IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

AT COMMON LAW

SUIT NO. C.L. T.040 OF 1982

BETWEEN	SYDNEY TAYLOR	PLAINTIFF
A N D	JAMAICA AMERICAN MORTORING COMPANY LIMITED	FIRST DEFENDANT
A N D	RUPERT MURDOCK	SECOND DEFENDANT

A. Campbell for Plaintiff.

Mrs. J. Stanbury instructed by Messrs. Judah, Desnoes, Lake, Nunes, Scholefield and Company for Defendants.

Heard on: July 5, 6, September 17, 18 and January 18, 1985.

ALEXANDER J: (AG.).

On February 25, 1982, at about 6 p.m. the plaintiff, a pedestrian, along East Street, in Kingston was hit by a motor car owned by the first defendant but driven at the time by the second defendant, resulting in the plaintiff sustaining some physical injuries.

At the time he was employed to the Government Printing Office, as a Factory Guard.

The plaintiff has therefore brought this action against both defendants in which he seeks damages for negligence.

The damages he seeks includes Special Damages which were particularised on his Amended Statement of Claim thus:

(a)	Loss of earnings for fourteen weeks at $160 per week from February 25 to June 4, 1982	$2,240.00
	(i) Loss of overtime earnings at $44 per week from June 5, 1982 to March 31, 1983, i.e. forty-three weeks	1,892.00
(b)	Loss of overtime earnings from April 1, 1983 to April 1, 1984 being fifty-two weeks @ $49	2,548.00
(c)	Loss of overtime earnings from April 1, 1983 to July 5, 1984	1,182.00
(d)	Taxi fares	520.00
(e)	Nursing Care for nine weeks and continuing at $60 per week	540.00
		$8,922.00

The injuries he sustained, as pleaded, and not really contested were as follows:

(a) Fracture dislocation of the left ankle (called Potts Fracture);

(b) Shock and concussion;

(c) 5% permanent disability of the left lower limb.

The Defence took issue on the question of liability as well as damages, and it therefore became necessary to address my mind to both areas.

LIABILITY

The plaintiff told what I considered a simple story. He said he had gone home having left work at about 5 p.m. He lived at 145 East Street, Kingston. He then went to the "I Did It" Supermarket, situated at the corner of East Street and Kensington Avenue on the south eastern side. He had purchased some food items for his family and had left the Supermarket, to return home. He said he looked up East Street that is, northwards, as East Street runs from north to south to ensure that it was safe to cross the road.

East Street, then and still, is a one way street for vehicles travelling from north to south.

He said he neither saw nor heard anything and felt therefore, that it was safe for him to cross the road. He proceeded across the road, and when he got near to the middle of the road, he heard a "rolling" from the north. He looked in the direction and then saw two motor cars coming down East Street "as if they were racing".

He continued ".....One car was behind the other. The front car was like an old time Austin. That car was about 80 ft. from me. A white car was behind it. I then started to run towards the other side of the street. While doing so, the white car overtook the other car. The white car collided with me. My right foot was resting on the sidewalk. As I was about to put my left foot on the sidewalk, I was hit and fell on to the sidewalk. The white car stopped by Income Tax Building, 100 - 150 ft. away....."

The plaintiff went on to say that this white car had overtaken the other car on the other car's right hand side, and so was in the right hand lane of East Street when it collided with him.

The second defendant had a completely different story. He admits that there was another car ahead of him which he had gone ahead of and was to its right, but that when he saw the plaintiff the plaintiff was some 3 - 4 feet away from the western sidewalk going in an easterly direction.

This is what the second defendant had to say:

> " I was in the right hand lane. I saw a man running across the street - East Street. He was coming from the vicinity of Workers Bank. Man was coming from west to east - the right hand side of the road. He jogged across the road. He passed directly in front of my car. Immediately on passing him, I felt something collide with the left rear wheel of my car. He completely cleared the front of my car. I then felt the collision on my left rear wheel. Other car just a little bit behind me. Man to get completely across road would have had to pass in front of this other vehicle. I looked in my rear view mirror. I saw the same man. He was seated in the street with his arms stretched behind him, holding himself up. I stopped. I reversed to where he was. He was in the middle of the street ....."

