IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. S041 OF 1991

BETWEEN	NICHOLAS SERGEON By his next friend PRINCESS BROWN	PLAINTIFF
A N D	LIVINGSTON MUIRHEAD	DEFENDANT

Mr. Ainsworth Campbell for Plaintiff.

Mr. Gordon Robinson and Mr. David Henry instructed by Mrs. Winsome Marsh of Nunes, Scholefield for Defendant.

Heard: June 9, 10, 11, 25, 26, 1997;
March 18, 19, & April 24, 1998

LANGRIN, J.

In this action the plaintiff Nicholas Sergeon, 12 years of age at the time of the accident was a pedestrian who collided with a motor vehicle owned and driven by Livingston Muirhead along the Brunswick Avenue main road in the parish of St. Catherine on the 19th February, 1990.

In his further Amended Statement of Claim the plaintiff averred that while he was lawfully standing on the sidewalk at Brunswick Avenue the defendant so negligently drove and or controlled his car that it collided with the plaintiff causing him to sustain bodily injuries and to suffer pain, damage and loss.

The particulars of negligence are stated as under:

Particulars of Negligence

(a) Speeding excessively in all the circumstances.

(b) Failing to keep any or any proper lookout.

(c) Failing to steer a straight and or safe course

(d) Hitting the plaintiff on the sidewalk and or soft shoulder.

(e) Failing to brake, stop, slow down, swerve or otherwise manoeuvre his vehicle to avoid the collision.

(f) Res Ipsa Loquitur.

The Plaintiff's case

He had just come off a bus accompanied by his mother and was standing beside a bag with ground provisions. His mother instructed him to remain beside the bag while she crossed the road in order to deposit a bag she was carrying. He observed about 5 cars passing on the road and the last one swung towards him on the sidewalk. As he stepped backways the motor collided with him and he found himself in the hospital at Spanish Town.

His mother said that on reaching on the other side of the road she heard a bang and when she looked around she saw her son being hit by a motor car and transported on bonnet of car for some distance. The plaintiff fell on the road and the car travelled some distance and stopped.

Robert Brown, the plaintiff's uncle said he was standing in front of a shop near the scene of the accident and he observed a car veering to its left on the sidewalk, picked up the plaintiff off the sidewalk and carried him some distance on the bonnett and then he fell on the road. Mr. Brown said he spoke to the driver who said he thought he had hit a dog. He instructed the driver to take the plaintiff to the hospital and he went to the hospital in a taxi.

The Defendant's case

The defendant specifically denies that the plaintiff was lawfully standing on the sidewalk of the said road and states

that the plaintiff suddenly dashed across the road with a bag on his head into the path of the defendant's motor vehicle. He observed a bus moved off from a stop and as he reached about 30 feet from the bus he saw the plaintiff on the road with a bag on his shoulder, running across the road. He veered his car to the right to avoid him but he collided with his left front fender, and after being thrown onto the bonnett he fell in the middle of the road.

Findings on the Issue of Liability

The question which arises for consideration is whether the defendant was exercising that degree of care and attention which a reasonable and prudent driver would exercise in the circumstances.

The evidence of the plaintiff and his witnesses was positive in all the material circumstances. I was impressed with the plaintiff's forthrightness in his evidence. He was adamant that he remained on the sidewalk in compliance with his mother's instructions, when he was hit. My finding is strengthened by the evidence of his uncle which is to the same effect.

I reject the evidence of the defendant and I find that his version of the accident is most improbable. Even if the accident happened the way he described it would mean that he failed to keep a proper lookout.

In my judgment the accident occurred solely through the negligence of the defendant by his failure to exercise due care and attention at the time of the accident.

Damages

The particulars of injuries pleaded are as follows:

i) Shock and concussion.

ii) Brain injury with unconsciousness.

iii) Laceration to the belly, left elbow and forehead and thighs.

iv) Trauma to the eyes causing them to be swollen and temporarily blinded.

v) Trauma to the knee.

vi) Bleeding through the nose and mouth.

vii) Giddiness and frequent headaches.

viii) Loss of memory.

ix) by reason of his injuries the Plaintiff has greatly reduced in intellectual capacity.

x) By reason of his injuries the Plaintiff is greatly retarded in his school work and finds learning exceedingly difficult if not impossible.

xi) By reason of his injuries the Plaintiff is likely to develop diseases associated with brain damage i.e.

a) Post traumatic Parkinson disease

b) Epilepsy

c) Amnesia

d) Alzheimer dementia.

xii) Severe cognitive deficits as a result of brain damage resulting from head injury, indicated by:-

i) Short term memory

ii) Constructional aproxia

iii) Acalculia

iv) Agraphia

xiii) Widespread dysrhythmic electrical (neurotransmitter) activity in both hemisphers of the brain particularly in the central parietal and the occipital areas bilaterally and the left temporal zone.

xiv) Severe headaches on the vortex of skull that occur frequently and remain unchanged in severity.

xv) By reason of his injuries the Plaintiff will be precluded from earning a living and to develop into a productive person economically or to manage his own affairs and will attract the expenses and sustain the loss of all such persons.

xvi) Swelling of the right hand.

xvii) Bilateral periorbital haematoma and abrasions to the forehead.

xviii) Fracture of the right tibia.

xix) Fracture of the third metacarpal of the right hand.

xx) Fracture of the skull and scarring of the forehead.

