JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 28/90

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE WRIGHT, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

BETWEEN	ARTHUR LEE ROY LEE	DEFENDANTS/APPELLANTS
AND	RICHARD BELNAVIS	PLAINTIFF/RESPONDENT

Mr. E. P. DeLisser & Mr. Douglas Batts for Appellants

Mr. Paul Dennis for the Respondents

22nd October, 1990

CAREY, J.A.

This is an appeal as respects damages only in a judgment of Marsh J. in the Supreme Court dated the 12th of March, 1990.

The defendants have argued that the award of $90,000.00 for general damages was inordinately high and that the court should in all the circumstances reduce that amount. There was filed also a respondent's notice claiming, to the contrary, that the same award of $90,000.00 was inordinately low and was a wholly erroneous estimate of the damage. That respondent's notice was withdrawn so we are concerned only with the appeal by the defendants.

Evidence of the injuries was provided by a medical report put in by consent which showed that the plaintiff had a displaced fracture of the mid-shaft of the left tibia, a displaced fracture of the mid-shaft of the right tibia, a displaced fracture of the mid-shaft of the right fibula and residual deformity in both legs in the form of excessive callus

formation at the fracture sites. There was a jagged wound on the right leg. He was totally incapacitated for six months. The medical report ended on this note _

> "He is however not expected to have any residual disability. The period for which he was incapacitated as a result of the accident was approximately six (6) months."

The injuries in this case, be it noted, were fractures to both legs, the fracture in the right leg being the more serious. Indeed there were three fractures in respect of that limb.

Mr. DeLisser was quite unable to cite any cases where the injuries were of a similar nature to demonstrate that the award was inordinately high. All the cases to which he made reference, were cases where injuries were to one leg only. Mr. Dennis was able to point our attention really to one case, a case reported in Mrs. Khan's book of injuries Vol. II at page 3 namely **Rutherford v. Dewar** where there were fractures to both legs. In addition there were other very serious injuries and in that case the learned trial judge made an award of $40,000.00. That award was made in 1981. There was another case of **More v. Gravesandy** reported at page 97 of the same work where there was a fracture of the left leg only, and in that case, the award which was made in 1985, was in the sum of $50,000.00.

In my view, the onus of proof is upon the appellant. He must demonstrate that this is a wholly erroneous estimate of the damages suffered namely, pain and suffering and loss of amenities. Even looking at the cases to which Mr. DeLisser has adverted our attention, where the injury was to one leg only one would have to apply the formula as ordained in the **Central Soya** case. That process would bring the award, in my view, well within the spectrum of this particular award.

Even using as a guide the 1981 award of $40,000.00 in **Rutherford v. Dewar** which I would think was a low estimate, one would find that the award of $90,000.00 was eminently reasonable. In my view, nothing has been shown which persuades me that the estimate arrived at by the learned judge in the court below was wholly erroneous. In my view this appeal should be dismissed with costs.

WRIGHT, J.A.

I agree and need add nothing more.

MORGAN, J.A.

I agree.