

NMLS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L. 1992/S-151

BETWEEN	FITZROY SMITH	PLAINTIFF
AND	CURTIS NELSON	DEFENDANT

Mr. Maurice Frankson instructed by Gaynair & Fraser for the Plaintiff.

Mr. Raphael Codlin, instructed by Raphael Codlin & Co., on the Record for the Defendant. The Defendant not appearing.

Heard on 11th May 2001 and 4th September 2002

Campbell J.

On the 18th May 1992, the Plaintiff filed Writ of Summons and Statement of Claim, both dated 18th May 1992.

The Statement of Claim, alleged at paragraph 2;

On or about the 4th day of March, 1990 at Lampart District, Frankfield P.O., in the parish of Clarendon, the Defendant unlawfully, maliciously and without reasonable and/or probable cause assaulted and beat the plaintiff by punching him with a fist, as a consequence whereof the Plaintiff received personal injuries and has suffered loss and damage.

Particulars of Damages

1. Facial injuries
2. Crepitus of left angle of mandible
3. Crepitus of right body of mandible
4. Bilateral mandibular fracture of right body.
5. Displaced mandible

On the 18th August 1992, the Defendant having failed to enter an appearance, Interlocutory Judgement was entered in default of appearance against the defendant.

On the 20th October 1992, an Order was made setting aside the Interlocutory Judgement, and granting the Defendant leave to file Defence and Counterclaim within fourteen days of the Order. On the 2nd November 1992 the Defence and Counterclaim was filed. On the 12th March 2001, Notice of intention to tender in evidence hearsay statement made in Document was filed and served on the defendant's Counsel on the 13th March 2001.

Notice of the trial of this action was filed and duly served upon the defendant through his attorney-at-law, Mr. Raphael Codlin, on the 10th April 2001. The Plaintiff, aged 70, contractor, of Frankfield, Clarendon, was on the 4th March 1990, at about 2:00am on his way from a "nine-night" at a district called Lampart in that same parish.

He testified that whilst he was leaving, in the company of two others, he heard a siren blowing. He observed the defendant sitting in a motorcar with one hand on the steering wheel. The plaintiff said something and continued on his journey. The defendant trailed the plaintiff's party and confronted the plaintiff, asking him "how you mean fi a call me mad man bway?"

The plaintiff said he was looking at him and was able to see him by the light of the moon, which shone "as bright as day". He said he suddenly felt a hard blow in his left jaw. He lost consciousness until the following morning at 8:00am. He was unable to talk. He made a report at the Frankfield police Station. He consulted a private doctor in Frankfield and was referred to the Spaldings Hospital, not receiving treatment, he sought treatment in Kingston and was referred to the Kingston Public Hospital. He was admitted for a total of fifteen (15) days, where he was x-rayed some three occasions. He received reconstructive surgery to his jawbone. His jawbone was wired. He was operated on three times in the course of a month.

The first of the operations was done on his first admission to K.P.H. On that occasion he was admitted for three or four days. The second operation was concerned with his lower right jaw. On the third occasion he was in hospital for a period of two to three days.

He passed blood in his urine for about fifteen days. The binding-wire was removed after three months, allowing him to talk. During the period the binding wire was inserted, his meals consisted of strained soup and porridge, which he would take through a straw. He cannot wear dentures, and is unable to masticate his food. His meals have to be crushed before it is eaten.

As a result of the injury to his jaw, his eyes would become watery, with his "right eye giving him greater difficulty". He has since worn glasses. He has had difficulty hearing out of his left ear since the assault.

The defendant was convicted in the Resident Magistrate Court for the assault upon him, and a case brought against himself and his cousin in respect of the incident was dismissed.

At the time of the assault, he had a contract to paint the Supreme Court. His employees were able to complete the contract in his absence. For the three months the binding wire was in, he was unable to work. He was unable to obtain any further contracts. He has resorted to farming.

The medical report dated 1st April 1990, prepared by Dr. Sh. Ornstein, Oral and Maxillo-Facial Surgeon of the Kingston Public Hospital, stated inter alia;

"Clinical examination at that time revealed minimal facial swelling, mobility and crepitus of the left (L) angle and of the right body of the mandible, in the para-symphyseal region, which was painful to manipulation.

Radiographic findings confirmed the diagnosis of ;
Bi-lateral mandibular fractures of the left (L) angle and
right body which were significantly displaced."

I find that the defendant assaulted the plaintiff causing him the injuries testified to by the plaintiff, some of which were enumerated in the medical report dated 1st May 1990.

Special Damages

Mr. Frankson, quite rightly conceded that he was unable to prove the items of special Damages.

General Damages

Mr. Frankson referred the Court to the following cases: George Dawkins vs Jamaica Railway Corporation, (Khan Vol. iv page 147), Clarke J. on 24th January 1997. Plaintiff, 45, injured in train accident on the 11th March 1984. Both eyelids, multiple facial fracture. The updated award is \$450,000.

Damion Campbell vs. Kasten Dyke and Earl Risten (Khan Vol. iv page 149), Reid J. on 18th April 1995. The plaintiff, 7, suffered injury to mouth, loss of three upper permanent teeth, experience some difficulty in speaking, loss some taste of food. \$320,000 awarded for general damages. Updated this is \$594,385.28.

Florence Samuels vs. Michael Dayes (Khan Vol. iv page 151).

Plaintiff, 33, housewife, unconsciousness, lacerations to face, superficial laceration to forehead and below left eye. Orr J. awarded \$380,000 in March 1996. Updated is \$553,704.99.

The plaintiff's injuries, has residual deficits of intermittent paresthesia of the left lower lip. I make an award of \$500,000 for general damages. Cost to the plaintiff to be agreed or taxed.

Interest at 6% from 15th June 1992.

Costs to the Plaintiff pursuant to Schedule A.