IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

BETWEEN	EDNA WEBB	PLAINTIFF
A N D	FITZROY BONNER	DEFENDANT
A N D	URIAH RILEY	THIRD PARTY

Mr. Garth Lyttle for Plaintiff.

Mr. David Johnson for Defendant.

Third Party not appearing and not represented.

Heard: April 17, 18, September 30, and October 2, 1996.

KARL HARRISON J:

On the 18th April, 1996 I completed hearing evidence in this matter but was unable to deliver judgment before now. I do apologise for the delay.

CAUSE OF ACTION

The plaintiff brings this action in negligence against the defendant claiming damages in respect of personal injuries and losses sustained arising out of a motor vehicle accident whilst she was a passenger on the defendant's vehicle on the 26th day, 1990. The defendant has denied the alleged negligence and has joined the third party in these proceedings. He has blamed the third party for the accident and is seeking a contribution and/or to be fully indemnified by him in respect of any damages he is adjudged to pay.

The third party did not enter an appearance nor file a defence. His position so far as this trial is concerned falls therefore within section 127A of The Judicature (Civil Procedure Code) Law which states inter alia:

> "If a third party duly served with a third party notice does not enter an appearance or makes default in delivering any pleading.....he shall be deemed to admit the validity of and shall be bound by any judgment given in the action .....and when contribution or indemnity or other relief is claimed against him in the notice, he shall be deemed to admit his liability in respect of such contribution or indemnity .....

Affidavit evidence reveals that there is an affidavit of service of one Errol Morgan, who has deposed that he did serve the third party ont he 1st October, 1993 with an attested copy of the order of the Master along with a copy of the Third Party Notice.

PLEADINGS

Particulars of Negligence alleged by Plaintiff

The plaintiff has alleged in her statement of claim that the defendant was negligent in that he:

1. Drove at a speed which was excessive.

2. Failed to keep any or any lookout.

3. Mounted the bank and thereat caused the said vehicle to overturn.

4. Failed to exercise or maintain adequate or effective control over the said vehicle.

5. Failed to stop, to slow down, to swerve or in any other way so to manage or control the said motor vehicle to avoid its overturning.

6. So far as may be necessary the plaintiff will rely upon the doctrine of res ipsa loquitor.

Defence

In answer to the foregoing allegations the defendant alleges inter alia:

"4. The defendant says that on the 26th day of May, 1990 the plaintiff was one of a number of passengers in his said vehicle and that when proceeding along the main road from Lyndhurst Gap to Dallas district in the Parish of Saint Andrew the brakes of his said motor vehicle failed causing the said motor vehicle to become out of control and to overturn."

The defendant then seeks to place responsibility for the brake failure on the third party. I will deal with this at a later stage.

THE PLAINTIFF'S CASE

The plaintiff, a bank credit officer attached to National Commercial Bank, testified that on the 26th day of May, 1990, she was a passenger in a land rover motor vehicle owned and driven by the defendant. Sometime in the afternoon she and about fourteen other passengers had boarded this vehicle at Papine and were heading home

to Dallas, St. Andrew. She further testified:

> "About ½ mile from Papine I heard a sound underneath the vehicle towards the front. I spoke to Mr. Bonner. I say, "Mr. B. something is wrong underneath there, there is a sound underneath the vehicle."
>
> He turn to me and say, "Is o.k." This was second time I heard sound. I had indicated to him it was the second time I was hearing sound.
>
> He did not stop when he say it was o.k. We travelled for 5-5½ miles. I heard the said sound. The vehicle went "criss cross" the road and over-turned."

It was also her evidence that as the vehicle over-turned she was thrown to the left side causing her left foot to be pinned in the vehicle. Passengers and other persons who came on the scene gave assistance, freeing her foot.

Miss Webb said she saw the defendant sometime during the course of the following day. She asked him what went wrong and he told her that something had broken off under the vehicle. Her response to him was:

> "If you had stopped and checked the vehicle this would not have happened."

His response was that he thought it was o.k.

She also testified that when she was about to return to work she called the defendant and had a discussion with him. She showed him the scar on her foot ad told him that she would be consulting a doctor regarding corrective surgery. She received an estimate of the cost of surgery subsequently; they had another discussion and both agreed on $30,000.00 for compensation. According to her, some three weeks later he brought her $3,000.00. She gave him a receipt with the terms of the agreement written at the back of it.

