

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 2000/J-027

BETWEEN JOSINA JACKSON PLAINTIFF
AND ANDRE ROACHE DEFENDANT

Mrs. Sandra Minott-Phillips and Christopher E. Kelman instructed by Myers, Fletcher & Gordon for the Plaintiff.

Mr. Christopher Samuda instructed by Andrea Walters & Associates for the Defendant.

ASSESSMENT OF DAMAGES

Heard on 18th, 19th, 20th, 21st and 22nd June, 28th November, 18th December 2001, 14th and 15th February, 27th May and 9th September 2002

Campbell J.

On the 31st March 2000, the plaintiff filed a Writ of Summons and Statement of Claim, both dated 31st March 2000. On the 13th April 2000, the defendant entered an Appearance by his Attorney-at-Law. On the 4th September 2000, Interlocutory Judgment was entered. On the 9th November 2000, Master McDonald (Ag.) made an Order to proceed to Assessment of Damages.

On the 16th September 1999, the parties were returning from a visit to the Asylum nightclub on Nutsford Boulevard in Kingston. They were alone in the defendant's motorcar, a Mazada Familia, licensed 7070BT. The plaintiff, is aged

26 years, was a part-time student at Southampton Institute in England, she was sitting in the front passenger seat.

Whilst proceeding along Knutsford Boulevard, the plaintiff spoke to the defendant requesting that he should "slow-down". She asked him twice to no avail. She told him that she needed to put her seat belt on. The defendant did not accede to her entreaty. She testified that she managed to put her seat belt on. The plaintiff became apprehensive that he would have hit the "curb or another vehicle due to the speed with which he executed the left turn from Knutsford Boulevard to Trafalgar Road. The defendant turned left from Trafalgar Road onto Lord Nelson Way. She testified that "halfway up the road, the car got out of control and careened towards a white concrete wall". The plaintiff closed her eyes and gripped the armrest. The car hit the wall.

The plaintiff opened her eyes to smoke coming from the vehicle. She noticed drops of blood. She released the seat belt and felt excruciating pain across her abdomen. She crawled through the front passenger window. Whilst lying on her back she observed the defendant crawled through the car window. She then realised that the car was "upside-down" and was pointed in the direction from which they were coming.

The plaintiff was in immense pain and was vomiting. The hospital was called and her brother, a doctor, arrived. She was placed in a cervical collar and

transported by ambulance to the University Hospital of the West Indies. She was admitted to Accident Emergency. A catheter was inserted in her bladder and a tube placed down her nose. She said the pain across her abdomen was so intense she could not cry. She was given an anaesthetic. When she regained consciousness she observed a straight cut down her abdomen, which extended from her "breast bone to below her navel". She had bruising on both sides of pelvic area. She remained in the hospital for eight days. She was discharged from the hospital on the 23rd September 2000 and returned to England on the 30th September 2000. The cut she received bulged and pus was oozing from it by the time she had returned to England. The scar she describes as "being dark in colour, slightly raised and has a pucker by the navel, and has a width of about one centimetre." Whilst in hospital she was attended by Drs. Barclay, Mitchell and Mr. McDonald. Three Resident doctors attended her, Venopaul, Clarke and Dr. Hunter.

On her arrival in England she was seen by Dr. Wilson and hospitalised at The Princess Anne Hospital a few days later. She remained in the Princess Anne Hospital for three days.

The plaintiff said that in addition to being a part-time student, she worked with a placement agency, earning £88 per week. She did Modern and contemporary dance at Southampton Institute. She is unmarried and childless, but "ideally would have liked to have two children".

Dr. Hunter testified that he saw the plaintiff at the University Hospital on the 16th September 2000 at about 3:00am. That x-rays of her neck, abdominal ultra sound and urinalysis were done and a nasal gastric tube was passed through the plaintiff's nose to the stomach, investigative blood analysis was also done. Hunter said she underwent an upper mid-line laparotomy, which caused a scar which extended from the epigastrium to below the umbilicus. Dr. Hunter said the purpose of laparotomy was to verify the opinion of the doctors that there was a perforation of the bowel and spleen. He described the operation as being a major surgery, which lasted two to three hours. The surgery was undertaken on a presumptive analysis and its complexity would depend on the intra-abdominal injury. Dr. Hunter said his finding was a two-centimetre perforation of the jejunum (part of the small intestine). In terms of orientation, the jejunum is important in the assimilation and digestion of food.

