NMC

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. N210/91

BETWEEN	JOHNNY NUGENT	PLAINTIFF
A N D	THE ATTORNEY GENERAL OF JAMAICA	DEFENDANT

CONSOLIDATED WITH

SUIT NO. C.L. B382/92

BETWEEN	RUDOLPH BAILEY	PLAINTIFF
A N D	INSPECTOR VANDEL PREDDIE	1ST DEFENDANT
A N D	ACTING CORPORAL ERROL SIMMS	2ND DEFENDANT
A N D	ATTORNEY GENERAL FOR JAMAICA	3RD DEFENDANT

Mr. Dennis Daly Q.C. for plaintiff in 210/92 instructed by Daly, Thwaites & Co.

Miss Christine Hudson for Plaintiff in 382/92

Miss Sheryl Lewis instructed by the Director of State Proceedings for the Defendants

HEARD: April 19, 22, 23, 26, 1999 and January 28, 2000

JUDGMENT

RECKORD, J

In these actions, both plaintiffs are claiming damages against the defendants for negligence arising out of a motor vehicle accident which took place along the Sligoville Bypass in the parish of St. Catherine on the 1st day of November, 1991.

The 1st plaintiff also claims damages for unlawful assault committed by members of the Jamaica Constabulary Force

against him.

Both Plaintiffs aver that in acting as alleged the members of the Jamaica Constabulary Force acted either maliciously or without reasonable or probable cause in the performance of their duties as servants or agents of the Crown.

In his statement of claim the first plaintiff sets out the particulars of negligence numbered (1) to (5), particulars of injuries (1) to (3) and particulars of special damages (1) to (6).

In his statement of claim the second plaintiff sets out the particulars of negligence numbered (1) to (5), particulars of injuries (1) to (5) and particulars of Special Damages. He also claims aggravated damages, interest and costs. He filed an amended statement of claim in May, 1998 with particulars of injuries numbering (1) to (30) and particulars of special damages (a) to (e).

The first plaintiff Mr. Nugent, testified that he was now 41 years of age and that November, 1991 he was a construction worker residing in Philadelphia, Pensilvania, U.S.A. and was in Jamaica on holidays for two - three weeks.

On November 1, 1991, he was riding his motor cycle from Spanish Town in the parish of St. Catherine and was going to Stewart Town, in the parish of St. Mary. His friend Mr. Rudolph Bailey, the 2nd plaintiff, was a pillion rider on the motor cycle. At about 12 mid-day - they were along the Sligoville bypass in

St. Catherine travelling on the left hand side of the road at about 20-25 miles per hour. As they approached a left hand corner he saw a police vehicle - a jeep came around the corner from the opposite direction on its incorrect side of the road and about 50 - 60 feet away. He slowed down his speed to see if the jeep could pull over to its correct side - It did not. Instead, it increased its speed and continued coming at him - If he kept his course the vehicle would hit him. He could not swing further left as there was a precipice on that side so he swung right to avoid an impact. The left fender of the jeep hit the left side of the motor cycle about the middle of the road - Nugent said he fell on the bonnett and then crashed into the windscreen of the jeep, then he fell off and skidded down the road.

Fortunately, he did not lose consciousness - he looked back and saw Bailey on his back and the motor cycle behind him. Two police officers came over him with guns in their hands - one said 'search them : They searched me and took my wallet'. He asked the police why he hit him down and he said it was my fault. He asked if they hit them down to rob him. He started yelling for 'thief' and 'robber'. He heard Bailey asking for his billfold. He saw one of the officers (Inspector Preddie) who was present in Court, pick up the billfold off the street a few feet from Bailey, looked in it and put it in his pocket. He called out to Bailey - 'see the officer putting your billfold in his pocket'- pointing to Preddie. He said the officers ' cranked up their

guns' and Bailey started screaming on top of his voice.

Lots of people from the nearby bushes came on the scene. The police was trying to disperse the crowd. About seven officers were there. Inspector Preddie who was sitting in Court was the driver of the jeep and was the senior officer present. They turned the jeep around and threw the two of them in the back like dead animal - he on top of Bailey. He said 'both my legs were mangled and my left arm was broken'.

