IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1983/R069

BETWEEN	OLIVER RICHARDS (infant b.n.f.) ICYLIN RICHARDS	PLAINTIFF
A N D	DERRICK STEWART	FIRST DEFENDANT
A N D	JUKIE CHIN	SECOND DEFENDANT

Noel Edwards Q.C. and Miss Phyllis Dyer for Plaintiff.

Mr. John Givans and Mr. Patrick W. Foster for Defendant.

NOVEMBER 13, 14, 15, 18, 19, 1991

AND 7TH MAY, 1992.

ELLIS, J:

By a Writ and Statement of Claim the Plaintiff by his next friend Icylin Richards, claims damages for personal injuries which he sustained when he was knocked down by a motor car which he alleges was negligently driven by the second Defendant.

The particualrs of negligence which he alleges against the Defendants are:-

(a) driving at an excessive rate of speed.

(b) failing to keep any or any proper look out.

(c) failing to see the Plaintiff standing along the said road.

(d) passing stationary vehicles in the said road when it was unsafe and/or dangerous so to do.

(e) failing to heed on coming traffic in the said road.

(f) driving on the wrong side of the road and thereby colliding with the Plaintiff.

(g) failing to stop, to slow down, to swerve or in any other way so to control the said motor car as to avoid colliding with the Plaintiff.

The particulars of injuries which are alleged are:-

(a) lacerated wound 5" x 2½" to side of head.

(b) brush abrasions 12" x 9" over the abdomen and chest.

(c) fracture of left humerus

(d) fracture of right femur.

(e) surgical emphysema left chest and other items K-Z as shown in the amended particulars of injuries.

Those injuries necessitated his being hospitalised from the 27/1/82 to 14/4/82. The fractures were reduced and the emphysema remedied. He now suffers searing pain to the left forehead with accompanying tenseness and irritability. His right lower limb has been shortened and he suffers periodic pains in that leg. He is not now able to concentrate for long periods.

The Plaintiff (Oliver) gave no evidence either as to the facts of the collision or as to his injuries. The evidence for the Plaintiff as to the collision came from Adella Houston. This lady is a higgler who was peddling her wares from under Mrs. Chin's shop as was her custom for the past 7 years.

She stated that on the 27/1/82 she was sitting on the piazza at about 4:30 p.m. The Plaintiff bought oranges and ripe bananas from her and stepped off the piazza and stood in the gutter on the right side of the road as one faces May Pen. Three mini buses were on the left in line stationary facing May Pen. Two cars she said, were coming from Mandeville direction driving behind each other and were not driving extra fast. At the time, a car was travelling from the direction of May Pen towards Mandeville and this car was going fast. This car she said swung "around" and took the Plaintiff from where he was standing in the gutter and flung him onto the other side. He fell 10 yards away with his head turned up towards Mocho. The car did not stop until it reached the

Four Paths Police Station 3½ chains from where the Plaintiff fell. She said the Plaintiff was standing in the water-table (gutter) when he was hit.

She was cross examined by Mr. Foster and admitted that she did not know the Plaintiff Oliver very well on the date of the accident. she said it was a hearse from the nearby funeral parlour which took away the Plaintiff.

She said the car which hit the Plaintiff swerved to the left where she was and it was a sharp swing. She denied that any mini bus was parked on her side at the edge of the road. She also denied that the Plaintiff Oliver bought fruits and ran across the road. The only other evidence concerning the collision was given by the second Defendant Juckie Chin.

Mr. Chin said on the 27/1/82 he was driving the motor car KY 456 from May Pen towards Mandeville at about 4:45 p.m.

On reaching Four Paths square he noticed a bus parked on the left of the road and another one parked on the right pointing towards May Pen. He said that as he came abreast the bus on the left he saw a figure running from the direction of the bus. He swerved to his right but the figure was running so fast he appeared to collide with his left fender, sprawled on the windscreen and shattered it. He stopped his vehicle 6 yards from the impact and saw a hearse in which the Plaintiff was placed. His speed was between 25-30 miles per hour.

He saw the Plaintiff run 1 ft. from in front of the bus. He denied that his vehicle stopped 3½ chains from the point of the collision. He also denied that he made a sharp swerve to his left and hit the Plaintiff who was stationary in the gutter.

