

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUITS NOS. C.L. S.089 OF 1989
C.L. B.091 OF 1989

CONSOLIDATED

BETWEEN RAYMOND SIMMS PLAINTIFF
A N D EVEL COCKBURN DEFENDANT

BETWEEN ROY BROWN PLAINTIFF
A N D EVEL COCKBURN DEFENDANT

J. Graham instructed by Broderick and Graham for Plaintiffs.

C. Samuda instructed by Piper and Samuda for Defendant.

February 27, 28 1991; and May 9, 1991.

ELLIS, J:

The plaintiffs claim damages from the defendants in these actions for injuries caused by the negligence of Lloyd Aarons, the servant or agent for the defendant.

The plaintiffs say that on the 20th February, 1989, they were riding bicycles along the left side of the road going towards Spanish Town. At a point along the way called the Caymanas crossing, they were knocked down from behind by a Volkswagen van owned by defendant and driven by Lloyd Aarons.

At the time when they were knocked down, they were riding in single file with Brown leading. Both cyclist fell on the left soft shoulder and each man suffered personal injuries.

Brown had lacerations to his head and other injuries as set out in his particulars of injuries. He was hospitalized for six days and he has lost the sense of smell and now suffers black outs periodically.

As a consequence of his injuries, Brown said he has lost his bicycle valued at \$2,500. He could not work for 26 weeks at \$250 per week. He spent \$300 for medication, and \$400 for transportation. He also spent \$1,250 for hospitalization and treatment making a total of \$6,450 special damage.

Simms suffered lacerations to his left side of his face, lacerations to his left elbow, left hand, left buttock and left ankle.

His cycle was damaged beyond repairs he said and he claims \$7,150 for the cycle. In addition he spent \$347 and \$435 for medication and transportation respectively. He also claims \$300 as the cost of his hospitalization and loss of earnings for 2 weeks at \$150 per week.

The driver of the defendant's vehicle Lloyd Aarons contended that on the 20th February, 1989, he was driving the van to Bog Walk. He said at the Caymanas crossing he was involved in an accident with the plaintiffs. He had seen the plaintiffs riding on the right side of the road and they were then 4 - 5 chains in front of his vehicle. At that time he was driving on the left side of the road with his headlights on as the road was dark.

He continued driving and on reaching to within 1 chain of the plaintiffs each of them swung into the path of his vehicle and collided into the front panels of the van. His windscreen was broken and his vehicle ended up in the middle of the road 3 chains from where the men were.

In cross-examination, he denied the particulars of negligence ascribed to him in the statement of claim. His answers suggested that the plaintiffs were contributory to the accident.

On the evidence, I make the following findings:

- (i) The cycles were adequately provided with reflectors;
- (ii) The plaintiffs were riding the cycles on the left side of the road going towards Spanish Town;
- (iii) The plaintiffs did not swing their cycles into the path of the Volkswagen van;
- (iv) The cycles were hit from behind as the damages to the cycles clearly suggest;
- (v) The plaintiffs were clearly seen by the driver of the defendant's vehicle;
- (vi) The driver of the van did not pay attention to the presence of the plaintiffs on the left of the road;

- (vii) Neither plaintiff is in anyway to be blamed for the accident;
- (viii) The driver of the motor van is solely to be blamed for the accident;
- (ix) The defendant is liable for the consequences of the plaintiffs injuries.

DAMAGES:

The plaintiff Brown gave evidence of special damages in an amount of \$6,450. Of that amount \$2,500 represents the cost of his bicycle. I am not convinced that the cycle is a total loss. It can be repaired and even if when repaired it may not be suitable for racing purposes, it would still be of some value. I would award not more than \$1000 as damage to the cycle. In that light this plaintiff's claim for special damages is reduced by \$1,500. He is there awarded \$4,950 as special damages with interest at 3% as of 20th February, 1989.

GENERAL DAMAGES:

There is no doubt that this plaintiff's injuries were serious. He has, however, on the evidence, recovered very well without serious residual consequences other than the loss of sense of smell. I am not in agreement with Mr. Samuda that that disability has not been well founded by evidence. The agreed medical report says so.

In the circumstances of the injuries and on a consideration of cited cases I assess the damages here to be \$35,000 for pain and suffering and loss of amenities.

The plaintiff Brown is therefore awarded \$35,000 as general damages with interest at 3% as of date of service of the Writ.

Simms stated that his cycle cannot be repaired and it would cost \$7,000 for a replacement.

I do not accept that statement. The cycle to my mind is damaged to an extent not more than \$1,200 and can be repaired. He claimed \$347 for medication, \$435 for transportation to and from hospital, \$300 as the cost of his hospitalization and \$300 for loss of 2 weeks earnings. That gave him a total of \$2,582 as special damages.

Professor Golding stated that in his opinion Mr. Simms' disability would have lasted three weeks. I would accept that statement. Mr. Simms in his evidence said he was on two weeks sick leave with pay. In that case I find that he is only entitled to one week's loss of earning at \$150 per week. In that case his special damages are reduced by \$150 to \$2,432. I award him that amount with interest at 3% as of February 20, 1989.

Mr. Simms suffered laceration to his face, legs and arms. These have caused him some slight cosmetic impairment but without any permanent disability.

In the circumstances I award him \$10,000 as adequate compensation for his pain and suffering with interest of 3% as of date of service of the writ.

Both plaintiffs are to have costs to be agreed or taxed.