Under cross examination it was suggested to her that there was only sound coming from beneath the vehicle. She insisted that there were three sounds. She agreed that it was after the passenger was

let off and the vehicle moved off that it started to get out of control. She also agreed that it was after she heard a sound that the vehicle began to get out of control. She said she would not know if the defendant immediately after the sound, had attempted to stop the vehicle by pressing brakes. Neither could she agree that the defendant had attempted to bank the vehicle.

THE DEFENDANT'S CASE

Defendant

The defendant testified that he was the owner of Land Rover CC 991H and that it had overturned on the Plantain Walk Road leading from Papine to Dallas, St. Andrew on the 26th May, 1990.

His evidence revealed that sometime during the morning of the 26th May, 1990 he had taken the vehicle to Mr. Riley's garage for repairs to be effected to a burst right chassis which was causing the vehicle to vibrate. He saw the workman lift a clip before the welding began but was told that the job would take some time. He left to do some business and on his return later, he was told that everything was alright. He paid for the job and the vehicle was delivered to him. He testified that he had not experienced any mechanical problems on his way to Papine after he left the garage.

He picked up about ten passengers and also goods, at Papine and then left for Dallas. On reaching Lindo's Gap he began descending a steep hill. He stopped at Plantain Walk to allow a young lady to disembark. He then moved off. To his right was a steep gully but this did not "trouble" him. He then testified:

> "....I press brakes and find out I did not have brakes. I press and find out I never have brakes after I dropped Miss Deacon. I heard sound and I press brakes and my foot go right to board.
>
> I heard sound after I moved off from where Miss Deacon was."

He denied that Miss Webb had spoken to him about any sound and neither anyone else had spoken to him about a sound. When asked what he did after he discovered that he had no brakes he said:

> "I readily know I have to bank it. I swerved to the bank. I turn steering to bank on right hand side. The wheel of itself ketch a tree root and it bounce back and suddenly as it come back I put it back in the bank and there was a kind of landslide and the only way I could get it stop was to put the bumper right in the side of the hill. The wheel ride a little and van was unbalanced, one wheel on the road and other wheel stuck in the bank.
>
> I stayed there and watch the land rover swing and take time go over. It turned over on left hand side. That was right in the middle of the road...."

The defendant also testified that one Thompson, a mechanic, came on the scene and assisted him. He examined the vehicle and showed the defendant what had happened. The defendant observed where the brake line was "wrapped up" around the drive shaft and that it had "burst from the right front wheel." He also said he noticed that all the brake fluid had run out causing a section of the wheel to be wet. He further observed that there was an opened clip on the side of the chassis.

The defendant said that he told Mr. Riley that the brake line which should have been attached to the chassis was left loose and that the welder who removed it to repair the chassis had not replaced it. Mr. Riley's response was that the person who fixed the chassis had reported to him that everything was alright. He also testified that Mr. Riley did tell him that he had not worked on the brakes as he did not do mechanic work.

When he was asked by Mr. Johnson if he was having any problems with his brakes before the accident occurred his response was:

> "No, not for that long while."

He was asked what he meant by that statement and he said:

> "The most problem I have with Land Rover is chassis bursting right along front end."

In answer to the Court how long was he having chassis problem,

he said:

"nearly every month I have that problem through the road bad."

The defendant contended that he did not agree to pay the plaintiff $30,000.00. He admitted however, that she had received $3,000.00 from him but she had insisted he would have to pay her the balance to make up $30,000.00 as she had wanted the $30,000.00 to do plastic surgery on her foot. He told her he could not give her money like that and that he was going to seek advice from his lawyer.

When asked why he had taken the $3,000.00 to the plaintiff, he said they had some discussion so he had decided to give her this sum of money to help her with bills. He says he did not give her because he thought he was to be blamed for the accident. Rather, he gave her this money because she was out of her work and was having expenses.

Defence Witnesses

1. Oniel Bennett

Oniel Bennett was called as a witness for the Defence. He was one of the passengers in the land rover on the day of the accident. He testified that sometime in the morning before the accident occurred he heard a "body rubbing" sound coming from the chassis when descending hills or slopes so it had to be taken to Mr. Riley to be fixed.

