

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. T165 OF 1991

BETWEEN

GLENTON TAYLOR

PLAINTIFF

A N D

KEITH GORDON

DEFENDANT

Mr Ainsworth Campbell for Plaintiff

Mr. David Henry for Defendant.

Heard: July 18, 22, 28, 29, &
October 14, 1994

LANGRIN, J.

Summary of the Facts

On the 17th March, 1991 the plaintiff was riding a motor cycle along Harbour Street in Kingston when he collided with a motor vehicle driven by the defendant. He sustained bodily injuries, pain and suffering and claims compensation to the extent of 1.7 million dollars. The defendant on the other hand, while admitting negligence contends that he is only liable to the extent of \$150,000.00.

The Plaintiff's case: General damages

In putting forward his case the plaintiff alleges a number of injuries, some of which he contends will probably lend to other more serious impairments. I will begin by summarizing the injuries so noted and will then comment on whether such injuries persist and whether there is any real or substantial risk of acquiring the other more serious impairments alleged by the plaintiff.

Injuries

- (1) Fracture of two Ribs
- (2) Chest pains
- (3) Multiple lacerations to the head and body
- (4) Dizziness and headaches
- (5) Reduced / Defective memory
- (6) Concussion resulting in unconsciousness
- (7) Increased probabilities of developing epilepsy, Parkinson's disease and Alzheimer disease.

- (8) Irregular brain waves
- (9) Bihemispheric ~~brain~~ damage which will lead to personality change of an antisocial nature.

Fracture of two Ribs

This injury has not been proven by the plaintiff, there is no medical evidence to support such a claim. The plaintiff himself made no mention of fractured ribs in his evidence. He spoke only of multiple laceration, headaches, dizziness and chest pains.

Chest pains

A chest tube was inserted into the plaintiff's chest to drain the area of harmful substances such as "bad" blood. The tube was removed before the plaintiff left the hospital and although the wound remained painful for a while this has now healed properly. The plaintiff's chest functions have returned to normal.

Multiple lacerations to the head and body

No permanent damage was caused to the plaintiff as a result of these injuries. They have all healed well and are no longer painful. However keloid scars remain on the back and shoulder and could be cause for embarrassment.

Dizziness and headaches

This is a usual feature of victims of motor vehicle accident and usually diminishes in frequency and intensity over time. The plaintiff himself stated that he usually takes exceedrin and panadol for his heaches. Dr. John Hall, a Consultant, Neurologist, a witness for the plaintiff, made no specific mention of headaches. He seemed more concerned with memory loss, dizziness and pain in the chest which was what the plaintiff complained of when he visited him on 18th June, 1992.

As with headaches, the dizziness will eventually wear off. Indeed the plaintiff himself stated that upon returning to work at Dino Mitchell after the accident, he was given another motor cycle to ride but could not do so partly because of constant dizziness. Today however he is gainfully employed as a motor van driver, this is obviously indicative of the fact that the plaintiff's condition

in this area has improved tremendously.

Concussion resulting in unconsciousness

A victim of motor vehicle accident who is rendered unconscious will usually suffer more injury than one who remains aware of what is happening. The risk of developing post traumatic epilepsy for example increases where the victim has lost consciousness after an accident.

The plaintiff contends that he was unconscious after the accident and was taken to the hospital and treated in that state. He stated in cross-examination "I do not agree with the doctor that I was conscious when I came to the hospital." The doctor he speaks of here is Dr. Daniel Graham, Consultant Neurologist, who examined him on November 16, 1993 and asked him specifically if he lost consciousness as a result of the accident. The doctor gave evidence to the effect that the plaintiff said he did not but was rather fully aware of what was happening around him.

The onus is on the plaintiff to prove on a balance of probabilities that he was in fact unconscious. The best possible way of doing this was simply to obtain the hospital records at the material date since this would have been a matter of critical importance and would therefore have been recorded. Indeed not only would the record say whether or not the patient/plaintiff was admitted in an unconscious state it would also state how long the patient remained in such a condition. The plaintiff however made no attempt to obtain these records and his allegation of unconsciousness therefore remains unproved, especially in light of the doctor's testimony.

Dr. Aston Young examined the plaintiff on March 19, 1991 at Kingston Public Hospital and his examination also revealed that he was conscious on the 17th March, 1991 when he was admitted to the hospital.

Reduced or Defective Memory

The case for the plaintiff in relation to this "injury" has not been proven. He stated that his employers complained about his "forgetfulness" and that he left his job as a result of this but did not call any of his employers from either Dino Mitchell or Pepperoni to

prove this fact. Dr. Hall, who examined the patient on June 18, 1992, testified that he did suffer from a defect in memory from recent events. However when he was examined at a later date November 16, 1993 by Dr. Graham, his testimony was that the patient was fully capable of recalling events. Greater weight should be given to Dr. Graham's testimony in this regard since it is the more recent and could quite possibly mean that immediately after the accident the patient had problems remembering things but this condition has improved with time.

The plaintiff alleges that he left his jobs because he was unable to remember the tasks he was given to do i.e. he kept forgetting addresses etc. However writing down these tasks would have alleviated this problem and the drastic step of leaving his employment need not have been taken.

While the plaintiff was in the witness box I asked him a few questions pertaining to events on the previous day in Court and I was satisfied that he was able to recall the happenings quite well.

Increased risks of acquiring epilepsy

Post traumatic epilepsy usually develops within six (6) weeks to three (3) years after the head injury. The post traumatic development seizures depends in part on the nature of the head injury and upon the part of the brain damaged. Penetrating wounds of the brain are more apt to produce seizures than are closed head injuries.

