Damages for Pain and	
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Suffering and Loss of Amenities	\$150,000.00
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Loss of Earning Capacity	\$ 50,000.00
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With costs to the Plaintiff to be agreed or taxed.

Judgment was given for the First Defendant against the Plaintiff on on 9th March, 1993 with costs to be agreed or taxed.

In relation to the First Defendant, costs are awarded against the Plaintiff for one day only.

In relation to the Second Defendant he is ordered to pay 50% of Plaintiff's costs.

Interest on Special Damages at 3% with effect from September 5, 1986 and on \$150,000 at 3% with effect from April 9, 1987.