It is, in my view, as if the parties were speaking of two completely different incidents.

Cross-examination and questions by the court did not in any way force any of them to move from their original position, even to the slightest degree.

Of course, as in most cases of this nature, when parties are asked questions about time, distance and movement, and the answers can only be approximations and personal assessments, situations that border on the impossible and even the impossible arise. This case was only one more. That being the position the court had to decide as between the two, which was the more probable. It came down to this.

The plaintiff could describe in graphic details all the relevant developemnts from the time he said he saw the vehicles to the time of the impact. He could describe the cars, the speed, their positions and his position at all the relevant times.

The second defendant on the other hand, saw the plaintiff for the first time when the plaintiff was about 3 - 4 feet from the western sidewalk and just about to proceed easterly. He could not say where the plaintiff had come from to have gotten to the position where he said he first saw him. Secondly he was unable to say how the plaintiff came to be hit.

In cross-examination, he had this to say. "I can't explain how plaintiff collided with my vehicle. I can theorise only....."

".....If he had continued as he was going he would certainly have collided with the other car. If plaintiff had stopped in the middle of the road he would have avoided the collision. I do not know whether or not he stopped in the middle of the road.....

.....When I first saw plaintiff he was in the road. He had just entered the road and then jogged across. When I first saw him he was 3 - 4 feet from the sidewalk. I was then 10 - 12 feet from him. He was running slant-wise. I do not recall seeing him on the sidewalk. I don't recall seeing him before the was 3 - 4 feet in the road.....

.....There was nothing obscuring my vision. Can't say whether or not plaintiff was moving from a stationary position....

.....I again say, I don't know how the collision took place - I can only theorise.....

.....I can only theorise that when he saw the other vehicle he panicked and collided with my rear wheel. My theory is that he was nearer to my car than the other car.....".

It meant then that one party was saying "I can say what happened", as against another who at best is saying "I can only theorise as to what happened".

In the circumstances I felt compelled to lean towards the one who said he knew, as against the other who said he only had a theory.

Having satisfied myself that the plaintiff's version is the more probable, it follows that I have also been satisfied that the plaintiff proved that the second defendant was:

(1) Speeding;

(2) Failing to keep any or any proper look-out;

(3) Failing to have any or any sufficient regard for pedestrians lawfully using the road including the plaintiff;

(4) Failing to see the plaintiff to which I would add, "sufficiently early";

(5) Hitting the plaintiff whilst partially on the side-walk, as has been particularised on the plaintiff's statement of claim.

In the circumstances I found that the second defendant was wholly the cause of the collision with the plaintiff.

DAMAGES:

It is necessary now to look into the question of damages and I will deal firstly with the claim for Special Damages. The first item under this head as stated in the Statement of Claim is Loss of Earnings for fourteen weeks at $160 per week from 25th February 1982 to 4th June 1982. The date of the accident was never an issue, nor the plaintiff's absence from work, until 4th June 1982.

The plaintiff's evidence is that at the date of the accident, his basic take home pay was $116 per week. The plaintiff was a Factory Guard at the time - a civil servant - and was entitled to a prescribed period of leave. In his own words he had this to say:

> " Each year entitles me to fourteen days Sick Leave, twenty-one days Vacation Leave, twenty-one days Departmental Leave.
>
> I don't take leave when it is due, as anything can happen. As a result, I work every day. I did so before the accident. Before I became a Factory Guard, I took leave - Since ay appointment as Factory Guard, I did not take any leave.

I now say I took leave during the period 1976 - 1980. Since 1980 I have not taken any. There is no overtime pay to collect when I go on leave....."

