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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L.L. 194 OF 1986

BETWEEN	COLIN LLEWELYN	PLAINTIFF
AND	FITZROY BECKFORD	FIRST DEFENDANT
AND	ROBERT GREEN	SECOND DEFENDANT

A N D

SUIT NO. C.L.E. 074 OF 1988

BETWEEN	DIANN EVANS	PLAINTIFF
AND	FITZROY BECKFORD	FIRST DEFENDANT
AND	ROBERT GREEN	SECOND DEFENDANT

N. Forsythe for Colin Llewelyn
and Diann Evans for Plaintiffs
Frank Williams for Defendants

Heard: January 17 and 18, December 8, 1995.

JUDGMENT

CHESTER ORR, J.

These consolidated actions arise as a result of a collision between two motor vehicles on the main road at Walkers Wood in the parish of St. Ann on the 14th day of January, 1986.

PLAINTIFFS' CASE

Diann Evans was a passenger sitting in the rear seat of a Lada motor car driven by Colin Llewelyn en route from Kingston to Ocho Rios. At sometime between 2.30 and 3.30 p.m. Llewelyn negotiated a left hand curve at Walkers Wood at a speed of about 30 miles per hour. He encountered a pick-up which was parked on the opposite side of the road facing the direction towards Kingston. A truck owned by the first defendant and driven by the second defendant suddenly overtook the parked vehicle and there was a head-on collision between the truck and the car. Both Llewelyn and Ms. Evans suffered injuries. Fruits were being sold to a person or persons in the pick-up. The details of his evidence emerged in cross-examination. He estimated the width of the road at 30 ft. and the width of the car at 4 - 5 ft. There was an unbroken white

line in the centre of the road. To his left was a stone wall and on the right an embankment of either marl or stones. He described the curve as not very sharp but it was a blind one. When he first saw the truck it was about 15 - 20 ft. away. He tried to go as close to his left as was possible but was unable to avoid the collision. The truck was beside the parked pick-up at the time of the collision. The impact occurred so suddenly that he did not have time to stop. He sounded his horn when he approached the curve but heard no such sound from the approaching vehicle.

THE DEFENCE

Robert Green the second defendant testified that he was driving the truck in the direction towards Kingston. He approached the curve at a speed of about 20 Mlles per hour. He observed the parked vehicle and reduced his speed to about 12 miles per hour. He sounded his horn twice. Some persons who were standing on the bank side of the parked vehicle, as also the driver of the vehicle, signalled him to proceed. He sounded his horn twice again and proceeded. As he overtook the pick-up he encountered the on coming motor car and there was a collision in front of the parked pick-up. The collision occurred in the middle of the road, the truck ended up on its left of the road and the car was in the middle of the road. In cross-examination he stated that he was unable to see ahead of the pick-up, but later stated that the pick-up was parked about 3 ft. from the curve and he could see ahead of the pick-up to the curve. He said that the collision occurred about 3 ft. in front of the pick-up. Mr. Beckford the first defendant and owner of the truck gave evidence as to the damage to the truck namely, to the chassis on the right side, the right side of the cab, the right headlamp and the right wheel which was dislocated.

Findings re Liability

I reject the evidence of Mr. Green that he was given signals to proceed. I reject his evidence that he approached the curve at a speed of 20 miles per hour which he reduced to 12 miles per hour. I find that he did not sound his horn and that he overtook the parked pick-up at a speed which was excessive in the circumstances. In view of the fact that the pick-up was parked close to the curve it was his duty to sound his horn and proceed cautiously. I find that Mr. Llewelyn did not sound his horn nor do

I accept his evidence that he approached the curve at a speed of 30 miles per hour. I find that he negotiated the curve which he described as a "blind corner", at a speed which was excessive in the circumstances. I find that the collision occurred while the truck was overtaking the parked pick-up. The damage solely to the right side of the truck is significant.

