IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. S116 OF 1980

BETWEEN	LAROSE SIMPSON	PLAINTIFF
AND	EDGAR GENTLES	
AND	T. G. TAYLOR	DEFENDANTS

Mr. A. C. Mundell and R. Pershadsingh Q.C. for Plaintiff
Mr. Trevor Levy for 1st Defendant, Gentles.
Mr. Michael Vaccianna for 2nd Defendant, Taylor.

Heard: 25th and 26th May, 1982
Delivered: 12th July, 1982

JUDGMENT

ELLIS J. (AG.)

The Plaintiff Larose Simpson claims damages from the defendants for injuries she received on the 12th of July, 1978, when a motor car KW 416, owned by the second defendant Taylor, and driven by the first defendant Gentles, knocked her off the sidewalk on Burke Road in Spanish Town. She also claims Special Damages consequential on the injuries she received.

The plaintiff was given leave to amend her Statement of Claim to add "the first defendant admitted his negligence by pleading guilty to careless driving in the Spanish Town Court", as 'h' to the Particulars of Negligence and "Post traumatic psychoneurosis" as 'e' to the particulars of Injuries.

The first defendant admitted the collision between the plaintiff and the car driven by him but denies that he was negligent. He says that the plaintiff was the sole cause of the injuries she sustained or alternatively, she contributed to them by walking across the road into the path of his vehicle. He alleges that he was acting on behalf of the second defendant and was not on a frolic of his own.

The second defendant admitted that the first defendant was the driver of his car but he says that first defendant was not his servant or agent.

Plaintiff's Case

The plaintiff says that on the 12/7/78 at about 3 p.m. she

was on Burke Road in Spanish Town. She was returning from an examination and was talking with another girl in front of a Dry Cleaning Establishment, She was on the sidewalk facing the shop. Her right side was towards the Spanish Town Hospital end.

While she was standing there conversing with her friend, she heard a noise and as she turned her head, a car hit her on her right side and hit her right leg on to the concrete column. She became unconscious and found herself in hospital 3 days after. She discovered that her right leg was amputated below the knee and she felt severe pains to her head and all over her body. The pains she said continued for about 2 months and she still have pains to her right side and shoulder and to the stump of her leg. She says her sight has deteriorated since accident and she is unable to read for long and her powers of concentration has been impaired.

The medical certificates which support her injuries and present mental and psychological condition were by consent, admitted in Evidence as Exhibit 1 and 2.

She was cross-examined by Mr. Levy and she denied that she was in the act of crossing the road when she was hit. She said she would not have had to cross the road to get transportation to her home. In answer to Mr. Vaccianna, she said she did not see the car before it hit her.

In support of her case, she called one Isaac Tomlinson. He said that on the 12/7/78 he was walking along Burke Road from the Railway end at about 3.30 p.m. He saw a car drove pass and it was going 2 sides of the road. The car went into the right side of the road and hit down the plaintiff whom he did not know before. He rushed to the scene and spoke to the driver of the car and he called for assistance and the plaintiff was taken to hospital.

In answer to Mr. Levy, he said he saw the car zig-zag and that the plaintiff was facing the shop with her back to the road.

First Defendant's Case

This defendant said that on the 12/7/78 at about 2 p.m. - 3 p.m. the 2nd defendant came to his garage and asked him to do some work on

his motor car KW 416. He told the 2nd defendant that he was busy but the 2nd defendant asked him to take him home, drive back the car and do the work and return the car. He took the 2nd defendant home and on his way back to the garage the accident occurred.

He said that on Burke Road, he saw a young lady coming across the street walking fast. She was about 22 ft. from him then, and he eased up to allow her to pass. The young lady who turned out to be the plaintiff, turned back and he tried to pass her on her right. She turned again and he tried to stop but the car hit her and he tried to avoid her by turning to his left and the car ran over her leg.

At the time of collision he was driving about 15 - 20 mph. and the car hit plaintiff on the right hand side of the road. After the collision police came on the scene, and he was arrested.

He said that the 2nd defendant and himself went to Dyoll Insurance where he gave a statement and he did not hear 2nd defendant deny that he had given him the car to drive.

In cross-examination by Mr. Vaccianna he denied that he was using the car to go to buy patties.

In answer to questions by Mr. Mundell, he said that the plaintiff was crossing the road and when he saw her she was about 2 - 3 ft. from the sidewalk and she walked about 4 - 5 ft. and reached the white line in the centre of the road which was 25 ft. wide.

He denied that plaintiff was standing on the sidewalk when she was hit.

That was the first defendant's case.

Second Defendant's Case

This defendant said that on the 12/7/78 he took his car to the first defendant's garage for repairs. He says he left his car at the garage and went home on foot. His home at Greendale is about ¾ of a mile from the garage. He said that when he was at his home he got a message and he went to Burke Road where he saw that his car was involved in an accident. The car was slightly damaged to the right front fender. He says he did not give first defendant any permission to drive his car. He authorised him only to effect repairs.

In answers to question put to him in cross-examination he said that first defendant had on occasions before 12/7/78 took him home in his car and drove the car back to the garage to be repaired. However, that did not happen on the 12/7/78.