They were driven to the Linstead Hospital where they were thrown on the pavement , one officer telling the matron that we were accident victims found on the road. The police left them on the pavement and Nugent said he told the matron what happened and they were taken to the X-ray room and were transferred to the Kingston Public Hospital same day.

Mr. Nugent said he never had any ganja and none of the police told him he was charged with having ganja, neither was Mr. Bailey charged with possession of ganja. He was never in custody of the police while he was in hospital. He was at Kingston Public Hospital for approximately four months and his family came and removed him to Queens General Hospital in New York where he spent three and a half months. There they did debriding of the left ankle and physiotheraphy of the left hand. He was later transferred to Cornell Hospital for special treatment of both legs. They put metal in both legs.

By consent, four medical reports were admitted in evidence. Exhibits 1 Dr. Dixon of the Kingston Public Hospital

dated 22/5/95.

Exhibit 2 Dr. Cornell of Cornell Hospital for special surgery -New york dated 26/8/92.

Exhibits 3 - Dr. Gayle of Cornell Medical Centre - New York - dated 28/8/92.

Exhibit 4 - Dr. Myint of Sir John Golding Rehabilitation Centre dated 21/5/98. (Witness shows to the Court his left foot, thigh, ankle, left hand and scars arising from the accident).

As a result of the injuries he can't run, he has pains in his leg every day, he has callouses on the sole of his feet, can't jump, nor lift heavy weight, he has difficulty climbing stairs.

Mr. Nugent said his salary before the accident was U.S. $450.00 per week - working for seven months for the year. He could not work for over three years up to 1995. He was currently selling fresh water fish in Jamaica for a living from 1996 earning approximately $10,000.00 per week. Had it not been for the accident he would at least be a supervisor earning U.S. $700.00 per week.

His motor cycle was taken to the Bog Walk Police Station where it was scraped - it was fairly new, only 10,000 miles was on the odometer. In 1991 it was valued $60,000.00. A motor cycle like that would today value $200,000.00. His shoes, shirt and shorts were damaged, valued $4,500.00. Costs of staying at Kingston Public Hospital amounted to $4,000.00.

The 1st plaintiff said that his motor cycle did not get into a skid, that he did not lost control and careered across the road. He also said he was not driving at fast rate of speed. The accident had destroyed his life both physically and emotionally. He now has a lot of stress factors - he takes pain killer every now and again.

When he was questioned by Miss Hudson for the 2nd plaintiff Mr. Nugent said that the back doors of the police jeep were open with police hanging from the body.

In answer to Miss Lewis for the 3rd defendant, the Attorney General, the 1st plaintiff said that the road surface was dry, asphalted and good - There was no loose gravel, no indication that road surfacing was being done and no equipment for that purpose was there and width of the road at point of impact was estimated at 15 - 18 feet. It was straight road for about 60 yards - two rear doors were open, not one - he denied that he cut the corner and came around the corner on the wrong side of the road. It was the first time he was driving on that road since he came on holidays. He denied braking up on seeing the police jeep and skidded - he never lost control of the motor cycle. He agreed Mr. Bailey fell on the enbankment. He got cuts in his head because of the broken windshield. He fell off the bonnett on the right hand side and skidded down the pavements for 15 - 20 feet from the point of impact.

Mr. Nugent said he went to the U.S.A in 1985 and has been living there since. He never had any payslips to verify his

salary in the U.S.A., neither did he have the letter of employment from his employers. He paid U.S. $30.00 for his Gap Shorts, U.S. $40,00 for his Vangaurd shoes and U.S. $30.00 for his Tommy Hilfiger shirt.

Mr. Nugent said he had shouted for thief because the police were searching their pockets and taking their money. The road was an incline - he was going down hill while the police were coming up. He repeated he saw police check Bailey's wallet - took a peep into it - zip it up back and put it in his left back pocket. Police were telling the people who had gathered to go on their way and to mind their own business.

This was the case for the first plaintiff.

Mr. Rudolph Bailey, the second plaintiff told the Court he was a 46 year old businessman of Greendale district, Spanish Town, St. Catherine.