On the assumption that the plaintiff is correct in all that he had said, it would mean that on the date of the accident he would be entitled to a minimum of fifty-six days leave with pay. Calculated, as is done now it means the plaintiff would be entitled to forty-two working days by virtue of his vacation and departmental leave or eight weeks and two days as well as fourteen days sick leave or two additional weeks making a total of ten weeks, and two days leave with pay.

Provisions are made for the accumulation of Vacation Leave not taken from one year to the next up to a particular amount, and I believe there are provisions for a further accumulation beyond this point with permission.

The evidence is not clear as to what was the plaintiff's position in relation to this at the time of the accident.

Mr. Trevor Hamilton, the Accountant at the Government Printing Office tried to give some assistance to the court. This is what he had to say in relation to leave in general, and the plaintiff's leave in particular.

"There is Departmental Leave, Vacation Leave, Sick Leave. If they are available to the officer, then they are used up to cover the days of his absence. Maximum Departmental and Sick Leave is twenty-eight days. If one is off duty more than twenty-eight days and there is Vacation Leave, half the amount of Vacation Leave is then utilised. If you have to go beyond that, you are not paid, unless by special permission of the Public Service".

".....plaintiff gets fourteen days Vacation Leave per year. Can't say whether or not, he had any leave. I know he was absent one or two days. This is usually regarded as Sick Leave. I am unable to say how much leave the plaintiff had at his credit at any time".

The plaintiff had also this to say:

> " I got forty-two days leave. I got no pay, because they said it was only pregnant women would be entitled to that leave. I an entitled to fourteen days Sick Leave, twenty-one days Vacation Leave and twenty-one days Departmental Leave. Despite that I got no pay for the forty-two days. The matter is at the Ministry of the Public Service pending settlement....."

I found this aspect of the plaintiffIs evidence somewhat puzzling. At one stage he is saying that he has taken no leave since 1980. He then states the number of days leave he has each year, to which he was entitled. However he was granted only forty-two days of that leave as a result of the accident, but not paid, so much so, that the matter is now before the Ministry of the Public Service. If he was granted forty-two days only, then I am at a loss to know what his position was in relation to the remaining days that he was not at work. Is he in fact saying he was granted forty-two days leave, for which he was paid, but that he was not paid for the remainder and that that is what is now before the Ministry for their consideration? If that is so then the claim for loss of earnings for the entire period of his absence from work, must be misconceived.

According to the pleadings, he estimated his earnings per week during that period to be $160. I presume that figure is arrived at by virtue of his claim that his basic pay then was $116 per week and his average overtime, $44 per week.

It is common knowledge that an officer does not and cannot earn overtime while being on leave. I am therefore satisfied that:

(a) that he averaged $44 per week as overtime during that period; and

(b) that he would have lost that because of his being absent from work.

However in relation to his claim for loss of his basic pay during that period, for the reasons I have already intimated coupled with the fact that the question of his entitlement to pay is now before the Ministry of the Public Service for their consideration, I am not mindful to make any award in relation to his basic pay.

My award therefore for loss of earnings for the period 25th February 1982 to 4th June 1982 is calculated on the basis of $44 per week for a total of $616.

The next item for my consideration is loss of overtime earnings at $44 per week from 5th June 1982 to 31st March 1983. This is the period when he resumed work up to the end of March 1983 when his basic pay remained what it was at the time of the accident.

It appears that the amount earned for overtime work is related to the officer's basic pay, that is to say, the more basic pay an officer earns, the more he gets in terms of his rate of overtime pay.

The plaintiff's basic pay remained the same between the date of his resumption and 31st March 1983. It follows therefore that his overtime rate would also remain the same.

The plaintiff stated:

> " I resumed work the first in June '82. I resumed as Factory Guard for two weeks. I earned no overtime in that period because of my broken leg. Overtime was available. I did not do any, because of the broken leg. At the end of two weeks, I was sent to the gate. As such I do not get any more overtime....."