I find that both drivers were negligent and apportion liability as follows:

Llewelyn - 20%

Green - 80%

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Re Damages

Mr. Llewelyn was admitted to the St. Ann's Bay Hospital for a period of eight (8) days and then transferred to St. Joseph Hospital where he was treated by Dr. Dundas whose certificate was admitted in evidence by consent. The certificate reads:

" 14th March, 1986.

Medical Summary on Colin LLEWELYN

I saw this patient on the 22nd January 1986 at the request of Dr. Warren Wilson. I admitted him to St. Joseph's Hospital with a diagnosis of fracture of the shaft of the right femur and the shaft of the left humerus. He also had fractures of the second metacarpal on the left hand and the ulnar styloid on the left. On the 23rd January 1986, he had Open Reduction and Plating of the left humerus and right femur under general anesthesia. He was discharged from hospital on the 31st January 1986 and is still an out-patient under care.

At this moment, he is still considered totally disabled."

Mr. Llewelyn showed scars on his left cheek and left upper arm,. He said he had a scar on his leg. He was unable to return to work until October 1987. His occupation then was a salesman and he earned a minimum of $300.00 per week. He lost a number of articles as a result of the accident.

GENERAL DAMAGES

Mr. Forsythe cited Dowie v. Yee Sing and Francis at p. 133 of Khans Personal Injury Awards Vol. 3. The plaintiff an infant 10 years of age suffered a head injury, lacerations to the forehead and scalp, loss of 3 teeth, fracture of left humerus,

laceration of liver and haematoma of tail of pancreas with resultant disability of scars, impaired memory and loss of concentration, dizzy spells and epileptic seizure. The award in November 1988 of $140,000.00 would revalue using the Consumer Prices Index for September 1995 at $1,092,858.5.

The injuries are more serious than those here and therefore the case is not of assistance.

Mr. Williams cited Calvin Edwards v. Arthur Kelly reported at p.27 of Case Note No. 2 of Personal Injury Awards by Karl Harrison then Registrar of the Supreme Court. The injuries were fracture of the right femur; fracture of the right wrist and fracture of the left leg. An operation was required to correct problems relating to his right hip. The award of $50,000.00, excluding loss of amenities in October 1990 revalues at $255,403.53. This case is applicable to the present in which there is no evidence of loss of amenities or resulting disability.

I award the sum of $260,000.00 for pain and suffering.

SPECIAL DAMAGES

The following were proved:

Shoes	-	$ 90.00
Shirt	-	50.00
Pants	-	90.00
Watch	-	300.00
Medical expenses	-	8,745.00
Loss of earnings from 14.I.86 to October 1987. 76 weeks at $300.00 per week		22,800.00
Total	-	$32,075.00

Re: Counter Claim

The only item on which evidence was adduced is loss of use. Mr. Beckford stated that at the time of the accident the truck was hired by Sherwin Williams. He hired a truck for nine (9) months while his truck was undergoing repairs at a cost of $120,000.00 and at times $30.000.00. Presumably this was the monthly hireage. Nine months at $20,000.00 = $180,000.00.. I award the sum claimed $110,000.00.

There will therefore be judgment for the plaintiff on the Claim as follows:

General Damages	-	260,000.00
Special Damages	-	32,075.00
		$292,075.00
Less 20% of Total		$233,666.20

with costs to be agreed or taxed.

Judgment for the Defendants on the Counter-Claim for $110,000.00

Less 80% total	-	$ 22,000.00

with costs to be agreed or taxed.

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Evans v. Beckford & Green

Miss Diann Evans suffered severe injuries. She gave evidence but was unable to recall anything about the accident. Her mother Mrs. Darcia Evans deponed as to amounts she expended for treatment. She has had to employ someone to look after her daughter as she cannot act independently. She can dress herself but cannot prepare meals or go out by herself. She needs assistance to negotiate stairs. Although, she is now 29 years of age, she acts like a 13 year old. She was a student at the time of the accident but has been unable to do any studies since. She worked at an hotel some three years before the accident at a salary of U.S. $300.00 weekly. Reconstructive surgery has been done to her face.