On the 13th of November, 1991, he was pillion rider on Mr. Nugent's motor cycle and that at about 11:45 a.m. they were on their way to Stewart Town in St. Mary. "We were deliberately and wilfully knocked off our bike by a marked police jeep on the Sligoville bypass - we were riding about 25 - 30 miles per hour coming down the hill towards Bog Walk". They were approaching a left hand corner and saw the jeep come around the corner - it was coming towards them "immediately it came around the corner it came exactly on our side of the road", at about 20 - 30 yards away from them, the jeep picked up more speed - Both doors at the back of the jeep were open and men in plain clothes were hanging

out from the back - there was no space for the rider on the left hand side between the open door and the precipice. Nugent swerved a little to the right but the jeep hit them in the swerve - he spun in the air and fell on his back on a big boulder on the right hand side of the road. He was unconscious for a short time.

There policemen including Mr. preddie came to where he was. One said to Mr. preddie "Superintendent we lick down the wrong man them". Nugent was about 20 - 25 yards below him with the motor cycle between them. Because of the pains he was having he asked one of the policeman 'to put me on my belly:

> "What he did was to step on the inside of my left ankle, squeezed it severely on the ground and said "boy you should a dead".

He heard Nugent saying that these men are not police - they are thieves. He felt for his billfold but never found it - he realized that his two side pockets were turned out - he then shouted for his billfold and Nugent shouted, and pointed at Inspector Preddie and said "he took out my billfold, opened it, tooked out it and then put it in his pocket as it was belonging to him'. He said he had $5,000.00 in his right side pocket and $2,600.00 in his billfold. They were missing. They both shouted that the men there were not police, but were thieves.

They remained on the scene for about half an hour and two policemen lifted him, took him to the jeep and threw him in the back. Shortly after he saw two of them coming with Nugent who was bleeding severely. They threw Nugent on top of him.

"They drove us to Linstead Hospital where they dumped us on the hot pavement", where they left them. Later, he saw and spoke to a 'sister' at the hospital and porters took them on stretchers to the X-ray room. They were transferred by ambulance to the Kingston Public Hospital where they were admitted - he spent about 31 - 32 days - they were never under any police guard.

(On application of defence attorney, the amended defence was further amended by deleting the words,'and were both charged for possession of ganja' in paragraph 5).

At Kingston Public Hospital Mr. Bailey said he could not help himself - he was on his back and could not move. The doctor explained that his back was broken and he was placed in a cast from his waist up to his neck - all around his back. He could not wear a shirt - a towel was used to cover his private parts and he had to use pampers - he could not feed himself. A nurse and his wife fed him - he was in severe pain. Being naked was very embarrassing. He left the hospital in cast, taken by stretcher, placed in a car and taken home.

At home he remained on his back for a further 41 days. His wife had to feed him and clean him. Three to four months later he could sit up for less than a minute - six to eight months later he could stand with the assistance of his wife and his holding on to a door. One and a half year after he made his first step.

He got a pair of crutches to assist him walking and used them for four to five months. Up to the present he did not have full control of his urine - sometimes it would come

without warning up to two times per day. He was embarrassed in not being able to consort with his wife. Although he had sexual intercourse with her the drive of his penis was very weak. About two to two and a half years after he was able to resume sexual relationship with his wife, but had pre-mature ejaculation which was the worst experience he had ever had.

Up to 1991, he played football with the Greendale United Football Club for many years. He can no longer play football.

He obtained medical reports from Kingston Public Hospital - marked "A"; from Dr. Rose marked "B", from Dr. Cheeks - marked "C".

Mr. Bailey said that at the time of the accident he was doing his own business at Essex Drive, Greendale - retail and whosesale of liquor, cigarettes, pastry, variety of natural juices and soft drinks and earned approximately $5,000.00 per week. After three and a half years he tried to get back in the business but could not - he could not lift weights and his wife was working elsewhere. He tried to get other occupation but without success and his business had been closed since.

(By consent, Medical Expenses agreed at $12,700.00 and money lost for $7,260.00. Claim for medical reports of $13,800.00 deleted).