Dr. Hunter testified that the perforation in the jejunum would result in leakage into the peritoneal cavity. The implications of this leakage are that the patient could get peritonitis bacteria, which is heavily laden and could contaminate the blood, which could lead to death. To underline the danger the plaintiff was placed in, Dr. Hunter said he found 200 cubic centimeters of concentrated fluid within the cavity. This fluid would have bacterial flora. Hunter opined that normally if fluid gets into another area it could cause a lethal infection, and that the

perforation that he saw was consistent with blunt abdominal trauma. The Patient had Pyrexia, refers to a pathological elevation of body temperature. An incidental appendectomy was performed after a histology revealed normal appendix. The reason for this course of action was an appendicitis could occur at anytime and the attending doctors could be delayed in making a diagnosis, because of confusion of the information from the fallopian tube. The patient was given antibiotics both intravenously and orally to treat the peritonitis. On the second day she had a white discharge, this was treated with an anti-fungal agent. He said the scar would never disappear.

In cross-examination, Dr. Hunter said that when the patient was admitted he had been practising for approximately three years and three months and that he was a member of the medical team that attended the plaintiff. Dr. Hunter could not recall if he had conferred with his seniors.

Dr. Orville Morgan, Obsterician-Gynaecologist had been practising since 1988. Fellow of the Royal College of Gynaecologist, had seen the plaintiff prior to the motor vehicle accident. First visit, 30th September 1997 and the next was December 1997. Those visits concerned a "bloody discharge" and the obtaining of contraceptive, respectively. When she next visited in August 1998, that was in relation to a vaginal itch. When he next saw her on the 25th April 2001, he noticed a amidline scar, her external genitalia was normal. There was no discharge, but the

uterus was shifted to the left. In the adnexa there was tenderness and endoration which signified, in the opinion of Mr. Brown, scarring. There was significant pelvic scarring, which could result in infertility and chronic pain. Brown opined that the scarring denoted that the tubes are immobile and involved in an inflammatory process. The fallopian tubes are the vehicles through which the sperm and the egg are transported to the uterus. He concluded that she had pelvic inflammatory disease. The history of bowel injury had caused pelvic infection. The most likely cause was that the bacteria released into the peritoneal cavity caused the tubal injury. Scarring, lectured Mr. Brown, can occur with any inflammatory process. This can lead to debilitating pain so that the tubes have to be removed. If the tubes are removed, the possibility of achieving pregnancy is zero. The organism can never be totally eliminated.

In her present state, Mr. Brown opined that the possibility of pregnancy in the plaintiff is less than 5%. Her chances of achieving pregnancy would be enhanced with invitro-fertilisation. He said the plaintiff is at increased risks for an ectopic pregnancy. The cost of an invitro-fertilisation is between \$12,000 to \$28,000. It is about \$5,000 per cycle. Pelvic inflammatory disease is most commonly caused by sexually transmitted infections. Mr. Morgan testified however one would not expect that level of endoration and scarring if it had been

caused by sexually transmitted disease. Mr. Brown agreed with the medical reports of Drs. Wilson and Saunders.

Dr Nigel Saunders' report dated 2nd February 2000 (exhibit 2) states that the plaintiff, "in view of her continuing problem was referred to the Gynaecology Assessment Clinic for further investigation." On The 4th October there was some lower abdominal tenderness, and tenderness around and lateral to the uterus. An Ultra Scan was done which revealed changes consistent with bilateral pyosalpinges. That is a damaged fallopian tube. There was no evidence of acute infection. The patient was apyrexial, with a normal white cell count. It was the doctor's opinion that it was extremely unlikely that the fallopian tubes will function normally, and infertility is therefore probable. Equally, she may require surgery to remove the damaged fallopian tubes should she continue to suffer ill health as a result.

In his report dated 3rd February 2000 (exhibit 3), Saunders stated, "I told Josina that her chances of spontaneous pregnancy are low, that she had a risk from ectopic pregnancy.

Dr. H. N. Wilson's report of the 15th November 2000, (exhibit 4) is to the effect that the plaintiff has midline keloid scarring. Dr. Wilson's report of 1st April 2001 states that the plaintiff had no gynaecological disease prior to her accident in September 1999.