A medical report by Dr. Crandon, dated 29th March, 1993, was admitted in evidence by consent. He summarised the injuries thus:-

> "In my opinion, she suffered a severe head injury and has permanent brain damage. There is clinical evidence of disability, disfigurement and deformity.
>
> Her disability is both mental and physical. She has memory deficits, impairment of intellectual function, speech problems, damage to the optic, oculomotor, trigeminal and facial cranial nerves, as well as sensory loss, muscle tone, coordination and gait abnormalities. The period of post-traumatic amnesia in this patient is of several weeks duration, indicative of the serious nature of the brain injury. Her current status places her into Class 4 of a Physical Impairment Scale of 5 classes, only capable of clerical/administrative or sedentary activity as defined in the Federal Dictionary of Occupation titles, Department of Labor, USA. There is moderate limitation i.e. 60-70% of functional capacity. this markedly restricts the type of work of which she is capable. At this time, some 7 years after

her injury, no further neurological improvement can be expected.

Disfigurement is related to the obvious right frontal and temporal scars which are permanent. The opinion of a Plastic Surgeon should be sought for details about the likelihood of concealment of these scars.

Deformity is related to the gross depression of the right side of her face, which is still plainly visible despite plastic surgery. Her present appearance is somewhat distant from normal. again, the opinion of a Plastic Surgeon may be useful in assessment of the likelihood of improvement in her appearance.

Epilepsy has not been a feature of Ms Evans' illness to date. However, because of the brain injury and the complication of an intracranial haematoma, she has a 4-5% risk of an epileptic seizure which may have its onset years after the injury. Should this occur, the implications for her future would be serious."

In Court she walked with an unsteady gait. She has a childlike appearance but there was no visible facial disfigurement.

Mr. Forsythe cited Salmon v. Kiskimo Ltd. at p.16l of Khan's Reports Vol. 3. The plaintiff suffered:

"1. Severe closed head injury.

2. Large subdural haematoma - in coma for nearly six (6) months.

3. Severe brain damage.

5. Severe comminuted fracture with shortening of right femur.

6. Fracture of pelvis

7. Damage of vagina.

The resulting disability:

Impossible to use right hand.
Sparticity in right leg.
Intellectual impairment, depression, personality change.
Epileptic seizures.

The award in June 1989 was $500,000.00 revalues at $3,352.59l.3."

He also cited Brian Smith v. Kenneth Smith at p.206 of the said Reports.

"The infant plaintiff, 5 years old, suffered:

(i) severe intellectual loss

(ii) Gross impairment of language function, only barely able to utter 3 or 4 words.

(iii) Upper limbs had tremor in both hands and likely to be permanent. Development of flexor contractures prevented knees from straightening and right leg had one and a half inch shortening Shortening of achilles tendon, operation was contemplated to

lengthen them.

(iv) Epilepsy

(v) Inappropriate behaviour and disturbed emotional status.

(vi) Unable to stand (could tip toe) had to be carried around, An operation was performed and he was able to walk with his feet flat on the ground. He was also in continent.

In July 1990 the award was $200,000.00 for pain and suffering revalued at $1,112,332.6."

Mr. Williams cited Hamilton v. Walford at p.6l of Harrison's Case notes 2. Plaintiff suffered brain damage resulting in speech defect, weakness in the right upper and lower limbs. There was permanent injury to the left hemisphere of the brain, walked with a limp. 50% impairment of the whole person. Award of $150,000.00 in January 199l revalues at $704,642.85.

Of the cases cited, I consider Salmon v. Kiskimo Ltd. the most applicable as a basis for comparison. The injuries in that case are more serious than those here. In the circumstances, I award the sum of $2,500,000.00 for pain and suffering and loss of amenities.