Mr. Bailey denied that the motor cycle skidded when it came around the corner. He could not say what speed the jeep was travelling, 'but it was in full 'REV' coming towards us'. It was good road surface, no construction, no road repair

equipment, broken glass splintered near the jeep. 'I never got any cut at all'.

He was questioned by Mr. Daly for the 1st plaintiff. When the police said it look like they hit down the wrong man, he understood this to mean that they had been mistaken for someone else. The police never visited them while they were in the hospital or at home. Between seven to eight policemen were in the jeep.

When cross-examined by Miss Lewis for the defendants, Mr. Bailey said they were hit on a straight road - not in a corner. He denied that the bike went into the path of the jeep. 'It was the jeep that hit us on our side of the road'.

He denied that the bike swerved to avoid the jeep, got into a skid and hit into the jeep - It was the jeep which deliberately hit us. The police never asked them their names - his identification card was in his billfold. He attended physiotherapist eight times. He alone ran his business. It ran up expenses and he had to sell it as he could not find anyone honest to run the business.

This was the case for the second plaintiff.

Inspector Vandell Preddie was the only witness who testified for the defence. He said that on the 1st of November, 1991 he was incharge of the Bog Walk police station in St. Catherine. He was on mobile patrol in the Bog Walk area along with three other policemen. He received a radio message from the Sligoville Police that two men travelling on a motor cycle

from Sligoville towards Bog Walk had run through a police road block. He drove to the intersection of the Sligoville and Bog Walk highway where he stopped. They alighted from the jeep and waited for the motor cycle which they anticipated would be travelling in their direction.

After waiting for about fifteen minutes and not seeing the motor cycle, they drove along the Sligoville road going up hill at about 15 - 25 miles per hour. The road surface was dry, asphalted with lots of loose metal due to re-surfacing. Approaching a left hand corner they saw a motor cycle with two men aboard travelling between 20 - 25 miles per hour on the right hand side of the road, that is, on his left. The rider appear to apply the brake, the motor cycle skidded and got out of control and "swerved further to my left and collided with the left corner of the front bumper of the jeep and skidded about 15 - 20 yards behind the jeep." He saw the pillion rider on his back on the embankment and the rider tangled with the motor cycle on the road surface behind the jeep.

They immediately removed the motor cycle from off the rider who was bleeding heavily. The other man was complaining for severe pains to his back and was unable to move. The inspector told his colleagues to search the two men - He backed up the vehicle to the embankment. The pillion rider was placed on his back in the jeep. Sergeant Simms showed him a black scandal bag with vegetable matter resembling ganja which

he said he found on the pillion rider. He drove to where the other man was. They lifted him and placed him in a sitting position on the floor in the back. One of his men was left on the scene to protect the motor cycle and he drove the injured man to the Linstead Hospital, where he backed up the jeep to the casualty department. Both men were removed by porters and the police and taken immediately to casualty where they began receiving treatment.

Apart from the vegetable matter, no one informed him of any personal property taken from the men. Both on the scene and at the hospital the injured men verbally gave their names and addresses. Neither he nor any of the police took any money from the plaintiffs. At the scene of the accident there is no precipice on either sides of the road. The inspector said both men were charged at the Bog Walk Police Station with possession of ganja and this was recorded in the station diary. He was not aware that they were ever taken to Court.

The inspector was cross-examined by Mr. Daly Q.C. He was now ten years in the rank of inspector. He never enquired whether the plaintiffs were the two men who ran the police road block . "It occurred to me when I saw this motor cycle that this could be what I got the radio message about. It was my intention to apprehend them". There was no siren on the jeep. He never thought that the easiest way of apprehending them was to 'run them down'. When he first saw the motor cycle it was about

