

Cases referred to

- ① Cunningham v Harrison (1973) 1 All ER 465
 - ② Peterson Black v Bhalai and Enid Hamilton SCC A50/91
(5/7/91)
unreported.
- ✓ comp N.W.R.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L.W. 225 of 1986.

Romance

BETWEEN	DONOVAN WATKIS	PLAINTIFF
AND	ADRIAN WELLER	FIRST DEFENDANT
AND	LEROY GRANT	SECOND DEFENDANT
AND	JUNIOR BROWN	THIRD DEFENDANT

SUIT NO. C.L.W. 289 of 1986

BETWEEN	ADRIAN WELLER	PLAINTIFF
AND	LEROY GRANT	FIRST DEFENDANT
AND	JUNIOR BROWN	SECOND DEFENDANT

SUIT NO. C.L.G. 143 of 1987

BETWEEN	LEROY GRANT	
AND	JUNIOR BROWN	PLAINTIFFS
AND	ADRIAN WELLER	DEFENDANT

CONSOLIDATED ACTIONS

Ainsworth Campbell, Miss J. Mosworthy and A. Mundell for Watkis
Dennis Goffe, S. Shelton and Paul Goldson and Miss Linette Palmer
for Weller in W.225/86 and G.148/87.
Miss Judith Pusey and Mrs. Sandra Johnson for Weller in W.289/86
Crafton Miller and Mrs. N. Anderson for Leroy Grant and
Junior Brown in W.225/86 and W.289/86
E. Wilkinson for Leroy Grant and Junior Brown in G.143/87.

hearing on July 9, 10, 11, 12 & 13, 1990
February 11, 12, 14 & 15, 1991
April 30 and May 2, 1991
June 24 & 26, 1991
February 24, 1992 and July 29, 1993.

JUDGMENT

CHESTER ORR, J.

In these consolidated actions the question of liability has been
determined. The decision on damages was reserved. I apologise for the delay.

SUIT NO. C.L.W. 225/1986

DONOVAN WATKIS' V. ADRIAN WELLER AND ORS.

The Plaintiff received severe injuries as a result of the accident. Both Dr. Cheeks and Dr. Hall are of the opinion that he has suffered brain damage with resultant loss of memory, which Dr. Cheeks estimates at 20%. They do not agree on certain aspects of his disabilities.

I accept the finding of Dr. Cheeks that plaintiff is an epileptic for life, that he suffers from a disorder that looks like Parkinson's disease, that he does not suffer from Alzheimer's disease but from a type of illness akin to Alzheimer's disease. I accept Dr. Cheek's opinion that Alzheimer's disease affects persons of the age of 60 years and over. The plaintiff is now aged 33 years.

I find that the plaintiff has suffered a personality change which results in animal like behaviour. He suffers from tremors as a consequence of his injuries. These were visible while he gave evidence. I accept Dr. Cheek's evidence that he will require medication for these tremors and for epilepsy for the rest of his life.

Injury to auditory nerve

I find that this injury was occasioned by the accident. I accept the opinion of Dr. Ramsingh that he will require future operations to correct his hearing problem.

Impotence

From the evidence of the plaintiff, his wife, Mrs. Paulette Watkis and Dr. Hall, I find on a balance of probabilities that the plaintiff has become impotent as a result of the accident.

Breakdown of the marriage

On the evidence adduced I do not find that the injuries caused the breakdown of the marriage.

Plaintiff's earning capacity

The question whether the plaintiff can be gainfully employed in the future has given me anxious consideration. At the time of the accident he was an electrician operating his own business. Both Dr. Cheeks and Dr. Hall

are of the opinion that he is fit for only menial tasks. Dr. Cheeks stated that he could be employed as a gardener but he would not allow him to use a lawn mower. Dr. Hall would not employ him as a gardener nor allow him to use a lawn mower. He is of the opinion that he could cultivate for himself and probably rear chickens but if this is done as a commercial venture he would need supervision. Plaintiff's father would not allow him to use a cutlass.

The evidence established that the plaintiff had undertaken electrical work for a Mr. Nehemiah Gordon subsequent to the accident. He supervised the work which was done by workmen. I appreciate that he must mitigate his damages but taking all factors into account and from my own observation, I am of the opinion that he is at a great disadvantage in obtaining future employment. I entertain grave doubts as to his ability to attract work of this nature or any other in the future.