LIABILITY

If Mr. Chin was travelling at 25-30 miles per hour and saw the Plaintiff 1 ft. in front of the parked bus, his car on his own evidence, would have passed without a collision.

I was not impressed with Chin's account of the collision and I have no hesitation in accepting Mrs. Houston's account. I find that second Defendant was speeding and that he did swerve to his left and hit the Plaintiff.

I find that the second Defendant on the evidence was negligent within the amended particulars of negligence and is therefore liable to pay damages to the Plaintiff.

DAMAGES

The Special Damages of $4,625.00 have not been contested and the Plaintiff is awarded that amount with interest at the rate of 3% as of 27/1/82.

GENERAL DAMAGES

Mrs. Icylin Richards Oliver's mother, gave evidence which touches on the award of General Damages. She said that after the accident Oliver returned to the Osbourne Store All Age School. He did not remain there as the teachers complained as to his aggressiveness and irritability. He was taken back to England and placed in a special school at which he did not stay for long since he got into fights. From there he was sent to a Youth Training Camp where he learnt nothing as he could not remember what he was told to do. He has never worked as no one will employ him. He has to be supervised.

Mrs. Richards was cross examined by Mr. Givans and the tenor of the cross examination was suggestive of the Plaintiff being no more than a child of average capacity.

Dr. Ruth Doorbar a Clinical Psychologist gave evidence on behalf of the Plaintiff. She carried out psychoanalytical tests on the Plaintiff. The tests were the Whecler Intelligence and Memory Test, the Rorschorch Personality Test, the House-Tree Drawing Test and the Bender Geshalt Test for brain damage. From the test Dr. Doorbar said she found in the Plaintiff

(i) a very serious memory problem and inability to recall simple immediate material and not much of the accident. His memory is 48% impaired.

(ii) extreme depression with evidence of regression, that is, child like responses.

(iii) complaints of headaches and sensation of blood puring from his forehead.

(iv) auditory hallucinations.

(v) indication of a pathology in the front lobe of the brain.

(vi) inadequacy in carrying out the House-Tree drawing test.

(vii) positive evidence of brain damage.

Dr. Doorbar said the Plaintiff's disability was 85% and suggests a referral to a rehabilitation centre. She saw little probability of improvement in the Plaintiff's condition. She sees progressive deterioration with Plaintiff becoming like a vegetable.

She was cross examined by Mr. Givans. She said that the tests which she carried out were designed to measure the symptoms of brain injury. She did not know of the Plaintiff's pre-accident intellectual ability when she examined him eight years after the accident.

Mrs. Hortense Gordon, the principal of the Osbourne Store All Age School gave evidence confirming the Plaintiff's aggressiveness and irritability after the accident. He spent only 3 months at the school after he returned.

Mr. C.P. Campbell a manager with British Telecommunications in London gave evidence of the Plaintiff's inability to hold a job which would have paid him a starting salary of £7,500.00 per year. That £7,500.00 would increase to £9,000.00.

Dr. John Hall a Neurologist said he examined the Plaintiff on the 5th of June, 1990. His examination revealed that the Plaintiff wrote in an infantile calligraphy which was inconsistent with his age. He made mistakes in spelling which suggested inability to comprehend the meaning of the spoken word. He showed retrograde amnesia and inability to remember recently communicated information.

The doctor stated that the behaviour of the Plaintiff and his mental deficiencies, in his experience, are indicative of damage to the brain in its entirety.

The examination also revealed epileptic activity which is not in the convulsive state but very likely to be convulsive in the future. Mr. Hall gave the Plaintiff a "Bad Prognosis" and is of the opinion that the Plaintiff will be a charge on his family or the community. His condition is one of permanent progressive deterioration and he has so concluded from

(i) The Plaintiff's clinical history.

(ii) his own clinical findings and

(iii) Results of E.E.G. tests.

Dr. Hall was cross examined by Mr. Givans. He admitted that spelling mistakes could be the result of accademic deficiency but he had no doubt that the difficulty with numbers was the result of brain damage from trauma such as a violent blow to the head. Dr. Hall's evidence confirms Dr. Doorbar's findings

The evidence from Dr. Doorbar and Dr. Hall leaves no doubt as to the fact that the Plaintiff has suffered serious brain damage. The consequence of that damage places the Plaintiff, to adopt Dr. Hall's description, "in a condition of permanent progressive deterioration" which will result in his becoming a charge on his family and possibly the community.

