

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW;

SUIT NO. C.L.S012/1977

Between	Sybil Smith	Plaintiff
A N D	Caribbean Car Rental Ltd.	1st Defendant
A N D	J. Buchanan	2nd Defendant.

Mr. W. B. Frankson instructed by Gaynair & Fraser for plaintiff.

Mr. D. Scharschmidt, instructed by Livingston, Alexander & Levy for defendant.

Delivered 19th February, 1979

Theobalds J. (Ag.)

This is a claim for damages in negligence arising out of a collision between a Fargo motor truck owned by the plaintiff and a motor vehicle owned by the first defendant and driven at the time of the collision by the second defendant. Although a defence and counter claim had been filed, at the trial liability was admitted by the defendants; quantum only was in dispute.

The plaintiff gave evidence that she had bought the Fargo truck as a new unit from the local agents Motor Sales and Service Co. Ltd., under a hire purchase agreement. At the time of the collision the truck was just under 18 months old. She used it for haulage of gravel, marl and cement. Although she kept no account books she estimated her weekly net earning from the unit at Three hundred dollars (\$300.00). This failure to keep books cannot be regarded as unusual or strange in the context of present day practice. Indeed it is more the norm than otherwise. The plaintiff was searchingly cross-examined as to how she arrived at this Three hundred dollars (\$300.00) per week, estimate of her weekly income. She could only indicate to the Court that she had expenses in relation to tyres, oil, and general servicing but she could not help with the actual costs thereof. She did insist however that "whenever it works and come in I take expenses out of it".

At the trial of this case the Court was urged that in calculating damages for loss of earnings the plaintiff's liability to Income Tax and Surtax should be taken into account. It was urged strenuously that this principle, established by the House of Lords in British Transport Commission and Gourley (1949) 1 K. B. 642 ought to apply to this plaintiff's claim for loss of use of Three hundred dollars (\$300.00) per week in relation to her damaged truck. No local authority in support of this proposition was cited and judgment was reserved expressly in order for the Court to satisfy itself as to the existence or otherwise of such an authority. Not surprisingly none has yet been unearthed and this Court is not prepared to break new ground in spite of the forcefulness and apparent logic in the argument put forward. A critical analysis of the principle enunciated above discloses some obvious weak links were it applied in the Courts in Jamaica. If judgment were entered for the plaintiff for an amount less Income Tax it would be the defendant who would stand to gain because a judgment in a sum less than the actual damage sustained would be collectable from him. Further what means are available whereby the court could be sure that the amount deducted for Income Tax would ever reach to the Commissioner of Income Tax. The Court is being asked to undertake the role of Income Tax Assessor, Accountant and or actuary. It is the plaintiff's duty to submit returns to the Income Tax Department and were the rule in Gourley's case to be applied it would be the defendant and the defendant alone who would benefit; for this reason I hold that it would be impractical to apply this rule in the courts of this island.

I award damage on a basis of six (6) months or twenty-four (24) weeks loss of earnings instead of the eleven (11) months claimed. See H. L. Motorways v. Alwalbi (1977) R. T. R. 276. The figure of Three hundred dollars (\$300.00) net loss has not been challenged successfully or at all. Indeed the submissions made to me in respect of deductions of an amount for Income Tax have all been based on an accepted figure of Three hundred dollars (\$300.00) per week loss of earnings. Although the plaintiff has not produced figures to show details of her expenses

I accept her evidence that she has taken such expenses into consideration in arriving at her estimated net income of Three hundred dollars (\$300.00) per week. Counsel agreed on Repair Bills of Three thousand dollars (\$3,000.00), Two hundred and ninety-four dollars and twelve cents (\$294.12) and Three thousand seven hundred and fifty-six dollars and ninety six cents (\$3,756.96) a total of Seven thousand and fifty-one dollars and eight cents (\$7,051.08). The amount claimed for repairs in the Statement of Claim was Six thousand eight hundred and thirty-nine dollars and fifty-five cents (\$6,839.55) and there was no application made to amend this figure. The lesser figure of Six thousand eight hundred and thirty-nine dollars and fifty-five cents as set out in the Statement of Claim is therefore awarded. To the amount of Six thousand and eight hundred and thirty-nine dollars and fifty-five cents (\$6,839.55) is added Seven - thousand two hundred dollars (\$7,200.00) representing 24 weeks loss of earnings at Three hundred dollars (\$300.00) per week. Judgment is accordingly entered for the plaintiff against both defendants. on the Claim and on the Counter claim. On the claim for Fourteen thousand and thirty-nine dollars and fifty-five cents (\$14,039.55) with costs to be agreed or taxed.