SPECIAL DAMAGES

The following items are contested.

Loss of earnings

The calculation of the plaintiff's loss of earnings after the date of the accident has occasioned no little difficulty in view of the unsatisfactory state of the evidence.

Evidence was adduced of an increase in payment to an electrician for a point, switch light or plug from \$90.00 each in 1982 to \$160.00 in 1991. No attempt was made however to relate this increase to the total cost of the job and thus arrive at a percentage of the increase. Mr. Cunningham a licensed and experienced electrician gave evidence for the plaintiff and possibly could have assisted in this area, notwithstanding that he was unhelpful on other aspects of an electrician's earnings.

Mr. Campbell in his submissions used the increase in the point as a basis for an increase in the earnings of the plaintiff. I am unable to adopt this approval.

On the available evidence, I calculate the pre-accident earnings of the plaintiff as follows.

Gross weekly earnings \$1,500.00

Expenses

Paid to Mr. Cunningham	\$500.00	
2 Apprentices at \$100.00 each	200.00	
Secretary	80.00	
Rental - \$150 per month	37.50	
2 Labourers at \$100.00 each	200.00	
Transportation	60.00	
Electricity - \$100.00 per month	25.00	
Total		1,092.50
Net earnings	..	407.50

Travel costs for Plaintiff's wife

Plaintiff's wife, Mrs. Paulette Watkins, stated that she travelled from Buff Bay to the Kingston Public Hospital thrice daily to visit the plaintiff and assist him there. He was then incontinent and she took clean sheets for him. She did this for about two (2) months at a cost of \$45.00 per day = \$3,000.00. The amount claimed is \$1,025.00 which sum I award as reasonable in the circumstances.

Extra help

Objection was taken to this item on the ground that there was no evidence that anyone had been employed to look after the plaintiff. This claim is clearly sustainable. In Cunningham v. Harrison [1973] 1 All E.R. 465 the headnote reads in part -

"Per Curiam - when a husband is injured and is entitled to damages, it is right and just, that if the wife renders services to him instead of a nurse, he should recover compensation for the value of the services that his wife has rendered, even though she has not given up paid work to look after him and has only performed domestic duties in the house."

The principle applies to other relatives and friends who render such services.

In this case the plaintiff's wife and mother rendered these services. The claim for \$100.00 per week is reasonable in the circumstances, and I award the sum claimed - \$100.00 for 280 weeks = \$28,000.00.

The total Special Damages awarded are as follows:

Loss of earnings from 7.12.85 to 24.2.92		\$127,140.00
Loss of pair of shoes	90.00
Loss of shirt	55.00
Loss of pair of glasses	1,200.00
Travel costs for plaintiff	200.00
Travel costs for plaintiff's wife	1,025.00
Medical expenses	1,785.00
Extra help	<u>28,000.00</u>
		<u>\$159,495.00</u>

GENERAL DAMAGES

Future Medication

I accept Dr. Cheek's evidence that the plaintiff will need continuous medication for life at a cost of \$350.00 per month = \$4,200.00 per year.

I award 20 years at \$4,200.00 per year = \$84,000.00.

Future help

Award - \$150.00 per week.

\$7,800.00 per annum for 20 years = \$156,000.00.

Future medical care

I accept Dr. Cheek's estimate for four (4) visits per year at \$200.00 each. I award such for 20 years. $4 \times 200 \times 20 = \$16,000.00$.

Travel for medical care

4 visits at \$30.00 for 20 years = $4 \times 30 \times 20 = \$2,400.00$.

Future surgery to ear

Dr. Ramsingh stated that plaintiff will need to have further operations to correct his hearing problem. He was unable to say how many but that the plaintiff may require them throughout his life. Mr. Campbell submitted that 13 such operations would be necessary. I estimate the number at 10. The plaintiff was treated at Kingston Public Hospital. There appears to be no good reason why future operations cannot be done at that institution. Dr. Ramsingh estimated the fee for each at \$250.00.

I take into account the possibility of an increase in the fee into consideration and estimate the cost at \$300.00 each. Total $10 \times 300 = \$3,000.00$.

Loss of future earnings

In view of the confused state of these earnings I calculate the loss on the basis of his weekly earnings of \$407.50. Applying a multiplier of 13 I award a total of $\$407.50 \times 52 \times 13 = \$275,470.00$.