Mr. Foster for the Defendant suggested an amount of $400,000.00 as an adequate award for that damage. That award he said would include damages for injury to the bones, brain damage and scarring.

Miss Dyer conceded an absence of any evidence of exact loss of amenities. She argued that Plaintiff should be compensated for

(i) handicap on the labour market/loss of earning capacity.

(ii) loss of prospective earnings based on the evidence from Campbell.

(iii) bone damage.

(iv) brain damage.

(v) scarring.

The fractures to the humerus and femur have resulted in 1 inch and 2 inches shortening in those limbs respectively. The medical report at exhibit 1b, states that the shortening of the limbs increases the likelihood of the Plaintiff developing osteo-arthritis and decreases his capacity for physical activities.

In those circumstances, I hold an award of $150,000.00 to be adequate compensation for the injuries to the Plaintiff's limbs.

The Plaintiff was 14 years old at the time of the accident and he was still at an All Age School.

That circumstance suggest a less than average student whose ambition was to be a mortor mechanic. Although the Plaintiff has no history of ever being in employment, Jamaican and English cases have established that even an injured child is entitled to have damages assessed for loss of earing capacity. See Deborah Salmon (b.n.f. Linton Salmon) v. Kiskimo Ltd. and others, Suit C.L. 1982 S.199, Civil Appeal 61 of 1989, Gammell v. Wilson [1981] 1 All E.R. 578 and Joyce v. Yeomans [1981] 2 All E.R. p.21. The cases having established the entitlement to damages for loss of earning capacity, assessed those damages by 2 methods - the one in which a global award is made to include loss of earning capacity (Salmon case) or the multiplicand/multiplier method (Gammell).

When the award in Salmon's case was appealed, Carey J.A. although accepting that the method of assessing damges for "loss of earning capacity" was flexible, expressed a preference for the arithmetic method - (Multiplier/ Multiplicand). He advanced as a reason for his preference, uniformity of awards under this head of damage.

In Joyce v. Yeomans Lord Justice Brandon while accepting a court's freedom from being bound to use the multiplicand/multiplier method in some cases, said this at page 27 letters d-e:

> "---- while a court is not bound to arrive at a multiplier/miltiplicand in a case of this kind in order to assess the damages, it would not be erring in law if it attempted to do so. The basis for finding a multiplicand may be slim but judges are often faced with having to make findings of fact on evidence which is slender and much less convincing than would be desirable. Therefore it seems to me to be open to a court to approach the problem by putting a figure on the loss of earning capacity on a weekly or annual basis and applying a multiplier to that figure."

I am of the opinion that Brandon L.J. was also advocating the arithmetic approach as Carey J.A. did in Salmon. I humbly agree with and adopt that advocacy.

In this case I hold on the balance of probabilities and on the evidence, though slender, that the Plaintiff would have in fact become a motor mechanic. He is now aged 23 and I am of opinion that he would now be earning

$250.00 per week or $1,000.00 per month as a mechanic. From a consideration of decided cases and the facts of this case I would fix a multiplier of 16 years. The award for "loss of earning capacity" would be $1,000.00 x 12 x 16 = $192,000.00. I have not discounted this amount as I have used a low Multiplicand of $250.00.

The Plaintiff must be awarded an amount for his serious brain damage which properly invested, will provide for his reasonable care. The assessment of damages here is primarily guess-work. The going rate of interest on deposits today constrains me to hold that a sum of $600,000.00 would provide an adequate amount.

The award for General Damages is therefore $942,000.00 made up as follows:-

$750,000.00 - including $150,000.00 as damages for injury to limbs,
- for pain and suffering and loss of amenities.

$192,000.00 - for loss of earning capacity.

The amount of $750,000.00 is to bear interest at 3% from date of service of the Writ. I have made no award for scarring and loss of prospective earnings.

There will be judgment for the Plaintiff and damages assessed as aforesaid with costs to be agreed or taxed.