

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1999/S265

BETWEEN	KELLANDO STEWART (Suing by his mother and next friend Jarine Williams)	1 ST PLAINTIFF
AND	JARINE WILLIAMS	2 ND PLAINTIFF
AND	DELROY FRAME	1 ST DEFENDANT
AND	OWEN WILLIAMS	2 ND DEFENDANT

Eric Frater, and Althea McBean-Wisdom instructed by Frater, Ennis and Gordon for the plaintiff.

Defendants unrepresented and not appearing.

Heard on 30th November 2001 and 9th September, 2002

Campbell J.

On the 20th December 1999, this action was commenced by Writ of Summons against the Defendants jointly and severally, claiming Damages for negligence, that the First Defendant on the 23rd March 1994, being a servant/agent of the Second Defendant so negligently rode a Honda 50-c motorcycle owned by the Second Defendant, that it collided with the Plaintiff and infant on the Wharf Road, Mt. Pleasant, Lucea, in the Parish of Hanover.

On the 20th March 2000, the plaintiff filed a Statement of Claim that particularised the Plaintiff's injuries as follows;

- a. Unconsciousness
- b. Circular laceration 5cm long of left parietal scalp, from which brain tissue extruded.
- c. Compound depressed fracture of left parietal bone.
- d. Torn dura mater, and locally damaged brain.
- e. Laceration of right parietal scalp with considerable swelling of right cheek.
- f. Fracture of right femur.
- g. Early post-traumatic epilepsy with focal seizures of the right limbs becoming generalised.
- h. Increased risk (25%) of developing permanent post traumatic epilepsy
- i. Walks with a limp.
- j. Shock, pain and suffering.

On the 29th January 2001 Interlocutory Judgment was entered in default of Appearance and the delivery of Defence. On the 11th June 2001, the Master made an Order on Summons to proceed to Assessment of Damages. On the 13th November 2001, Notice of intention to rely on the Medical Report of Dr. J.A. McHardy was filed in the Supreme Court.

On the 3rd March 1994, the Plaintiff then aged 7 years, was on his way to school; he was accompanied by his cousin. Whilst proceeding on the

embankment, he was struck by the first defendant who was overtaking a motorcar. The plaintiff was thrown in the "banana-walk of a nearby yard".

The plaintiff lost consciousness and was transported to Lucea Hospital then to the Cornwall Regional Hospital on the same day, from where he was flown to the Bustamante Hospital for Children. Dr. McHardy reported that He had sustained circular laceration 5cm long to his left parietal scalp. Also laceration to right parietal scalp with considerable swelling of his right temporal scalp and right cheek. The plaintiff's right femur was fractured. He regained consciousness on the 26th March 1994. The left scalp became infected and grew a variety of organisms. The depressed fracture was elevated and 7cm tear in the underlying dura mater repaired. He had early post traumatic epilepsy and has, since the accident, averaged about three epileptic attacks per year. He walks with a limp. He has wet the bed since the accident, and walks in his sleep, making loud noises. His grandmother notes that there have been changes in his behaviour since the accident. He is now "more aggressive and ignorant" His growth is stunted and there are no signs that he is maturing, e.g., lack of pubic hairs.

General damages

The Court was referred to the Dudley Burrell (b.n.f. Margaret Hill) v United Protection Ltd . and David Simpson, Suit No. C.L. 1992/B072 reported in "Recent Personal Injury Awards" Volume 4 by Ursula Khan.

On 23rd October 1996, Miss Justice Kay Beckford awarded \$1,372,000 for pain and suffering; loss of earning capacity, \$313,280; special remedial school, \$120,000; transportation, books, and uniform, \$60, 000. The Plaintiff, aged 8 was hit down by a van. The following injuries were noted;

1. unconsciousness for two days.
2. Periorbital swelling.
3. Right subconjunctival haemorrhage with no peripheral border.
4. Fracture of base of skull with moderate to severe cerebral contusion.
5. Abrasion on anterior abdominal wall.
6. Abrasions to both knees.

He was admitted to Spanish Town Hospital and transferred to Bustamante Hospital. On visits to hospital, he was noted smiling and giggling inappropriately. Psychometrically, his concentration and abstract thinking were impaired as was his capacity to learn. Total of \$1,865,280 updated to December 2001. This provides an award of \$2,464,639.20.

The most recent medical report that this Court had in respect of Stewart is that of 4th August 1994. In that report it is stated, "He will make a maximum recovery from his injuries in one or two years." I find the evidence of his grandmother helpful. She says his injury has affected his schooling; he has stopped attending because of severe headaches. That he "wets his bed every night

up to last night". He was unable to speak after regaining consciousness, and when he did, his mother's testimony was, he spoke "foolishness" for weeks, and failed to recognise family members. Stewart's injuries are clearly more severe.

In Isiah Muir v Metropolitan Parks & Markets and Dennis Whyte, higgler, Suit No. C.L. 1991/M090 reported at Khan Volume 4 p. 185, injured when struck with pipe iron and chopped with machete. She had compound fracture of the skull, laceration of left forehead and unconsciousness.

On the 21st July 1995, Mr. Justice Edwards awarded \$1,623,600 (\$1,500,000) for pain and suffering. This sum updated is \$3,134,506. All the features of injuries are replicated in Stewart's case. Stewart's injuries are more aggravated. There was no evidence before the Court of the future medical needs of Stewart, although the fact of ongoing seizures would suggest the need for anti-epilepsy medication.

In Deborah Salmon (bnf Linton Salmon) v Kisimo Ltd., Suit No. C.L. 1982/S199 reported at page 53 of Harrison's Assessment of Damages for personal injuries, the Plaintiff, student, 13 years, injured in motorcar accident, in coma for six months, damage to vagina, intellectual impairment, unable to use right hand, and severe trauma to the head. On the 23rd June 1989, Mr. Justice Theobalds, awarded \$500,000 for pain and suffering; \$400,000 for loss of earning capacity; \$360,000 for future medical care. The updated figure for loss of amenities and loss

of earning capacity is \$11,741,418. The injuries suffered in Salmon is much more aggravated than in the instant case.

In the case of Karen Brown, (b.n.f. Cynthia McLaughlin v Richard English Suit No. C.L. 1988/B102 reported p. 54 of Harrison and Alfred Jones) 21, suffered injury whilst a student; head injury with probable basal skull fracture, cerebral concussion with loss of consciousness, laceration below right ear, bleeding from right ear. Sequelae dizziness, confusion, frontal headaches, poor memory, brain damage, causing below average intellectual performance. Permanent disability of 60% brain damage. The Court heard from twenty-three (23) witnesses. Mr. Justice Malcolm awarded \$385,000 for pain and suffering and loss of amenities. For loss of prospective earnings, an award of \$550,000 was made. That represents \$7,972,710 in today's money.

Stewart's differs from that of Brown in that the percentage damage to the Plaintiff's brain has not been assessed, neither is there any medical evidence as to the permanence of the injuries that the Plaintiff suffered.

General Damages

\$

Pain and suffering and loss of amenities - an award of 3,000,000.00

Loss of earning capacity - an award of 2,500,000.00

Total \$5,500,000.00

<u>Special Damages</u>		\$
Medical Expenses	-	2,000.00
Travelling	-	5,000.00
Food - Special food and Boarding and Lodging	-	2,500.00
Loss of earnings (2 nd Plaintiff)		<u>104,345.66</u>
Total		<u>\$113,845.66</u>

General Damages \$5,500,000 within interest at 3%.

Special Damages \$113,845.66 at 3%.

Costs to be agreed or taxed.