Mr. Hamilton in examination-in-chief said inter alia:

> " .....There are two posts of Factory Guard. There is also the post of Gateman. The Factory Guard is Grade II G.L.S. The Gateman is G.L.S. Grade I. This is a lower grade.....
>
> .....Had plaintiff continued as a Factory Guard, he would have earned a whole lot of overtime, as the person now in that position now averages $18- - $200 per week, in overtime alone.....
>
> .....Because of his injury he had to be removed as a Factory Guard. Factory Guards have to do a lot of moving around on their feet. It is unlikely that plaintiff will ever get back that job".

However in cross-examination a number of things were revealed by Mr. Hamilton which in my view, alters the plaintiff situation as I saw it, in a very fundamental way.

Mr. Hamilton had this to say:

> " .....Plaintiff's basic salary was not altered by his change of duties. Having already been appointed a Grade II, he would not lose on basic pay by being placed in a lower grade....."

This means therefore that his rate of overtime pay would also remain the same, if he is in a position to earn overtime pay. In relation to this aspect of the plaintiff's claim. Mr. Hamilton said:

> " .....Occasionally the Gateman earns overtime. There are times when unloading of goods occurs after 5 p.m. necessitating the Gateman working beyond 5 p.m. His overtime would be based on his basic salary paid as time and a half. I recall the plaintiff earning this overtime since I have resumed duties. Plaintiff now averages about $58 per week in overtime, in his present post....."

Going back a bit to his examination-in-chief, Mr. Hamilton said:

> " Between 1982 and now there has been great need for overtime and round the clock work, as there was the election of 1983 and various exams and exam results. Admit there was a time when the work was sub-contracted, but this has now been lessened....."

In cross-examination he said:

> " .....Admit increased activity has affected the overtime capacity of the Gateman. It affects every one in the productive area, and the Gateman is regarded as one in the productive area".

What seems to be patently clear, in my view, is that the plaintiff although he was placed in a lower grade, has not lost anything in basic pay, which means that his rate of overtime pay would nor have been affected, nor has he lost the opportunities to earn overtime pay because as long as there is need for overtime work to be done the Gateman is a part of the team, so to speak, one in the "productive area".

In my view this makes a lot of sense, as what seemed to have happened is that the plaintiff was placed in a post where his earning power remained intact without necessitating him having to undergo the arduous physical duties which, because of his injury, he was no longer able to do.

Relating this to his claim for loss of overtime earnings at $44 per week from 5th June 1982 to 31st March 1983, I am satisfied that any loss he incurred would have been for the two week period when he resumed his duties as a Factory Guard, overtime was available, he did not do any because of the broken leg and culminating in his being sent to the gate as Gateman.

His average overtime pay then was $44 per week, and so my award on that claim is $88. All the other claims in relation to loss of overtime earnings covering the periods 1st April 1983 to 1st April 1984 and 1st April 1984 to 5th July 1984 on the basis of my findings in relation to his claim for loss of overtime earnings for the period 5th June 1982 to 31st March 1983 must therefore fail.

The next claim is for taxi fares and the figure stated is $520. The plaintiff had this to say:

> " I had to return to University Hospital to check the foot. I did so ten times at $40 per time - $400. After that I had to attend the hospital about six times. This was after the plaster came off. This was $20 per trip - $120".

In cross-examination the plaintiff said:

> " .....Now say I attended hospital five times with the plaster - five times after plaster was taken off, by taxi. I attended six times after that, but I went by mini-bus. The cost of each of these trips was $20. Took bus from Orange Street to University Hospital. This $20 included costs of lunch. I paid 80¢ one way, lunch $12 for wife and I, pack of cigarettes - $4. The taxi charged $20 to and $20 from. Did not eat lunch those days. Wife would fix a snack....."