The plaintiff is an attractive, articulate young woman who gave her evidence with refreshing candour. Not surprisingly, she appeared concerned and distraught at her extremely low chances of achieving spontaneous pregnancy. I find, as a fact, that as a result of the motorcar accident, the plaintiff suffered severe abdominal injury, resulting in pain and perforation to her intestine. I find that her condition necessitated emergency laparotomy, and incidental appendectomy. I find the perforation to the small intestine could lead to life-threatening peritonitis. I accept the medical evidence that there is damage to the fallopian tubes and find that this damage is evidenced by endometriosis and scarring, is a result of the peritonitis.

I accept the evidence of Hunter and Nigel Saunders that the chances of the plaintiff conceiving spontaneously are low. That there is a likelihood of the plaintiff becoming pregnant through invitro-fertilisation. I accept the medical evidence that it is unlikely that her fallopian tubes will function normally and it may require surgery to remove the damaged fallopian tubes. I find that the plaintiff is at increased risk for ectopic pregnancy and that she is likely to suffer from recurrent bouts of disabling abdominal pain, because of the inability to completely eradicate all of the organism from the tubes. I accept the evidence of the plaintiff and the medical evidence, particularly Dr. Wilson's that, there remains a mid-line laparotomy scar which is keloid.

General Damages

In making an award for general damages, I take into consideration, among the other facts found, the plaintiff's age and the fact that she is unmarried and childless and the disabling pain that she endured as a result of her injury; her sensitivity to the keloid scar extending down her mid-line. We were referred to the case Margaret Dunn v Inwood Howell C.L. 1987/D-176, in which the plaintiff had suffered unconsciousness, head injuries with cerebral concussion, acute hemorrhagic shock, multiple right rib fractures of right 4th, 5th, 6th and 7th ribs; fractured pelvis and right iliac, closed fracture of lower 4th right tibia and fibula above ankle of right leg, blunt trauma to abdomen with lacerations maceration of the postero-inferior third of right lobe of liver, laceration with total contusion of right kidney with retro-peritoneal hemorrhage, hemoperitoneum of 2.8 litres of free blood in the peritoneal cavity, subsequent unmasking of a retrograde amnesia in the post concussional syndrome. She had a laparotomy and internal appendectomy, inability to have more children.

Five Hundred Thousand Dollars (\$500,000) was awarded for pain and suffering. The updated award is \$6,211,700. Margaret Dunn has clearly suffered more aggravated injuries. The abdominal injuries were themselves more severe. Josina Jackson suffered no fractures to the pelvic region or anywhere for that matter. There was also no assessment for permanent partial disability.

Mr. Samuda submitted that the nature of the injuries, the resultant disabilities removed this case from the ambit of Jackson's case.

Of Charles Douglas v Clifford, Mr. Samuda submitted that the orthopedic injuries suffered are similar to those in Margaret Dunn's. The difference is the injuries to liver, haemorrhage, and shock, updated the award is \$800,000 to \$900,000.

It was submitted that in the instant case there was no medical evidence that Jackson continues to suffer, and that there is no evidence of infertility.

Mr. Samuda thought that an award of \$1,500,000 for pain and suffering (if Court finds infertility), would be reasonable in the circumstances.

I would make an award for \$2,750,000 for pain and suffering. Interest at 3% from April 8th 2000.

Special Damages

I find the plaintiff claim for special damages have been proved and supported by evidence led:

Loss of earnings for 5 weeks @ £88.32 = 441.60

Ambu Care

JS\$4,000

Travel

£ 4.00

Travel (taxi)	£ 12.20	
Paid Dr. Hobby	£100.00	
Boots	£ 40.45	
U.H.W.I.		J\$26,170.00
Boots (chemists)	£ 13.86	
F&S Chemists	£ 11.80	
F&S Chemists	<u>£ 12.10</u>	
Ligunea Lane Rx		\$ 2,521.80
	<u>£636.01</u>	<u>\$32,691.80</u>

1. \$32,691.80

2. 44,616.75

TOTAL \$77,308.55

Future Medical Expenses per cycle costs of i.v. treatment. Cost of invitro-fertilisation US\$5,000 per cycle at three cycle for a total of US\$15,000.

Interest on Special Damages @ 3% from 16th September 1999.

Cost to the plaintiff to be agreed or taxed.