21 yards from him. He intended to stop them by flagging them down. Up to when the accident occurred he never had enough time to do so. He denied that the accident occurred on a straight road. He denied that he deliberately drove on the right hand side forcing the motor cycle to swerve to the right. He denied there were seven to eight police in the jeep some standing with long guns and with both back doors open. He denied speeding up the jeep and drove straight in the path of the motor cycle. He said he was on his side of the road when the motor cycle hit the jeep. His right wheels would be within 12 inches of the centre of the road - there was no hill-side on one side and gully on other side of the road. He denied that he was asked "why you hit me off the bike'? He denied that the men called out for thief and robber. Nugent never said 'see one taking your billfold and put it in his pocket' he never heard Bailey asking for his billfold. The scandal bag had in less than ¼lb of ganja. He was not aware if the men were told that they were charged. He denied he first took Bailey's wallet and put in his pocket. The first time he knew of missing money was when the suit was filed. He denied that anyone said to him "superintendent a the wrong man them we lick down." He denied that crowd gathered and he never heard Bailey said "these men are not police, they are thieves. No one reported finding any money on either of them. He spent less than half hour at the hospital, then drove to the Linstead Police Station and returned to the hospital. He reported at the hospital as to

how the men got injured. He denied that the men were thrown on to the hospital pavement and left there.

Miss Hudson for the 2nd plaintiff next cross-examined the inspector. The information he got was that two men were travelling on a big motor cycle. He never turned on his head lights. He agreed that using flashing lights is standard way of stopping motor vehicles. He never got discription that one man had dreadlocks, he never saw Bailey bleeding but saw blood on him at the hospital. He denied that the police threw Nugent on top of him in the jeep. He was not aware if the men were charged for breaches of the Road Traffic Act. He denied that seeing the motor cycle that he drove over to its side and knocked off the men. He denied that they were thrown on the pavement at the hospital; he denied taking Bailey's wallet that had fallen from his pocket. He denied deliberately hitting the men off the motor cycle.

On re-examination, the inspector said that the windscreen on the jeep was not broken - broken glass came from the head lamp and the indicator lamp. If he had flagged them down and they never stopped he would have turned around and chased them and get assistance from Spanish Town by radio.

This was the case for the defence.

Submissions

Miss Lewis for the defendant submitted that the plaintiff was negligent in cutting the corner into the path of the police jeep. Although the inspector was looking for a motor cycle with pillion rider he had no intention of using the jeep to stop them.

Loose gravel in the road caused the motor cycle to skid into the jeep. The plaintiffs evidence that they were thrown into the jeep and thrown on the pavement at the hospital is an embellishment and ought not to be believed. The inspector had rejected suggestions that he deliberately hit the motor cycle.

On the claim for lost money, Miss Lewis submitted that the Court should not make any findings on this claim based on the inspectors evidence. There was also no basis for an award for aggravated assault.

On the question of damages Miss Lewis referred to the case of Lawford Murphy v Luther Mills (1976) 14 JLR p.119 and submitted that special damages must be specifically pleaded - evidence has just been thrown at the Court - there was no evidence to support the 1st plaintiffs earnings in the U.S.A., therefore no award should be made for this claim as the business was still in existence and plaintiff never gave any evidence of having any difficulty in obtaining same. She took no issue with the value of the motor cycle, value of clothes damaged, hospital costs and transportation.

With respect to the medical reports concerning the 1st plaintiff, counsel referred to exhibit 4 - report of Dr. Myint - of the Sir John Golding Rehabilitation centre - "owing to his disability, he can be considered as likely to have a permanent impairment of about 40% of the whole person. She referred to two cases tried in the Supreme Court.

Patrick Noble vs Gerold Williams et. al. p. 267 of Harrison case book - award of $2.1M - was made for pain and suffering and loss of amenities. (More serious injuries than the instant case. Roy smith v Rose Hill Farms et. al. - heard March, 1992, award of $200,000 was made. This is equivalent to $661,681.00 at todays value - the instant case more serious than case under reference.

Counsel submitted that an award of $1.M would be sufficient to compensate this plaintiff for his injuries.

With respect to 2nd plaintiff Mr. Bailey, defence counsel referred to medical reports of Dr. Cheeks and Dr. Rose. This plaintiff suffered a total loss of 45% of the whole person.

See smythe v Walker and Anor. Suit C.L. S066/88 - January, 1990. Harrison case notes. $333,000.00 awarded for pain and suffering now equivalent to $3M. This is more serious than the instant case.