After it left Mr. Riley's garage the defendant went to Papine where passengers including the plaintiff went on it. On the way to Dallas the defendant had stopped to let off a passenger and as it moved off he heard a sound. The defendant applied his brakes but the vehicle did not stop. He tried to bank it twice and on the second attempt the vehicle stopped after he ran it into "a soft spot on the right bank." It became unbalanced and according to him it "take it little own time and turn over on the side."

He saw the mechanic Thompson came on the scene of the accident and Thompson told them something. He observed that the brake line

was wrapped up in the coupling of the driving shaft. According to him: "where the driving shaft was placed the mechanic never put it back." He also observed that the brake line was not clamped and that three clamps on the chassis were opened. Thompson having blocked off the back brakes, put the vehicle on its four wheels and the defendant's son "coasted" it down to Dallas.

2. Francisco Bonner

Francisco Bonner, a son of the defendant, was another witness called by the Defence. It was his evidence that a passenger had disembarked at Plantain Walk, and after she got off the vehicle proceeded slowly. He then said:

> "As it moved, I felt when it jerked and it was moving towards the right hand bank. I realize something was wrong. I jumped off top to the ground. The other two guys on outside also jumped off."

He also saw mechanic Earl Thompson checked the vehicle at the scene of the accident. He looked under the vehicle and saw the brake line twisted around the drive shaft. Brake fluid had leaked and the area where the brake line and drive shaft were, had been wet up.

Under cross-examination he told the court:

> "...I can say defendant used first gear on the day of accident. He put it in four wheel drive at Lyndhurst Gap. I heard a sound (emphasis supplied) when he engaged vehicle in four wheel drive. This was done before accident occurred and released before the accident.
>
> On going up steep hill you need the four wheel drive. In going down you will need first gear but not necessarily the four wheel drive."

The defendant did say however when he was asked what gear he was using when he was coming down the hill:

> "I was in one gear at the time. I had drawn four wheel drive coming down."

THE LAW

The decision of **Readhead v. Midland Rv. Co. (1869) LR 4 QBD 379**

establishes that a contract made by a general carrier of passengers for hire is to "take due care," and included in that term is the use of skill and foresight to carry passengers safely. The basic duty therefore, is for the carrier to provide a vehicle which is safe for the use of passengers as reasonable care could make it.

The critical question which now arises in the case before me, is whether the defendant Bonner has breached that duty. Was the defendant negligent? The onus of proof therefore lies upon the plaintiff to establish her case by a preponderance of probabilities. In order to do this, the plaintiff must present credible evidence to prove those facts which are set out in her pleadings. She also prays in aid the doctrine of res ipsa loquitor.

The doctrine of res ipsa loquitor applies:

1. When the thing that inflicted the damage was under the sole management and control of the defendant;

2. The occurrence is such that it would not have happened without negligence.

If these two conditions are satisfied it follows, on a balance of probability, that the defendant must have been negligent. There is, however, a further negative condition:

3. There must be no evidence as to why or how the occurrence took place.

If there is evidence, then appeal to res ipsa loquitor is inappropriate, for the question of the defendant's negligence must be determined on that evidence.

The defendant may also show that the mere fact of the occurrence of damage or injury does not necessarily connote negligence, for he may be able to provide a reasonable explanation of how the thing could have occurred without negligence. It must be observed however, that the defendant cannot just put up theoretical possibilities, his assertion must have some colour of probability about it - **Ballard v. North British Ry. 1923 S.C.43** and **Moore v. R. Fox & Sons [1956] 1 QB 596**.

Lord Porter in **Barkway v. South Wales Transport Co. Ltd.** (Supra) had said at p. 394:

> "The doctrine is dependent on the absence of explanation, and, although it is the duty of the defendants, if they desire to protect themselves, to give an adequate explanation of the cause of the accident, yet, if the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether on the facts as established, negligence is to be inferred or not."

SUBMISSIONS

Mr. Johnson submitted that the principle of res ipsa loquitor was inapplicable to this case as there was evidence from the defendant and his witnesses which indicate the reason why the accident occurred.

He submitted that:

1. The fact that the evidence showed there was no problem with the brakes prior to or for some time before the accident;

2. The fact that repair work was done to the chassis the very morning of the accident;

3. The fact that after the accident it was observed that a clamp to hold the brake line was in fact opened and the brake line was wrapped up around the drive shaft;

4. The defendant having spoken to Mr. Riley who told him that the person who had welded the chassis had said that the chassis was alright.