Taking a taxi to and from the hospital while his leg was in a plaster is in my view, quite reasonable. To have continued to use the taxi for five times after the removal of the plaster is also understandable as the plaintiff would need time to adjust to his new situation.

However in relation to his claim for $20 per day for six days when he started to take the mini-bus since $16 were spent on lunches and cigaretts, which he would have bought in any event, I am allowing only $4 per day. My award then for taxi fares will be $424.

The final item under the heading of Special Damages, is Nursing Care for nine weeks, and continuing, at $60 per week - $540. The plaintiff said:

> " .....After discharge, I could do nothing for myself. I had to 'cock up' my foot. My wife had to assist in everything. I am claiming pay for her services then as 'Nursing Care'. This was for a period of forty-two days at $100 per week - $600".

In the absence of any evidence showing actual expenditure and or loss, I do not see this as being more then the hazards of marital life.

In cross-examination the plaintiff said:

> " .....My wife does not work. She was not working at time of accident....."

In the circumstances I will make no award under the particular head. My awards for Special Damages will therefore be:

(a)	Loss of earning for period February 25 to June 4, 1982	$ 616.00
	(i) Loss of overtime earnings from June 5, 1982 to March 31, 1983	88.00
(b) & (c)	Loss of overtime earnings for the period April 1, 1983 to April 1, 1984 and April 1 to July 5, 1984	No award
(d)	Taxi fares	424.00
(e)	Nursing Care	No award
	TOTAL AWARD -	$1,128.00

I will now turn to the area of General Damages. Mr. Campbell urged me to consider this under three limbs:

(1) Pain and suffering and loss of amenities;

(2) Loss of future earnings;

(3) Reduced status on the labour market.

I will do that.

1. <u>Pain and suffering and loss of amenities</u>:

The plaintiff suffered the following injuries:

(a) Fracture dislocation of the left ankle (Potts Fracture);

(b) Shock and concussion;

(c) 5% permanent disability of the left lower limb.

It is probably useful to state here the findings of the doctor. He found a fracture/dislocation of the left ankle. The doctor continued:

> " The ankle comprises three bones - tibia, fibula and the talus. The talus fits inside the tibia and fibula to form a mortice. This allows flexion and extension of the ankle joint. Mr. Taylor had fracture of the tibia and fibula, with displacement of the talus. The attachments are by ligaments. Once there is dislocation, the ligaments are torn. Ligaments are extremely hard to repair. Would on that basis, say a torn ligament is serious. This type of injury required immediate operation, for a proper job to be done. The doctor had tried to put back the bones without operation. It required opening the ankle and seeing what was what.
>
> Two pieces of metal were placed in his ankle a) Screw; b) Nail with a hook. This is now permanent.
>
> Foreign bodies have a well recognised complication 1) rejection; 2) infection which would never heal in presence of a foreign body; 3) restriction in range of movement, because of the foreign body. Inability to run one of them.
>
> Once there is a knife to skin, blood vessels are destroyed - would cause swelling in the area, as the same amount of blood is going through the area so that there is a 'back up' of blood causing the swelling.
>
> Inability to get around for forty-two days is understandable. To have been away from work until June '82 is also understandable.
>
> .....injury serious would expect pain. The failure of the first attempt by the doctor would have increased the pain. When I saw plaintiff on 16th March 1982, I assessed disability for a period of nine weeks from 25th February 1982....."

In cross-examination he said inter alia:

> " .....I formed the opinion that he had 5% disability. This was my final assessment. The 5%, refers to the use of the limb.....
>
> .....plaintiff was plastered immediately after surgery, in a below knee plaster of paris-back-slab. On March 12, 1982 sutures removed and back-slab converted to a full plaster. On April 19, 1982 the plaster was removed. On May 31, 1982 I recommended bandaging, if and when he had to do long standing or walking, to reduce swelling. It was then I recommended that he return to work in June 1982. While in the cast, he had to use crutches to ease weight off the foot".