The plaintiff, a twenty year old young man testified that after the accident he did not know himself until he realized he was a patient in the Spanish Town Public Hospital. His hand and foot were in plaster of paris and he had a swelling on his forehead. His knee sustained abrasions. He was taken to Childrens Hospital where he was operated on. It was after a period of one year he was able to walk. For two months he was aided by a stick and for the rest of time he walked with a limp. Up to the present time he suffers from pain in his hand and leg.

At time of accident, his eyes were swollen and he was unable to see properly. This lasted for about one month. He used to

attend school before the accident but since then he couldn't perform satisfactorily and his memory was deficient.

He was examined by Dr. Brown, Dr. Hall and Dr. Cheeks while Dr. Golding and Dr. Graham did C.T. Brain Scan and EEG respectively on the plaintiff.

Dr. John Hall, F.R.C.P. Consultant Neurologist gave evidence that he examined the plaintiff sometime in 1992. He produced a medical report dated March 8, 1993 which was admitted in evidence.

"Re: Nicholas Sergeon

Thank you for referring in medico-legal Neurological consultation this boy who is said to have been involved in a road accident on or about 19/2/90. He was unable to give the precise date of the event as he "does not remember". He had been having memory problems, headaches, pain in his right side and an occasional limp in his gait since his discharge from the Spanish Town Hospital since 3 weeks, after the accident.

He recalled going to Dam Head with his mother to seek food, on the day of the accident, and returning by bus with his mother to their bus stop. His mother crossed the road taking a box with her. He remained on the sidewalk with a bag of food on his head. He knew nothing more until he awakened in the spanish Town Hospital later that night and noted an abrasion on his forehead, pain on the right side of his chest, and some difficulty with walking. There was clarity of recall but for an island of Retrograde Amnesia regarding the date of the accident.

Headaches occured spontaneously on the vertex of the skull, 2 to 3 times per week, and lasted about 2 days on each occasion. The attacks had been severe enough to prevent him resuming school attendance which ceased since his accident. He has been attending JAMAL at the Spanish Town Learning Centre but he found that he was not remembering. The severity of the headaches was unchanged. No satellite phenomena were associated with the headaches.

Pain in the right side was located over the right lower rib cage. It was worse on exertion, but unassociated with cough, dyspnoea, vomiting, haematuria or bouts of fever. The attacks of pain occured over a 3 day period every 2 or 3 weeks. Their severity remained unchanged, and had been interfering with his activities of daily living. He had not been previously sick.

Examination revealed a slightly built boy of 110 lb. His heart, blood presure, abdomen, chest spine showed no abnormality.

Neurologically he demonstrated severe cognitive deficits. He was right handed. He could not sign his name or write to dictation. He was unable to name the Prime Minister or the Queen. He was unable to recite the 5 times table. He failed the serial 7s test. Commonly used proverbs such as a stitch in time saves nine could not be interpreted by him. He could not name the colours of the rainbow. He could not explain the difference between a chicken and a cow. There was inability to recall a simple street address given him 5 minutes earlier in the examination. He could not reproduce a simple geometric drawing.

This aggregation of neurological abnormalities namely constructional apraxia, short term memory deficit, acalculia, agraphia, and other cognitive deficits indicated significant brain damage as a result of the head injury in a previously well boy.

Electroencephalography (EEG) gave objectivity to these clinical features by demonstrating widespread dysrhythmic electrical (neurotranmitter) activity in both hemispheres of the brain. Principal areas affected were the central, Parietal and occipital areas bilaterally, and the left temporal area, zones notoriously vulnerable to insult during serious head injury. The EEG anomalies were worsened by the activation procedure of hyperventilation, used in our laboratory to highlight EEG abnormalities.

It is clear that an Epileptic pattern now exists on the EEG: post-traumatic epilepsy occurs in 5-10% of head injury cases. From the wide-spread nature of the EEG abnormalities, affecting both sides of the brain, there is a heightened probability of early onset post-traumatic Alzheimer's dementia and post-traumatic Parkinson' disease, both of which are devastating clinically and socially disruptive disorders, which would impact negatively on his life, lifespan and livelihood. Already his ability to learn and function as a school-boy is gravely compromised. Personality changes are inevitable.

