

Sub Ct. Damages - Assessment - Question - whether injury sustained by plaintiff to his right testicle has caused him permanent partial impotence and post-traumatic anxiety neurosis with depression. Evidence. It finds injury has not caused partial impotence. Damages assessed.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. S 212 OF 1983

No Cases referred to

Evidence Remedies

BETWEEN

PAUL SIMPSON
(b.n.f. Josephine Mason)

PLAINTIFF *✓ comp*

A N D

JAMAICA OMNIBUS SERVICES
LIMITED

DEFENDANT

R. Pershadsingh, Q.C., and W. B. Frankson, Q.C., for plaintiff.

D. Goffe, N. Davis and G. Patterson for defendant.

HEARD: January 18 & 20, 1988, December 19, 1988 and April 20, 1989.

PANTON, J.

At the end of the case for the plaintiff, liability was admitted by the defence. The matter then proceeded as an assessment of damages.

The major issue to be determined is whether the injury sustained by the plaintiff to his right testicle on August 2, 1977, has caused him permanent partial impotence and post-traumatic anxiety neurosis with depression.

THE EVIDENCE

The plaintiff was twelve years old at the time of the injury. He is now 24. He testified that he suffers from constant pain in the right testicle, particularly when he engages in physical activity such as cycling. He further testified that he had not been having sexual intercourse because although he was not experiencing any problem getting an erection, he was unable to maintain it because of pain. Since 1978, he said, he had not been successful in his attempts to have sexual intercourse due to pain; the last occasion on which he tried to do so was in 1980.

Dr. Ruth Doorbar, a Clinical Psychologist, assessed the plaintiff in early 1984 and concluded that he has "a psycho-neurosis characterized by anxiety and depression." She did not verify the information given to her by the plaintiff in relation to the plaintiff's injury and life style. Her assessment was done solely on what the plaintiff had told her. However, due to

her recognition of the fact that the plaintiff may have had a motive for exaggerating his symptoms, she referred him to Dr. Robert Wan, an experienced Urologist.

Dr. Wan's examination of the plaintiff in mid 1986 revealed that both testes were of normal size and consistency but, on the right, the epididymis was thickened. There was, he said, no connection between impotence and the epididymis. He concluded that the plaintiff had indeed suffered a right scrotal injury in 1977 resulting in injury to the testis and haematoma to the scrotum. The haematoma refers to bleeding within the scrotum which would cause swelling. The 1977 injury did not affect the penis, nor did it cause any loss of tissue or permanent damage to the testis. His findings are inconsistent with the complaint of impotence.

Incidentally, Dr. Wan's findings differed significantly from those of Dr. Dawson who saw the plaintiff shortly after the injury, and also in 1988.

Dr. Wan further testified that there was a remote possibility that the plaintiff was still suffering pain and swelling, on and off; and that he could not exclude a psychological cause with respect to the impotence complained of.

Dr. Herma Jean Carpenter who manages the Comprehensive Health Centre at 55 Slipe Pen Road where the plaintiff has been an out-patient since 1980, testified that the plaintiff visited the clinic in 1985 on three occasions for treatment of a sexually transmitted disease. Her evidence was that such a disease is contracted only during sexual intercourse.

FINDINGS

I do not believe the plaintiff's testimony that due to pain in the right testicle he has been unable to have sexual intercourse. I cannot accept that the plaintiff is permanently partially impotent, yet an experienced Urologist, after a detailed examination, has failed to find any physical

evidence to support such impotence. On a balance of probabilities, I find that the accident in 1977 has not had the effect of rendering the plaintiff partially impotent. It is not surprising therefore that Dr. Carpenter's evidence indicates that the plaintiff has been sexually active.

I was impressed by Dr. Wan's evidence. Wherever his evidence conflicted with Dr. Dawson, I accepted the former's due to his training and experience in urology.

So far as Dr. Doorbar's testimony is concerned I am of the opinion that she did not have sufficient material on which to make a proper assessment. It was necessary for her to have had some verification of what the plaintiff told her in relation to his life style. She should have at least interviewed persons close to him at home and at the workplace. In my judgment, the plaintiff gave false information and exaggerated. Indeed, Dr. Doorbar recognized the exaggeration by referring him to Dr. Wan.

There is no doubt that the plaintiff's right testis was injured in 1977; it became swollen, painful and tender. However, when the plaintiff was examined in 1986, the testis was not abnormally hard. To the medically trained hands and eyes of Dr. Wan, the plaintiff had made a full recovery. Notwithstanding this recovery, I find also on the basis of Dr. Wan's evidence, on a balance of probabilities, that the plaintiff has pain and swelling "on and off".

DAMAGES

Mr. Goffe has suggested an amount of \$15,000.00, whereas Mr. Frankson has countered with a submission of \$55,000.00 - \$70,000.00 for general damages.

In my judgment an award of \$27,000.00 is fair and adequate compensation for the pain and suffering endured by the plaintiff.

There will be judgment for the plaintiff as follows -

General damages: \$27,000.00 plus interest at 3% from the date of service of the writ to April 19, 1989.

Special damages: \$1,581.00 plus interest at 3% from August 2, 1977 to April 19, 1989.

Costs to the plaintiff to be agreed or taxed.