The doctor was asked about osteo-arthritis by Mr. Campbell. It was defined by the doctor as the condition when there are changes in the bone caused by injury or overweight.

In relation to the plaintiff the doctor was of the view that in fifteen years he would develop osteo-arthritis, but that there was a 50% chance that he would in ten years and a 20% chance that he would in five years.

Once again reference was made to Mrs. Khan's Book, "Recent Personal Injury Awards in the Spreme Court of Jamaica". Mrs. Stanbury cited the following cases:

1. Wilbert Donaldson v. Xavier Crossman - page 25

Plaintiff's age - forty years.

Injuries:

(a) Head injury;

(b) Laceration of left ear;

(c) Fracture of shaft of left femur;

(d) Fracture of right fibula at ankle joint;

(e) Wound on right thigh.

Treatment:

Admitted to Annotto Bay Hospital for three months in traction. Treated for thirteen weeks at the Kingston Public Hospital. The wound on the right thigh became infected and the plaintiff experienced pain across right hip, in head and right ear.

Disability:

Permanent partial disability of the right leg was assessed at 5%.

General Damages: - $8,750.00 - Date 16th April, 1980.

2. John Roofe v. Attorney General for Jamaica - page 60

Plaintiff's age - thirty-two years.

Injuries:

(a) Pain in chest;

(b) Abrasion to face and arms;

(c) Fracture of left tibia and fibula - site of fracture, just above ankle.

Treatment:

Admitted to Spanish Town Hospital for ten days - discharged for out-patient treatment. His foot was placed in plaster of paris cast for twelve weeks and he had to use crutches for about seven months. His plaster was removed in September 1978 and he was fully mobilised by November 1978. The Surgeon Specialist was of the opinion that his period of incapacity was seven months.

General Damages: - $6,000.00 - Date February 1981.

3. Winston Green v. Joseph Brown - page 32

Plaintiff's age forty-four years.

Injuries:

(a) Compound fracture of right tibia and fibula;

(b) Abrasion of left little finger and thumb.

Treatment:

Hospital at University Hospital for three months and his leg placed in a cast. A chronic ulcer developed with area of depigmentation and hyper-pigmentation, and this had to be drained. He was re-admitted to hospital on 1st February 1980 for surgery to remove a large piece of dead bobe from tibia. He remained in hospital for seventeen days. At date of trial the ulcer was still discharging pus.

Disability:

(a) ½' shortening of right lower leg;

(b) Permanent partial disability of right lower limb assessed at 15%;

(c) Unable to ride motor cycle or to stand for very long periods;

General Damages:

Loss of future earnings - $ 7,500.00

Pain and suffering - 12,000.00

Loss of amenities - 2,500.00

$22,000.00 - Date February, 1981.

On the basis of these decisions and taking all the relevant circumstances into account Mrs. Stanbury submitted that an award for General Damages of $8,000 would be appropriate.

Mr. Campbell on the other hand relied on the following cases, also to be found in Mrs. Khan's book.

1. Easton Rose v. James Green - page 41

Plaintiff - male forklift operator.

Injuries:

(a) Multiple abrasions over head and both lower limb;

(b) Two small lacerated wounds on back of scalp;

(c) Two large swelling of left side of scalp;

(d) Fracture of left talus and oscalsis (bone of the ankle joint:;

(e) Severe injury to the left ankle.

General Damages: - $9,000.00 - Date February, 1980.

2. Celestine Tomlinson v. Alfred Chambers - page 47

Plaintiff - female aged thirty-four years.

Injuries:

(a) Shock;

(b) Multiple lacerations to face;

(c) Bruises to right forearm; right lower leg; left lower leg;

(d) Severe compound fracture of lower third of left tibia and fibula with severe degloving injury to left lower leg and resulting deformity;

(e) No pulse in left foot.

Hospitalisation and Treatment:

Plaintiff hospitalised as follows:

15th April 1979 to 4th August, 1979;

20th November 1980 to 29th November 1980;

2nd April 1981 to 21st April 1981.