It would have been helpful to have the Spanish Town Hospital record summary: in their absence the neurological evaluation here outlined should assist in your assessment."

By the consent of the parties the medical report dated December 16, 1993 of Dr. Paul Brown, Consultant Surgeon was admitted in evidence;

The report reads as follows:

"Re: Nicholas Sergeon

This patient was admitted to Spanish Town Hospital on February 19, 1990, having allegedly been involved in a motor vehicle accident earlier that day. There was a history of loss of consciousness and he was bleeding from the nose and mouth.

On examination he was responding to painful stimuli and his vital signs were stable. He had contusions of the anterior abdominal wall, swelling of the right hand, bleeding from his nose and mouth, bilateral periorbital haematoma and abrasions to his forehead. There were abrasion also to the left and right thighs and left knee.

X-rays done on admission suggested a possible undisplaced fracture of the base of the third metacarpal of the right hand. Subsequent x-rays revealed a fracture of the right fibula when he was noted to be unable to walk. He made a steady recovering from his many injuries resulting in him being sent home on March 9, 1990.

He was seen in the Surgical Out-Patient Department on April 5,1990, and again on June 7, 1990 when he was noted to be fully recovered and was therefore discharged from our care."

Dr. Rudolph Cheeks, FRCS., Consultant Neurosurgeon testified that he examined the plaintiff on November 30, 1993. He took his history and examined him neurologically then made a medical assessment. A medical report dated December 2, 1993 was admitted in evidence.

The medical report states as follows:

"Medical Report re: Nicholas Sergeon, 15 years

Nicholas Sergeon attended my office for neurological evaluation on 30 November 1993, this being the first occasion on which I saw this individual since he was alledgedly injured in a road traffic accident in February of 1990.

HISTORY

Nicholas was accompanied by his mother, Princess Brown, who witnessed the accident, and the account of events surrounding the accident was provided by them since I was not in possession of any contemporaneous hospital records. According to mother, Nicholas had just alighted from a bus with a box when she, having crossed the road, turned around at the sound of a vehicle and saw the vehicle strike Nicholas who was bounced off the bonnet

and then fell to the ground. She noted that he was unconscious and was bleeding from the forehead as well as from the mouth and both nostrils. Nicholas himself recalls getting off the bus, but next recalls awakening in a hospital bed in Spanish Town hospital. He says he spent one month in hospital, and had a broken rib in addition to the head injury.

PRESENTING COMPLAINTS

The subject complains of periodic HEADACHES which affect the vertex of his head and usually respond to phensic. He also reports that he tends to be FORGETFUL, for example he is inclined to forget one or two items if he is sent to shop for several different things. His mother says that he forgets things which he has been taught at school. Prior to the accident he had not experienced these symptoms.

To direct questioning, he has no other complaints and has never experienced any epileptic seizures.

SOCIAL AND EDUCATIONAL HISTORY

Nicholas is one of eight children. He was attending a primary school at the time of the accident but his mother says that she never got any reports. He left home six months ago and candidly admits to playing traunt on a consistent basis, preferring to spend time with his sixteen-year old girlfriend, Claudette with whom he was having sexual relations. Currently, he plays normally with his brothers, and his social interactions are normal. Additionally, he "does not make any trouble outside", according to mother who also says that he is a good respectful son to her.

EXAMINATION

Nicholas is of healthy general appearance with physiological vital signs (BP 100/80 and pulse 74/min in sinus rhythm), and manifests no clinical evidence of any general medical disorder. Initially shy and reluctant to speak freely he soon relaxed and cooperated fully with the interview. He was alert, spoke with rational comprehensible speech, and was oriented in time and place. The impression gained was that this boy was functioning in the dull/normal range of intelligence. Additionally, he is virtually illiterate but can copy script accurately, as well as diagrams, which, taken with his normal language function indicates that his complex integrated cerebral functions are intact but that he has received almost no education which corresponds with his admission of consistent truancy.

I did not detect anything to suggest any emotional disturbance. A 1 cm scar is noted over the right side of his forehead.

NEUROLOGICAL EXAMINATION

Psychometrically he is slow in the areas of abstract thinking, reasoning ability and serial sevens, and his performance in the digit span was low/normal. Concentration was not impaired. Tests of memory function revealed nothing abnormal with long-term or intermediate recall, for example events of a few months or years ago could be recalled without difficulty but tests of recent memory suggest a deficit of approximately ten percent with respect to both the verbal and visual aspects, i.e. he retains approximately ninety percent of what he is expected to retain.