Re Josephine Eubanks v Keith Thorps heard December 1990. Harrison case notes award of $300,000.00 for pain and suffering - this equivalent to $2.1M - this is more serious than instant case.

Counsel suggested an award of $1.2.M.

Re Special Damages (Mr. Bailey).

No issue being taken in claim for medical expense of $12,750.00 or for travelling expense of $2,500.00. Counsel however challenged the claim for loss of earnings as there was no evidence to support it - there was no evidence of date of discharge from hospital. If award is made it should be for

no more than one year. The plaintiff had a duty to mitigate.

Miss Hudson for the second plaintiff submitted that the credibility of both plaintiffs was consistant throughout. Although the accident was over eight years ago the discrepancies were not fundamental. The inspector admitted he ordered men searched - pockets were found turned out - it was reasonable to infer that monies were taken. Blood on Bailey's clothes suggest that Nugent was thrown on him.

Miss Hudson referred to the amendment of the defence to include skidding. This came six years after although it was the crux of the case for the defendant. This lacked sincerity. On a balance of probabilities she asked for judgment for the plaintiffs.

On the question of General Damages in respect of Bailey, Miss Hudson referred to the medical reports. His injuries were serious and he suffered loss of amenities. The awards made in the Smythe and . Ebanks caseswere extremely low. She referred to the case of Francis vs. Owen Thomas et. al. heard in December, 1994 as reported in Khans Volume 4 at page 127 where the sum of $3.5M was awarded. Another case is Mighty vs Alcan Jamaica Limited on the 14th of July, 1997 - $1,750,000.00 was awarded. Wellington Williams v Black River Upper Morass in April, 1997 reported in Khans Volume 4 sum of $1,980,000.00 was awarded and this equivalent to $2.25M. Miss Hudson suggested a round sum of $3M.

Based on the medical reports Miss Hudson submitted that the second plaintiff entitled to an award under the head of handicap on the labour market or loss of future earnings - he had tried to find alternative employment without success. Mr. Bailey was now 46 years of age. She suggested a multiplier of 8; the minimum wage is now $800.00 per week 8 x 800 x 52 = $332,800. Loss of earnings. Second plaintiff could not go back of shop-keeping - he sought another occupation. Counsel suggested an award for three years for loss of earnings — $5000 x 12 x 3 = $180,000.00.

Mr. Daly, Q.C. on behalf of the first plaintiff, submitted that it would be unthinkable that the plaintiffs would have invented such a horrendous lie against the police. Their lives have been dramatically altered as a result of their injuries. The action of the police was deliberate or utterly reckless and callous of their safety.

Mr. Daly listed the allegations against the defendants as follows:-

1. Drove on wrong side of the road forcing the plaintiffs to swing right to avoid the jeep.
2. While seriously injured on the ground, they were searched and their moneys taken.
3. Keeping injured men on the road for ½ hour, then throwing them in the jeep - one on top of the other.

4. Dumped on the pavement at the hospital.

5. Allegation that ganja found on the 2nd plaintiff - never charged - never held in police custody - never put before Court.

Further, Mr. Daly, submitted that allegations then that plaintiffs cut the corner is unlikely - a motor cycle going around a right hand corner would, if it skidded, go to the left rather than to the right as stated by the inspector. Mr. Daly suggested that the defence had provided the defendant with a motive for acting in the way it did. The inspector had admitted the plaintiffs were likely to be the men he intended to apprehend. It was clear that the police felt that this was /the only way to apprehend them. He submitted that the plaintiffs had proved their cases beyond the balance of probabilities and asked for judgment.

Re Damages: The fact that no documentary evidence had been produced as to the earnings of Mr. Nugent did not mean that his evidence as to loss should be rejected.

Re Injuries - Nugent spent a total of about eleven months in hospital both in Jamaica and the U.S.A. He now suffering pains every day - the cases referred to by the defendant - Leroy Smith and Noble had no resemblance of this case - counsel referred to the case of Michael Campbell v Ernest Allen in Khans Volume 3 at page 5. Heard 29/9/89 - $297,250.00 ordered for pain and suffering, now equivalent to $2.8M.

