IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

C.L. H53/86

BETWEEN	DONOVAN HUNTER	PLAINTIFF
AND	MERVEL GRAHAM	FIRST DEFENDANT
AND	COURTNEY GRAHAM	SECOND DEFENDANT

Charles Piper for Plaintiff
Crafton Miller and Miss Nancy Anderson for Defendants

HEARD: June 29 & 30, 1992.
July 15, 1993.

CHESTER ORR, J.

In this action the Plaintiff claims damages for negligence arising out of accident on the main road at Linstead involving the plaintiff and a motor car owned by the first defendant and driven by the second defendant. The defendants counterclaimed for damage to the motor car and resulting loss of use thereof.

PLAINTIFF'S CASE

On the 14th day of June, 1985, at sometime between 6.20 and 6.30 p.m. the plaintiff drove his motor vehicle along King Street in Linstead from the direction of Kingston and parked on the left side of the road facing the direction of Ocho Rios. King Street is a one way street from Kingston towards Ocho Rios. There were cars parked on both sides of the road leaving a space of some 22 feet.

The plaintiff looked in the direction from which he had come, saw no vehicles approaching and proceeded to walk across the road from left to right. As he was about to pass between two of the cars parked on the right side of the road, he was hit in his right upper thigh by a vehicle which approached from the direction of Kingston. He fell on the asphalt and was assisted by persons. He was taken to the Linstead hospital and later transferred to the St. Joseph's hospital.

There was visibility of some four (4) chains from his parked car in the direction of Kingston. In cross-examination he stated that he did not see the vehicle before the collision. He looked straight ahead while crossing the road and does not recall having looked again in the direction of Kingston before the collision. He was some one or two feet from the parked cars at the time of the collision. He did not hear the sound of the application of brakes nor the sound of the approaching vehicle before the collision. He denied that he ran across the road.

Re Damages

He suffered a fractured femur and was discharged from hospital on the 24th June, 1985. He used crutches for about six (6) weeks and walked with a stick until November, 1985. He was a lecturer at the Extra Mural Department of the University of the West Indies and a member of the Industrial Disputes Tribunal. He lived alone in Linstead where he owned a farm.

On his discharge from hospital he recuperated at the home of a friend in Kingston who charged for board and lodging and employed a helper specifically to assist him. He was unable to lecture for about 37½ to 38 hours. He engaged the services of a Mr. Narcisse to oversee his farm during his convalescence.

He was supported by a witness Mr. Carlton Young who was sitting on a piazza at the time of the incident. He said that he saw the plaintiff walking across the road. When he first saw the car it was about 18 ft. from the plaintiff, but he pointed out 10 yards as the distance. He said that the car did not stop before it hit the plaintiff. Dr. Dundas treated the plaintiff. He said that he had a fracture of the mid-shaft of the right femur and abrasion to the forehead. For the first two (2) days his leg was kept in traction and on the 16th June, 1985, a femoral nail was inserted as definitive therapy under general anasthesia. The nail was removed on the 15th August, 1989. He stated that the usual period of disability following this type of injury is between four and six months. The plaintiff has a small residual disability of about 5% of the affected extremity.

THE DEFENCE

The sole witness for the defence was the second defendant. He stated that he was driving the first defendant's motor car, a Lada, along King Street, Linstead, from the direction of Kingston to Ocho Rios. On reaching the point where the accident occurred he saw the plaintiff run across the road "very very fast". When the plaintiff was in the middle of the road, the car was close to him, he quickened his speed and bounced into a parked vehicle on the right side of the road and rebounded on to the right fender of his defendant's car. He applied his brakes but because cars were parked on both sides of the road he did not have enough space to manoeuvre but turned the car as much as he could to his left. When he first saw the plaintiff he was about 5 feet 6 inches from the car. His speed was approximately 15 - 20 miles per hour. There was a car ahead of his shortly before the accident, some 15 or 20 feet away. This car had turned off on a side road and he had to stop behind this car.

The right wing mirror and the right side of the bonnet of his car, almost on the seam between the bonnet and the right fender were damaged. In cross-examination he said that the plaintiff's foot got caught in a parked vehicle. He rebounded, fell backwards on the car, his back made contact with the car as also his right hand and left elbow. He fell on the right fender and to the road. The road was busy.

FINDINGS

I accept the evidence of the plaintiff and his witness. I find that the plaintiff walked across the road. I reject the evidence of the second defendant that he ran across the road.

I find that the second defendant was driving at too fast a speed in the circumstances and was not keeping a proper look out. He ought to have seen the plaintiff sooner and thus take evasive action.