The inference can be drawn that the cause of the accident was in fact due to brake failure and that the brake failure itself was as a result of the third pary's failure to either restore or ensure that the vehicle was restored to its proper running condition.

He also submitted that the question of whether or nor the plaintiff's evidence was in fact true must be examined and in examining it, regard must be had to the evidence of the defendant himself and his witness Bennett. Both have testified he said, that there was

only one sound after the vehicle had moved off and having pressed brakes there was none. He asked whether it was plausible that the plaintiff having heard a loud noise the first time, why didn't she bring it to the attention of the defendant immediately? He asked also, "if the plaintiff having heard the sound on the second occasion which was also worrisome to her, why hadn't she insisted that the defendant stop and find out what this all about?"

Mr. Johnson further contended that the plaintiff was unable to assist the court as to the cause of the accident. She was unable to say whether the defendant did apply his brakes. Neither did she look underneath the vehicle after the accident. There was evidence he says, that the vehicle was taken to the garage for repairs to be done to the chassis and that after the accident the said chassis was still intact. In these circumstances, he argued that the defendant ought not to be held responsible for the plaintiff's injuries. Furthermore, he said that all the witnesses for the defendant have been consistent in their evidence and they have been credible and truthful.

Mr. Lyttle

Mr. Lyttle on the other hand, submitted that the fault for this accident rested solely on the shoulders of the defendant and no one else. Furthermore, it was his view that the doctrine of res ipsa loquitor was properly pleaded and relied upon because all the plaintiff can say is that the vehicle "zig zagged" and then overturned. This evidence he said, was supported by the defendant and his witnesses.

So far as the vehicle was concerned, Mr. Lyttle submitted that a reasonable inference could be drawn that it was not sound. He said that the evidence given by the defendant had revealed that:

1. The vehicle was vibrating and having recognised the defect, it was taken to Mr. Riley for repair to be done on the chassis.

2. Every month he had a problem with the chassis.

It was further the view of Mr. Lyttle that the defendant ought to have called an expert witness as such a witness would be more credible and competent to give an opinion on the defect in the brake line after the accident had occurred. He also urged the court to disregard the evidence given by the defendant's witnesses as they were not frank with the court and were far from being credible.

FINDINGS

I must recite what Erle C.J. said in **Scott v. London Dock Co. (1865) 13 L.T. at p. 148**, and cited with approval in **Barkway v. South Wales Transport Co. Ltd. [1950] 1 All E.R. 392**:

> "Where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, then it affords reasonable evidence in the absence of explanation by the defendant that the accident arose from lack of care."

As Lord Porter said in **Barkway v. South Wales Transport** (supra) if the facts are sufficiently known, the question ceases to be one where the facts speak for themselves. The solution is therefore to be found by determining whether on the facts as established, negligence is to be inferred or not. I therefore ask the question: Can it be said that the facts are sufficiently known in this case? My answer is that indeed they were. What were those facts? I set them out as follows?

1. The vehicle was taken to the garage the morning of the accident for welding to be done on the chassis.

2. Repair work was done on the chassis and the defendant saw a workman lifting a clip on the chassis.

3. Immediately before the vehicle turned over, there was a sound and upon the defendant depressing brakes there was none.

4. It was observed after the accident that a clamp to hold the brake line was in fact opened.

5. The brake line was wrapped up around the drive shaft.

6. The brake line was broken off from the right front wheel.

&. The chassis was still intact after the accident.

It is unarguable I think, that the foregoing provides sufficient facts on which to draw a reasonable inference that the cause of the accident could reasonably be said to be due to brake failure. In these circumstances res ipsa loquitor is clearly inapplicable in my view.

Has the plaintiff established her case on a preponderance of probabilities that the defendant was indeed negligent? I have assessed the evidence given by her and must say that I find her to be an honest and truthful witness. It was urged upon me by Mr. Johnson that I should accept the evidence of both Bennett and the defendant that the only sound heard was when the vehicle moved off and subsequently the brakes failed to respond. Francesco Bonner who was on top of the vehicle testified however, that he had heard a sound when the defendant had engaged the four wheel drive at an earlier stage of journey. The evidence shows therefore, that on the defendant's own case two separate sounds were heard. The plaintiff on the other hand, testified that she heard three distinct sounds whilst they travelled to Dallas.