Lindo Harris v Baron McKenley - in Khans Volume 3 at page 8 - heard 15/3/89 $280,000.00 awarded - equivalent to $2.9M.

The plaintiff Lindo Harris spent forty eight days in hospital - Nugent spent eleven months.

These cases,counsel submitted,would justify an award of $4M for pain and suffering and loss of amenities.

Counsel also asked for an award under the heading of future loss of earnings - in Campbell's case (supra) the sum of $10,000.00 was awarded. He asked for an award of $200,000.00

Counsel abandoned claim for handicap on the labour market as this should be included in award for pain and suffering. The 1st plaintiff was now selling fish - a career he intended to persue.

Findings

There are settled ways that the police may employ to signal a motorist to stop. One popular method is by the use of road blocks. A motorist who goes through such road block manned by the police without stopping runs the risk of being chased and arrested by the police.

In this case, on the evidence of the police, they received a radio message that two men on a big motor cycle had run through a road block erected by the Sligoville police. After waiting at the intersection and not seeing them the inspector proceeded along the Sligoville road. Suddenly, he saw a motor cycle approaching with two men aboard. It occurred to him these were the men he was looking for. He intended to

stop them by flagging them down - but never did so as he never had enough time - he never had a siren on his vehicle; he never flashed his head lights. He never thought of turning around and chasing them.

What did the inspector do - it appeared he did nothing because the motor cycle for some unknown reason, suddenly developed a skid got out of control and swered into the left front bumper of the jeep. This seems farfetched. I agree with Mr. Daly that a motor cycle going around a right hand corner, if it gets into a skid, would invariable go to the left, not to the right as the police alleges. The police vehicle was going slowly uphill; it could stop almost immediately. The law requires every driver to take reasonable steps to avoid an accident on the road.

On a balance of probabilities I accept the evidence of the plaintiffs and reject the defence out of hand. I find that the plaintiffs were on their correct side of the road, that the police speeded up and deliberately hit them off the motor cycle despite their efforts to evade the jeep. That they did so in the mistaken belief they were the men who broke through the road block.

I further find that the injured men were kept on the scene for a much longer time than was necessary; that they were picked up and thrown in the back of the jeep, one on top of the other. That they were dumped on the pavement at the Linstead Hospital and left them there after callously telling

the nurses that the plaintiffs were found injured on the roadway.

The medical reports on the first plaintiff revealed that he had inter alia, fracture of the left humerus; fracture of the left fibia; fracture of the right ankle. He was assessed as having multiple compound fractures and was a patient in the Kingston Public Hospital for four months after which he was taken off to the U.S.A.

At the Charles Cornell Hospital for special surgery in New York it was estimated that he would be continuously disabled for at least two years from the time of the accident and was completely disabled at the time of their report dated August 26, 1992. The report said "he almost certainly has severe degenerative desease in the knee and may rapidly require --- a total knee replacement." Dr. Myint of the Sir John Golding Rehabilitation Centre said that at the present Mr. Nugent walks with a limp and that owing to his disability he can be considered as likely to have a permanent impairment of about 40% of the whole person.

This plaintiff is now 41 years of age. He said the accident has destroyed his life both physically and emotionally. He has spent eleven months in hospitals undergoing several surgical operations both here and abroad. There has been no evidence of how much it cost him for treatment in the U.S.A. He has been in pains every day since the accident. It should be noted that his claim for loss of earnings has not been supported by any documentary evidence.

Damages will be assessed as follows in the respect of Nugent.

Special Damages:

Value of clothes:		
U.S. $100.00 at $37 for 1 = J.A	$	3,700.00
Value of motor cycle =	$	60,000.00
Hospital costs ---	$	2,000.00
Loss of earnings - allowed for one year only 52 x U.S. $450 = U.S. $23,400 @ $37 to 1 =	$	885,800.00
Costs of transportation (no evidence)		no award
	$	951,500.00

General Damages

Pain & Suffering and loss of amenities;

Based on awards made in cases with similar injuries, I assess damages under this head at J.A $3M.

Future loss of earnings:- No award is being made under this head as the 1st plaintiff is now earning more than he earned at time of accident.