Loss of Future Earnings

There was a paucity of evidence presented under this head. The evidence indicated that the plaintiff had worked some three years before the accident at a salary of U.S. $300.00 per week. At the time of the accident she was a student at Hunter college in New York, U.S.A.

Mr. Williams submitted that no award should be made under this head as the plaintiff's earnings had not been pleaded. He cited Robinson and Co. Ltd. and Jackson v. Lawrence - (1970) 15 W.I.R. 349. This case dealt with proof of loss of earnings as special damages. Mr. Forsythe submitted that it was not necessary to plead earnings as the plaintiff was not working at the time of the accident.

In United Dairy Farmers Ltd. v. Lloyd Goulbourne, Supreme Court, Civil Appeal No. 65/87 January 27, 1984 (unreported), Carberry JA said at 6.

> "In this connection I might also mention Taylor v. Bristol Omnibus Co. Ltd. (1975) 1 W.L.R. 1054 (CA) . . . . . In that case a child of three and a half years had received serious brain injury, and would never be able to work. The trial Judge made an award for future loss of earnings never the less, but basing it on what the child's father was earning, and saying in effect that there was evidence that from that background the child would likely have pursued

> the same sort of work with this type of earning, the Court of Appeal upheld the award on this head."

The plaintiff's mother Mrs. Darcia Evans is an Administrative Assistant but no evidence was led as to her salary which could be used as a basis for the plaintiff's earnings as indicated above. Mr. Forsythe was content to rely on the plaintiff's salary of U.S. $300.00 which she received at the hotel and this figure is used as the basis of the calculation of her earnings.

She is now 29 years of age. I consider a multiplier of 15 appropriate and award as follows:

U.S. $300 x 52 x 15 = U.S. $234,000.00

Future Nursing Care

From the evidence, it is evident that the plaintiff will need nursing care for the rest of her life. There is no evidence of any shortening of life as a result of her injuries. I adopt a higher multiplier than that applicable to future earnings as the plaintiff should live beyond retirement age. The multiplier adopted is 18. Mrs. Evans stated that she paid U.S. $2300.00 per week for nursing care.

I award U.S. $300 X 52 X 18 = U.S. $280,800.00.

SPECIAL DAMAGES

An itemised total of U.S. $74,897.25 was claimed under this head in respect of medical services. Mrs. Evans gave evidence of having paid U.S. $70,497.00 in this respect but she did not itemise the expenditure. However, she stated that she got receipts for the sums but objection was taken successfully to the admission of these receipts in evidence. However, I am satisfied from the evidence on a balance of probabilities that she did expend sums in respect of these expenses and award the sum of U.S. $70,497.00.

In what currency should final judgment be given?

In Sheila Darby vs. The Jamaica Telephone Company Ltd. and Russell S.C.C.A. 44/1986 11TH April 1988. (unreported) Carberry J.A. said at 17:

> "While I can see no reason why a Jamaican Court should not give a judgment for foreign currency, yet I am inclined to agree with Patterson J that in a case where some items will be expressed in Jamaican dollars and some otherwise, it is better to use one common currency throughout the judgment and to express it in Jamaican dollars but using the date of assessment as the appropriate date at which to calculate the rate of exchange. I would leave open for future consideration the possible effect of appreciable

> change in the exchange rate for the Jamaican dollar occurring between the date of the assessment and the date of final judgment or execution of the judgment."

In view of the circumstances which prevail with the change in the exchange rate for the Jamaican dollar, I do not consider it prudent to express the award in U.S. dollars and in Jamaican dollars and thus will not use one common currency.

There will therefore be judgment for the plaintiff against both defendants as follows:

GENERAL DAMAGES

Pain and Suffering and loss of amenities:	J$2,500,000.00
Loss of future earnings	U.S.$234,000.00
Future Nursing Care	U.S.$280,000.00
Special Damages	U.S.$ 70,497.00

The plaintiff will have costs - such costs to be taxed if not agreed.