The Law

A pedestrian must keep a careful look out both before and during the crossing of a road.

In Baker v. Willoughby [1970] A.C. 467 Lord Reid said at 490:

> "A pedestrian has to look to both sides as well as forwards. He is going at perhaps three miles an hour and at that speed is rarely a danger to anyone else. The motorist has not got to look sideways though he may have to observe a wide angle ahead: and if he is going at a considerable speed he must not relax his observation for the consequence may be disastrous."

The plaintiff admits that he looked to his right once before crossing but does not recall having done so again.

I find that the second defendant was negligent and that the plaintiff was contributorily negligent. The first defendant is also negligent as owner of the motor car.

I assess blame in the following proportion:

Plaintiff - 20%

Defendants - 80%

Re Damages on Claim

Special Damges

The disputed items are Nos. 3, 13, 15 and 18.

No. 3 - Cost to remove surgical pin

Dr. Dundas stated that the fee for surgery was $1,470.00 which included surgery, assistant surgeon and anesthesist. He said it was normal for St. Joseph's hospital to charge an additional fee separate from his fees. Plaintiff stated that he paid in excess of $2,000.00 which included medical fees but was unable to produce the receipts. In these circumstances I award the sum of $2,000.00 as claimed.

No. 13 - Board and Lodging in Kingston

The plaintiff was unable to prove the actual amount spent for board and lodging. Of this amount there would have to be a deduction for the amount which he normally would have spent for food. See Shearman v. Folland [1950] 1 All E.R. 976.

He did not employ a helper at his home. I accept that a helper was employed to assist him in Kingston and award wages at $125.00 per week for 15 weeks = $1,875.00.

No. 15 - Pay to caretaker of farm

I am satisfied that the plaintiff incurred expenses for overseeing his farm during his convalescence. I award the sum of $600.00 per month for 3 months = $1,800.00.

No. 18 - Loss of earnings

The unchallenged evidence is that the plaintiff earned $80.00 per hour. He states he was unable to lecture for approximately 37½ to 38 hours. There is no evidence for loss of earnings as an Arbitrator.

The difficulty arises with respect to his expenses in order to ascertain his net earnings. Some deduction must be made for these expenses.

In Shearman v. Folland supra, the Court of Appeal (U.K.) arrived at an amount for the cost of food in the absence of evidence as to the actual cost. At 980 Asquith L. J. said:

> "If evidence had been adduced to show what proportion of the twelve guineas a week was attributable to board or lodging, we think that it would have been open to the judge to make a deduction in respect thereof. In the absence of such evidence it seems to us impossible to estimate the proportion attributable to lodging . . . . With regard to food the position is different. A jury would, we think, be quite entitled in such a case as this to say:
>
> > 'These fees must be referable to some extent to the provision of food. We think, in the absence of evidence as to actual cost, that at least £1 a week should be deducted under this head.'
>
> We think we are entitled to act in this matter as a jury would have done, and we, accordingly propose to deduct the sum of £55 from the amount of the special damages claimed in respect of nursing home fees."

I respectfully adopt this approach.

The plaintiff lectured one or two days per week and travelled from Linstead to Kingston. I calculate his total loss as 38 hours at $80.00 per hour = $3,040.00. From this amount a deduction is made of $540.00 for travelling expenses and meals. Total amount $2,500.00.

The total special damages awarded are therefore.

Agreed damages	$8,608.81
3. Cost of removal of surgical pin ..	2,000.00
13. Board and lodging in Kingston ..	1,875.00
15. Payment to caretaker of farm ..	1,800.00
18. Loss of earnings	2,500.00
	16,783.81

General Damages

There is no evidence on which an award can be made for loss of earning capacity. The authorities on this point are numerous. I will mention one.

Edwards and Morris v. Pommells and Gibson - S.C. C.A. 38/90 March 22, 1991 (unreported).

Pain and suffering and loss of amenities

The cases cited indicate an award in the range of $45,000.00 to $50,000.00 for a similar injury in 1990.

Taking inflation into account I award the sum of $165,000.00 for general damages.

Re Counterclaim

The claim for special damages was abandoned. The other items were agreed. Total $375.00.

There will therefore be Judgment for the plaintiff on the claim for $145,427.04 with costs to be agreed or taxed and Judgment for the defendants on the counterclaim for $75.00 with costs to be agreed or taxed. There will be interest at 3% on the damages for the relevant periods.

Cases referred to

(1) Burton v Willoughby (1970) A.C. 467.

(2) Shearman v Folland (1950) 1 ALLER 976.

(3) Edwards and Morris v Pommells and Gibson — S.C.C.A 38/90 22/3/91 (unreported)