Handicap on the Labour Market:- Counsel declined to make any claim.

Aggravated Damages - $50,000.00

The medical reports on he 2nd plaintiff Mr. Bailey, disclose that he sustained injuries to his back.

Dr. Collins in his report dated 31st July, 1992 (exhibit 5c) said radiological examination showed a fracture dislocation of the eleventh thoracic vertebra upon the twelve. On the 5th of November, 1991 the patient had the procedure of spinal column reduction and stabilization with wires. He was discharged on the 6th of December 1991, with appointment to the fracture clinic in six weeks. On the 13th of February, 1992, the patient was seen at the fracture clinic. He complained of pains and immobility to his left knee - examination revealed a midly swollen joint - physiotheraphy was ordered.

Dr. R.C. Rose, a consultant orthopaedic surgeon examined Mr. Bailey on the 27th of February, 1997. He suffered lower back pains from prolonged sitting or walking. He was suffering from urgency and incontinence with regard to his urine. He complained of pains in the left knee when walking. Flexion of the neck produced pain in the dorsal spine. He had a 12 cm surgical scar along the midline. Following his surgery Mr. Bailey has been left with permanent weakness in the left lower limb, an absent of left knee jerk and a blunting of sensation in the left leg. He has also been left with permanent urinary symptoms. He has suffered a 55 percent impairment of the whole person.

Dr. Cheeks, consultant neurosurgeon, saw Mr. Bailey on the 30th of April, 1998. Examination of the left knee revealed instability in the anterior to posterior direction;

he had suffered a serious spinal injury with major injury to the bony as well as the neural elements in the thoracic spine. He developed osteoarthritis in the spine. He will continue to experience back pains indefinately. The disturbance of bladder function with intermittent incontenence still persist with the obvious social implication. He will not be able to take on heavy physical work. The total permanent partial disability resulting from the spinal injury is thirty-seven percent. To this should be added the 8% impairment of the left knee. Total 45%

Claim for lost money:

The defendants are resisting this claim. They admit searching the plaintiffs, but deny taking Bailey's billfold which had fallen from his pocket and was laying on the road nearby. The inspector denied that any money was found on the men. It is inconceivable for Court to accept that two grown men, one on a visit from the United States of America, would be going out in the country to visit relatives and friends with empty pockets. I accept Mr. Nugent's evidence that he saw the inspector pick up Mr. Bailey's billfold from the road.

Claim for Aggravated Damages:

The plaintiffs complain that :-

1. They were kept on the scene for over ½ hour while Nugent was bleeding profusely and Bailey lay crying for his back.
2. They were thrown into the back of the jeep - one on top of the other.

3. They were dumped on the hot pavement at the hospital.

Would the plaintiffs be entitled to aggravated damages in these circumstances? These would fall in the category of oppressive, arbitrary or unconstitutional action by the servants of the government.

Damages in favour of Mr. Bailey are as follows:

Special Damages

Loss of earnings for one year	$ 60,000.00
Loss of money	7,260.00
Medical expenses (agreed)	12,750.00
Travelling expenses (No evidence)	no award
	$ 80,010.00

General Damages

Pain & Suffering & Loss of Amenities	2,000,000.00
Handicap on the labour market	50,000.00
Future loss of earnings (unsupported)	no award
Aggravated damages	50,000.00

In Summary - the awards are :-

NUGENT

Special Damages award at with interest @ 6% from 1/11/91 to today.	$931,500.00

General Damages

Pain & Suffering & Loss of Amenities with interest @ 6% from the date of service of	3,000,000.00

writ to today	
Aggravated Damages ----------	$ 50,000.00
BAILEY	
Special damages	
with interest at 6% from 1/11/91 to	
today.	$ 80,010.00
General Damages	
Pain & Suffering	$2,000,000.00
Handicap on the Labour Market	50,000.00
with interest @ 6% on $2M from	
date of service of writ to today.	
Aggravated damages ----------	50,000.00
Cost to the plaiantiffs against the	
1st and 3rd defendants, to be agreed	
or taxed.	

I regret the delay in delivering this judgment.