All the special senses are functional normally, in particular it is noted that he has 20/20 vision bilaterally, full visual fields and normal pupillary responses.

All four limbs are normal in all neurological respects and parietal lobe function as well as cerebellar function are unremarkable.

Essentially then, this youngster who has managed to evade the educational system by "chronic trauncy" is virtually illiterate and anumerate.

ASSESSMENT

The only neurological abnormality I find here is a 10% deficit in recent memory function. The mother's eye-witness account of the accident suggests that this boy did indeed suffer a concussion; she is, of course a lay person but she does describe blood issuing from his nostrils and mouth which in this context suggests a basal skull fracture. It is most unfortunate that the Spanish Town hospital notes are not readily available. Assuming that the mother's recollection is accurate I would conclude that the concussion was of moderate severity as adjuged by the amnesia for the impact up to the awakening in hospital plus the absence of retrograde amnesia. Subtle injury to the recent memory circuit in the temporal lobe can result from this type of diffuse head injury leading to some impairment of recent memory. In other words, the head injury, whilst not severe was a significant one.

Behaviourally he seems none the worse for the accident. His mother says that he shows no personality change, is good and respectful

towards her, and plays normally with others. Thus, with these normal social interactions plus the ability to form and sustain a sexual relationship it is clear that the integrated functions and social conditioning in the frontal lobes are normal.

RESIDUAL DISABILITIES

This boy can be considered to have reached MMI with respect to the accident of 1990.

(1) The defect of recent memory is ten percent, and it is probably the result of head trauma. No other cerebral functions are the result of head trauma. No other cerebral functions are affected. This disability amounts to an impairment of five percent of the whole person according to the AMA guidelines. It will not worsen.

(2) There is a small 1 cm scar on the right side of his forehead which is just visible at conversational distances.

Prognostically, there is a risk of delayed-onset epilepsy during the first five years after head trauma such as this, the vast majority occuring during the first there years. Three years have elapsed without epilepsy in this case. I think his risk of now so doing is of the order of one percent for the next two years.

Secondly, given that this is a single episode of head trauma, apart from the risk outlined in the previous paragraph, it is highly unlikely that he will, in the future, suffer from any new complications arising out of this accident.

Finally, it would be interesting to have a 16-channel computerised EEG carried out, and also to have a CAT head scan done. These tests

can be done in Jamaica and pose no risk to the patient. and maybe, a little more time and effort can be directed towards trying to access the contemporaneous hospital records."

Dr. Trevor Golding, a Consultant radiologist testified that on the 6th January, 1994 performed a C.1 Brain Scan on Nicholas Sergeon. There was no evidence of chronic subdural haemotomac In his opinion the chances of brain damage are absolutely minimal.

Dr. Daniel Graham, Consultant Neurologist testified that he did a EEG study on the plaintiff about June 29, 1994. His findings were that the plaintiff had a normal EEG.

The medical report states "The patient, is a fifteen year old right handed boy, awake and alert. Background of this resting record consists of posterior dominant alpha activity, frequency 10 - 11 Hz, which attenuates to eye opening. Focal slow waves, epileptiform spikes, spike-wave or polyspike discharges are not noted. Hyperventilation is satisfactorily performed and produces no significant electrographic changes."

In his opinion this is a normal wake EEG. Further it is the presence of spikes or sharp waves which are electrographic determinants of seizures and <u>not</u> dysrhythmic electrical activity as indicated by Dr. Hall.

I accept the submission of Mr. Henry, Learned Counsel for the defendant that in so far as head injuries are concerned the dominant expertise lies more with the Neurosurgeon than the Neurologist. Besides, Dr. Cheeks' assessment which was supported by Dr. Graham a consultant neurologist and Dr. Trevor Golding a Consultant Radio-

logist are more recent. Accordingly the greater weight of the medical evidence lies with Dr. Cheeks, Dr. Graham and Dr. Brown. On a balance of probabilities I find that the only neurological abnormality suffered by the plaintiff is a 10% deficit in recent memory function. In addition I accept unreservedly the assessment of Dr. Paul Brown in his report dated December 16, 1993 which states inter alia that ..... on June 7, 1990 he was noted to be fully recovered and was therefore discharged from our care."

For these reasons I am of the view that an award of $750,000 is appropriate for the injuries suffered by the plaintiff. And I so award.

Special Damages have been agreed at $7450.

Accordingly, there is judgment for the plaintiff on the claim in the sum of $750,000 as General Damages with interest at 3% from the date of service of writ to date of judgment. Special Damages agreed at $7450 with interest at 3% from 19/2/90 to date of judgment.

Costs awarded to the plaintiff to be agreed or taxed.