Modern Trends in Neurology state that the incidence of epilepsy after a closed head injury is 2.5 - 3.5% while that of an open head injury is 4.5 - 4.9%. In the case of Donsalla and Another v. Bar for example [1969] 3 ALL ER 489) the risk of epilepsy was stated to be 3% after the plaintiff suffered a fractured skull. In the recent Jamaican case of Tricia Thompson v. Junior Harriot (C.L. 1989/ T0224) the risk of epilepsy developing was stated to be 4%.

However in the 1970 case of Cook v. J.L. Kier and Co. Ltd. the plaintiff was reported to have a 10% risk of developing epilepsy. In that case however the plaintiff received severe head injury when

a 3lb spanner dropped on that part of the body. He was rendered unconscious, bits of his skull had to be taken out, he lost his sense of taste and smell, became sexually impotent and was unable to control his limbs properly.

In Taylor's Principles and Practice of Medical Jurisprudence (volume 1) it was stated that in cases of head injury the possibility of epilepsy occurring is very remote and where it does occur is usually preceded by a state of unconsciousness in the victim after the accident and followed by a varying period of retrograde amnesia.

In the instant case it has not been proven that the plaintiff was rendered unconscious due to the accident, the injuries to the head he received were closed injuries which did not affect his brain, nor did he suffer from amnesia. I am therefore of the view that the plaintiff is in no real danger of developing epilepsy and even if this were so, the 10 - 20% chances of its occurrence as predicted is wholly unrealistic. In advancing his case the plaintiff has put forward the case of Petrona Black v. Jennifer Bhalai and Eneil Hamilton Civil Appeal No. 50/90 in which the incidence of developing epilepsy was discussed, in a judgment delivered by Carey J.A. on July 15, 1991. Unlike the present case however the victim in that accident was rendered unconscious for twenty minutes. There was a two to four hour period of post-traumatic amnesia and she had three epileptic seizures on the day of the accident. Her skull was also fractured. Such a case therefore is clearly different from the one on hand.

Increased Risk of Developing Parkinson's Disease

Parkinson's disease is a neurological condition beginning in patients between the age of 40 and 70 and leading to progressive rigidity of all voluntary muscles of the body together with a characteristic tremor. The disease is due to an affection of what are termed the basic ganglia of the brain. It may be caused by disease of cerebral arteries with impairment of nutrition of the basic ganglia, by encephalitis (brain inflammation) by the action of poisonous substances, and by brain tumours. Cases are recorded where the injury to the skull, particularly where repeated, and associated

with small haemorrhage in the appropriate areas has led to the production of Parkinsonism, but this is very rare. This has been seen in instances of prize fights and boxing in which repeated head trauma has occurred in the case of these sports.

It is not possible for a simple accident to lead to the developing of Parkinson's disease. This area is still a very grey one. Most medical texts state that it is very rare for Parkinson's disease to develop after repeated head injuries, thus it is even more remote to think that one head injury could set off the disease. In light of this I think the plaintiff's risk of developing Parkinson's disease due to his motor vehicle accident is unfounded.

Increased Risk of Alzheimer's disease

Schmidt's Attorney's dictionary of medicine states that Alzheimers disease is a form of mental deterioration usually beginning at middle age in the 40 - 60 age group. It is marked by the wasting away of the brain. No cause for Alzheimers disease can be found and it would therefore seem that it is simply a disease which may occur along with the aging process. I could find no authority for the proposition that Alzheimer's could be a result of a motor vehicle accident.

Bihemispheric brain damage

The plaintiff contends that he has suffered Bihemispheric brain damage which will ultimately lead to personality changes of an anti-social nature. In the present case there is no credible evidence advanced that the plaintiff has undergone or will undergo any changes in personality. The accident occurred more than three years before and such a change has not developed. I conclude therefore that the risk of the plaintiff undergoing any adverse personality change is extremely remote. Indeed I find as a fact that the plaintiff has not suffered any brain damage, consequently, there has not been any personality change.

Irregular Brain waves

Brain waves are wave-like figures recorded on an electro-encephalogram (E.E.G. machine) by the fluctuation of electric currents produced by the brain. The E.E.G. test is useful in detecting and localizing

brain injuries and tumors, in differentiating forms of epilepsy etc. An irregular brain wave of itself means very little and is simply the symptom of something else. In the present case an E.E.G. was done to ascertain if any damage to the brain was done. This was what Doctor Hall himself stated. In doing the test he sought to ascertain whether the plaintiff was in danger of developing epilepsy. Irregular brain waves therefore should not have been listed as one of the particulars of the plaintiff's injuries. Dr. Bridgewater found no brain damage.

For these reasons I am of the view that an award of \$200,000 is appropriate for the injuries suffered by the plaintiff. And I so award.

I now turn to the question of Special Damages

SPECIAL DAMAGES

Loss of Earnings

The plaintiff has not specially proved this item of special damages but in view of the fact the plaintiff was hospitalized at a time he was in a job, I allow a period of 5 weeks at \$1000.00 per week

\$5000.00

These other items are allowed:

Loss of shirt	150.00
Loss of pants	350.00
Loss of socks	30.00
Transportation Costs	200.00
Extra help for 5 weeks	800.00
Medical Bill	2960.00

Total

\$9490.00

Accordingly, there is judgment for the plaintiff on the claim in the sum of \$200,000.00 as General Damages with interest at 3% from the date of service of writ to date of judgment. Special Damages assessed at \$9490.00 with interest at 3% from 17/3/91 to date of judgment. Costs awarded to the plaintiff to be agreed or taxed.