Pain and suffering and loss of Amenities

I take into consideration the cases cited. With regard to epilepsy Mr. Campbell relied heavily on the judgment in Patrona Black v. Bhalai and Eneil Hamilton S.C.C.A. 50/90 July 15, 1991 (unreported) in which the Court indicated that an award in proportion of one million dollars would be regarded as reasonable where there was an absolute certainty of the recurrence of an attack.

The plaintiff in that case, however, was an infant of 15 years.

I made a global award of one million dollars for pain and suffering and loss of amenities.

The total General Damages are as follows:

Future medication	\$ 84,000.00
Future help	156,000.00
Future medical care	16,000.00
Travel for medical care	2,400.00
Future surgery to ear	3,000.00
Loss of future earnings	<u>275,470.00</u>
Total	\$ 536,870.00
Pain and suffering and loss of amenities	<u>\$1,000,000.00</u>
	\$1,536,870.00

There will therefore be judgment for the Plaintiff on this Claim against the defendants as follows:

Special Damages	-	\$ 159,495.00
General Damages	-	<u>\$1,563,800.00</u>
		\$1,723,925.00

in the proportion --

Adrian Weller - 70%

Leroy Grant and Junior Brown - 30%

There will be interest on the Special Damages at 3% from the 7th December, 1985 to the 29th July, 1993 and on General Damages of \$1,000,000.00 from the date of the service of the Writ of Summons to the 29th July, 1993. Costs to the Plaintiff to be taxed if not agreed.

RE SUIT C.L.W. 289/1986

ADRIAN WELLER ~ Plaintiff
LEROY GRANT]
JUNIOR BROWN] ~ Defendants

and

SUIT C.L.G. 148/1987

LEROY GRANT]
JUNIOR BROWN] ~ Plaintiffs

ADRIAN WELLER ~ Defendant

(1) General Damages

The cases cited are not of assistance. I award the sum of \$10,000.00.

Special Damages

- (a) The claim for Medical Certificate is not allowed. The Certificate was not tendered in evidence.
- (b) Value of motor car. The plaintiff has failed to mitigate his loss. No effort was made to sell the wreck or parts thereof. Mr. Turnbull testified that the engine was intact three (3) days after the accident. I award the sum of \$8,000.00.
- (c) Cost of wrecker service \$250.00.
- (d) Loss of income.

The evidence of the plaintiff's earnings at the time of the accident is unsatisfactory. The sale of the lands at Grays Inn on which he farmed affected the amount of produce available for sale, the extent of which was not stated. In the circumstances, I assess his net earnings at \$1,000.00 per week.

The plaintiff stated that he resumed selling his farm produce about two (2) months after the accident. I regard this period of inactivity as unreasonable having regard to the nature of his injuries. Unaided by any medical evidence I regard a period of three (3) weeks as sufficient for him to have recuperated. I award loss of earnings for this period ~ 3 weeks at \$1,000.00 per week = \$3,000.00.

He has claimed for some 56 months loss of earnings occasioned by the damage to his car.

"It is generally reasonable for the owner of a damaged chattel to avoid any loss of profits by hiring a substitute for the period during which his own is under repair, in which case he is entitled to recover the cost of hiring as damages for loss of use."

Clerk and Lindsell on torts 16th edition at 5-32 p. 289.

The plaintiff mitigated his loss by using a bus for two months and thereafter ceased to sell his produce because of the expense. He made no attempt to obtain a replacement for the car, or even to sell the wreck. For 5½ years he said he has not engaged in his usual occupation.

I agree with Miss Anderson that the period for loss of use should be that in which the plaintiff could obtain a replacement of the car. No evidence was led in this regard. Her submission was six weeks. I consider two (2) months a more realistic period and award loss of use for this period.

The evidence indicates that he lost about a half of his usual earnings when he resumed selling. I award 3 weeks at \$500.00 per week = \$4,000.00.

Total Special Damages	-	\$15,250.00
General Damages	-	<u>\$10,000.00</u>
		\$25,250.00

Defendants liable for 30% = \$7,575.00.

There will therefore be judgment for the plaintiff against both defendants for \$7,575.00 with costs to be agreed or taxed with interest on the Damages at 3% for the relevant periods.

G.148/87

LEROY GRANT]	-	Plaintiffs
JUNIOR BROWN]		
ADRIAN WELLER	-	Defendant

By consent, Judgment was entered for the first plaintiff for \$95,000.00 with costs to be agreed or taxed.