Plaintiff received treatment to remove pieces of dead bone and to diminish fracture. The wound to leg was sutured and dressed. Up to the time of trial she was still visiting her doctor.

Disability:

(a) Permanent limp;

(b) Permanent shortening of left leg;

(c) Permanent osteomyelitis;

(d) Permanent scarring on leg;

General Damages:

Pain and suffering and loss of amenities - $50.000

Loss of future earnings - - 56,000

TOTAL - 106,000 - Date June 1981.

3. Wesley Graham v. Orrette Ellis - page 58

Plaintiff - male aged forty-three years.

Injuries:

1. Severe compound communuted fracture of upper 1/3 of right tibia and fibula extending into the knee joint;
2. 8" laceration over front of leg exposing bone and 2" laceration over left calf.

Treatment:

Hospitalised in Kingston Public Hospital for one week - discharged. Re-admitted one week later. Later re-admitted for two operations. Total hospital stay six months.

20th November 1972 dead bone removed from his leg;

31st May 1973 cast removed;

31st October 1973 re-admitted to hospital with a fracture of the lower end of the femur;

29th November 1974 more dead bone removed.

Disability:

Permanent partial disability assessed at 30% of right lower limb.

General Damages:

Loss of future earnings - $25,000

Loss of earnings capacity - 5,000

Pain and suffering - 15,000

$45,000 Date - January 1981.

Based on these awards, Mr. Campbell submitted that an award under the limb of pain and suffering and loss of amenities, again taking all the circumstances into account, should be between $30 - 40,000.

The plaintiff, Mr. Taylor is now fifty-three years old. It follows that at the time of the accident, he would have been approximately fifty-one years old. He had one operation, but was unfortunate in that the doctor who first attened to him mis-read the nature of the injury and therefore his treatment rather than helping the plaintiff, aggravated it.

My understanding of what the doctor said in this regard, is that the sum total of this error was an increase in pain. He was admitted to University Hospital from the day of the accident Thursday, until the Saturday. He returned as an out-patient some sixteen times.

As a youngster, he danced and played foot ball. Presumaly he had discontinued these past-time even before the accident.

There is a 5% permanent disability of the left lower limb and the plaintiff on each day of the court's sitting had an obvious limp, which however the doctor made no mention of.

I must remind myself that the precedents cited to me bear only some similarity to the present case. None is identical. I must therefore make an award which in my view does justice to this case.

My award for pain and suffering and loss of amenities would therefore be $22,000.

In relation to loss of future earnings as I have indicated above, I am of the view that despite his "transfer" to the post of Gateman, I was not satisfied by the evidence that the plaintiff would incur a loss in respect of future earnings. There will therefore be no award under that limb.

The third limb has to do with the plaintiff's reduced status on the labour market. The evidence is that the plaintiff's retirement age is sixty-five years.

There is in my view, no evidence to suggest that he cannot continue until he attains that age. He refers to himself as a "civil servant". However, no evidence was led as to whether or not his posts present or otherwise, are pensionable and, if so, the approximate rates.

Indeed the evidence is silent as to what his financial situation would be when retirement comes. Be that as it may, I must bear in mind:

(a) his 5% permanent disability in the left lower limb; and

(b) the doctor's testimony that at best plaintiff can only engage himself in a sedentary post for the rest of his life.

This in my view must place him at some disadvantage compared to other sixty-five year olds coming on to the labour market at the time that the plaintiff is expected to.

In the circumstances I will make what I consider a token award under this head of $3,000. The order will therefore read thus:

Judgment for the plaintiff against both defendants as follows:

1. Special Damages - $1,128.00 with interest at 4% from the date of the incident;

2. General Damages - $25,000. Interest on award for pain and suffering only at 8% from the service of the Writ to today's date.

Costs to the plaintiff to be agreed or taxed.