Cause of Accident

The plaintiff has only stated that she was hit by the car and that she suffered injuries and consequential loss. She was not able to give any evidence herself as to the behavior of the car prior to it colliding with her.

The evidence to that effect was given by Isaac Tomlinson. He said he saw the car pass him on Burke Road and it was going 2 sides of the road and then hit into the right bank and collided with the plaintiff. When car collided with the plaintiff he was about 1 chain away. He did not see the plaintiff crossing the road and her face was not turned to the road when she was hit.

In answer to that the first defendant who deponed as to the facts from the defence says that he saw the plaintiff crossing the street and he slowed down to allow her to pass. The plaintiff crossed the road to the middle then turned back. He tried to pass her, but the car collided with her. When it is recalled that he said the width of the road was 25 ft., and that his speed was between 15 - 20 mph. and that when he saw the plaintiff she was 2 - 3 ft. from the right side of the road, it is hard to conceive how there could have been a collision. Then again his account as to the manoeuvres he made with his car is, to put it mildly, fantastic.

I therefore hold that the first defendant's version of the accident is not credible. I accept on a balance of probabilities the plaintiff's version and I find that -

1. The car driven by the first defendant hit the plaintiff whilst she was on the sidewalk.
2. The car was driven in a zig-zag manner that is to say, it went from side to side.
3. The first defendant drove without due care.
4. The plaintiff was not crossing the road at time of collision.

In the circumstances, I find that the first defendant's driving was the sole cause of the accident.

Liability

The first defendant contends that he was driving for and on behalf of the second defendant. That contention is denied by second defendant. I accept the contention of the first defendant that he was driving for and on behalf of the second defendant. The cases cited by Mr. Mundell i.e. Bernard v. Sully and Omerod v. Crossville Motors 1953 2 A.E.R. 753 are supportive of that finding. In addition the case of Morgans v. Launchbury (1972) 2 All E.R. 606 is quite to the point.

In the circumstances, I find that the second defendant instructed the first defendant to drive his car and instructed him so to do on his behalf and for his benefit.

The second defendant is therefore liable on the principle "respondeat superior".

Damages

The special damages of $1695.00 have been agreed. The plaintiff's injuries as are contained in Particulars of Injuries are:-

(a) Shock

(b) Pain

(c) Severe crush to the right leg resulting in a below the knee amputation.

(d) Blow to the head.

(e) Post traumatic psycho-neurosis.

The medical certificate which was, by consent, admitted in Evidence as Exhibit 1 confirms the particulars (a) - (d). That which was also by consent admitted in evidence as Exhibit 2 confirms particular (e). Mr. Vaccianna addressed the court to say:-

1. There should be no award for damages in respect of loss of Prospective Earnings as a nurse since that head would be mere speculation.

2. There should be no damage for Loss of Future Earnings as a teacher since plaintiff's position as a Basic School Teacher has not changed. He invited the Court to bear in mind Lord Diplock's statement in Brownings v. War Office that damages for negligence are

compensatory and not punitive.

Mr. Mundell for the plaintiff argued that Damages should be under the following heads:-

1. Pain and suffering.
2. Loss of Amenities which would include Loss of Prospects of marriage.
3. Disadvantage on the Labour Market.

In assessing damages from Loss of Amenities the plaintiff's expectation of life at the date of trial is relevant. This was well stated by Singleton L. J. in Bind v. Cocking (1951) 2 T.L.R. 1262 when he said:

> "..... Just as the consideration of age must be remembered when arriving at the loss of earnings in the case of a plaintiff who can never work again, so it appears to me must that element be remembered when damages are being assessed for loss of amenities of life."

The plaintiff is now aged 24 and her expectation of life is obviously high. She will have to live with the loss of her right leg for a considerable time. I have seen the plaintiff and there is no doubt that she is an attractive young lady for whom the prospects of marriage must have been good. From Dr. Doorbar's certificate and an objective assessment, her injury and loss of leg have substantially reduced her prospects of marriage. She should be compensated for that reduction. The plaintiff has suffered a permanent injury to her leg. She now teaches at a Basic School, but if she loses that job, that injury and loss of leg might millitate against her getting work. In other words, the plaintiff is at a disadvantage on the Labour Market. This disadvantage attracts damages.

The question now is what should be the quantum of damages?

I am reminded of Lord Diplock's finding on Browning's case that "damages for negligence are compensatory and not punitive, the dominant rule in relation to damages for financial loss is res titutio in integrum, to restore the injured party to the position in which he would have been if the loss had not been sustained".

With the above principle in mind, and on a consideration of

the circumstances and the arguments in this case, I hold that an amount of $80,000 is an adequate compensation to the plaintiff.

That amount is made up as follows:

For Pain and Suffering and Loss of Amenities including loss of prospect of marriage	$70,000
Disadvantage on Labour Market	$10,000
Total General Damages	$80,000

There will be judgment for the plaintiff in $1695.00 with interest at 4% from 12/7/78 and $80,000 General Damages with interest at 8% from 18/6/80. Costs to be agreed or taxed.

ELLIS J (AG.)