

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. P.023 OF 1978

BETWEEN LLOYD PATTERSON PLAINTIFF

A N D THE ATTORNEY GENERAL DEFENDANT

W. B. Frankson Q.C. and Mrs. M. Forte instructed by Gaynair and Fraser for Plaintiff.

N. Fraser Assist. Attorney General and D. Henry Crown Counsel instructed by Director of State Proceedings for Defendant.

May 22 and July 3, 1987

ELLIS, J:

In this case, the plaintiff was shot by a policeman in circumstances which made for the agreed liability of the defendant. The matter therefore proceeded as to assessment of damages.

The plaintiff was 26 years old at the time of his injuries in 1977. He was injured by bullet which entered his right side of the abdomen and exited on his left lumbar region. He was hospitalized for 16 days and visited the hospital some 40 times as an out-patient.

At the hospital, the plaintiff underwent emergency operation for removal of a damaged kidney and other remedial surgery. Pictures by X-Rays were taken of his injured body and these showed some degree of damage to the tip of his spinal column (caudal equinum).

The consequences of the injuries are:

- (a) Flaccid paralysis of the right leg;
- (b) Inability to use the left ankle in walking;
- (c) Walks with a "drop foot" gait in the right leg;
- (d) Loss of sensation in the right leg;
- (e) Wasting of muscles in the leg.

Dr. Alafia Samuels confirmed the condition of the plaintiff and stated that lack of sensation in the plaintiff's right leg could result in the plaintiff injuring his leg unwittingly. She also said that the weakness in the right leg precludes him from following his trade as a mason. The fact that he now has one kidney places him in grave danger in case of renal illness.

The doctor is of opinion that the plaintiff has suffered a 25% permanent loss of function in his right lower limb.

DAMAGES:

The plaintiff said that at the date of his injury he was a mason in steady employment with Leonard I. Chang on Cooreville Gardens Housing site. He said he received \$120 - \$130 per week and he worked overtime.

He did not work from March 1977 until December 1982 when he started to buy and sell goods. He therefore claims loss of earnings for a period of 5 years at \$110 per week an amount of \$28,600.00. In addition he claims another \$409.00 which has not been challenged, making a total of \$29,009.00 as Special Damages.

Mr. Fraser challenged any claim for an award of \$28,600.00 on the following grounds:

- (i) there is no evidence that the plaintiff was a mason and there has been no proof that he earned \$110.00 per week;
- (ii) even if the court is minded to make an award, the period cannot be for 5 years but at most for 10 months.

He supported his challenged by reference to the well known principle that Special Damages are to be specifically pleaded and strictly proven.

In relation to Mr. Fraser's first ground of challenge I am convinced that Mr. Patterson was mason on the date of his injuries. Mr. Patterson impressed me as a very honest witness and I accept his statement that he was a mason and that he earned \$110.00 per week working with Leonard I. Chang and Company. As a matter of fact, I tested his connection with the trade of a mason by using a technical term in a question to him. He did not understand the term but described the practical details to my satisfaction.

On ground (ii) Mr. Fraser is on surer footing. The plaintiff honestly stated that he could have commenced some buying and selling before 1982. He did not say from what period prior to December 1982,

he could have started that buying and selling but he said that he is now earning between \$200 and \$300 per week from that occupation.

Mindful of the obligation of the plaintiff to mitigate his loss, if any, and taking into consideration the extent of the plaintiff's injuries, I am of opinion that the period 18th March 1977 to the end of December 1978 is a reasonable period for which he should be awarded loss of earnings. That is 88 weeks at \$110.00 per week which is an amount of \$9,680.00. In addition, the plaintiff will get \$409.00 making a total of \$10,089.00 with interest at 3% from 18/3/77.

GENERAL DAMAGES:

Mr. Frankson argued that the heads of damages should be -

- (i) pain and suffering and loss of amenities;
- (ii) loss of future earnings and/or disadvantage on the labour market.

He said that the plaintiff's injuries are serious with consequent physical disabilities and is attractive of damages of \$150,000.00 high or \$130,000.00 at a low.

Mr. Henry for the defendant argues that damages in the region of \$50,000 - \$60,000 would be adequate compensation. He cited in support of his case, cases of Edwards v. Richards et al and Picott v. Harris from Mrs. Khan's Compilation of Personal Injury Awards.

The Edwards case dealt with a loss of kidney but in totally different circumstances from the instant case. Moreover, I make bold to say that the award of \$5,000.00 in that case seems to be low.

In this case, the plaintiff again with remarkable honesty said he played no games and one would be tempted to ignore a claim for loss of amenities. I have seen the plaintiff and his gait is now defective. He has lost the amenity of walking properly.

For pain and suffering and loss of amenities I would award him an amount of \$90,000.00. I make no award for any disadvantage on the labour market as again with absolute condour the plaintiff said he now makes per week from higglering as much as he would have made as a mason.

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There will be judgment for the plaintiff and Special Damages awarded in an amount of \$10,089.00 with interest at 3% as of date of injuries to date of judgment.

General Damages awarded in a sum of \$90,000.00 with interest at 3% as of date of service of the Writ.

Costs to plaintiff to be agreed or taxed.