I accept the plaintiff's evidence that on hearing the first sound she did not mention it to the defendant but upon hearing it the second occasion she told the defendant that something was wrong and he responded that it was o.k. I also accept the plaintiff's evidence that after travelling for some 5-5½ miles she heard the third sound and in her own words the vehicle went "criss cross" the road and then overturned. It is my considered view that such an event would not in the ordinary course of things happen unless negligence was the cause.

I do believe the plaintiff told the defendant that had he stopped and checked the vehicle when she had pointed out the second sound, this accident would probably not have occurred. Was it the response of a

prudent driver when he said it was o.k. and then kept driving? What does he mean when he told the plaintiff the following day that he thought it was o.k.

The question now for determination is who is to be blamed for this accident?

Paragraph 5 of the Defence has placed full responsibility for the accident on the third party and has asserted that it was due to brake failure. It states:

> "5. The defendant says that the failure of the brakes on his said vehicle was caused by the negligence of Mr. Uriah Riley his servants or agents in effecting repairs to the said vehicle on the said 26th May, 1990."

PARTICULARS OF NEGLIGENCE

A. Removing the brakes line on the defendant's said motor vehicle when doing work of welding and reinforcing the chassis and neglecting and/or refusing to secure them after.

B. Failing to pin the brakes line to the chassis as they were pinned prior to effecting the said work.

C. Leaving the brakes line loose and thereby causing or permitting same to come into contact with the drive shaft when the vehicle was in motion.

D. Leaving the brakes line loose and thereby causing same to break when coming into contact with the drive shaft and thereby depriving the breaking system of brake fluid.

E. Failing to warn the defendant of their failure to pin or otherwise secure or effectively secure the brakes line of the said vehicle to the chassis or otherwise, to alert the defendant of the danger which was created by their failure to secure or effectively secure the brakes line of the said vehicle."

Mr. Johnson has urged me to conclude that because repair work was done on the chassis the very morning of the accident, that after the accident a clamp to hold the brake line was opened and the brake

line was wrapped up around the drive shaft, an inference can be drawn that the brake failure itself was as a result of the third party's failure to restore the vehicle to its proper running condition. He did submit also that the evidence showed that there was no problem with the brakes prior to or for some time before the accident.

I must say that I find this argument put forward by Mr. Johnson the least convincing. I cannot agree with him that the facts he relies on, warrant the inference drawn. I am of the opinion that the defendant failed in his duty to take due care and he did in fact breach that duty where the plaintiff was concerned. He has failed in my view to keep any or any proper look out. Had he stopped and checked the vehicle in order to investigate the second sound which caused the plaintiff some concern, there probably would have been no accident. There is every reasonable probability that the accident resulted from the want of some precaution which the defendant might and ought to have resorted to.

In the result, I unhesitantly conclude that the defendant was negligent and must be condemned in damages.

DAMAGES

General Damages

The parties have agreed to admit as Exhibit 1 the medical report of the late Professor Sir John Golding. It states as follows:

> "I have examined Miss Webb for the purpose of writing this report on the 6th November, 1991.
>
> Miss Webb had been seen in the Casualty Department following an injury caused by a motor vehicle. She had sustained severe abrasions over the outer aspects of her left foot involving the base of the lateral four toes. Radiographs had revealed an undisplaced fracture of the medial malleolus of the tibia. The wound had been cleaned and dressed. The lower extremity had been immobilised in a plaster back slab.
>
> When she was seen in the Out-Patient Clinic on the 31st May, 1990 the condition of the wounds was found

to be satisfactory. She was given antibiotics to take to prevent infection of the wound. She had been seen regularly for dressings in June and July, 1990. On the 5th July, 1990 Radiographs had shown the fracture of the medial malleolus to have united and the wounds were healing very satisfactorily.

When I examined her I found that she was complaining of some swelling of the ankle after prolonged standing. There were obvious scars over the lateral aspect of the left foot. She was complaining of occasional aching pain in her ankle after prolonged walking and standing.

On examination there was a hyperpigmentated scar over the outer aspect of the left foot measuring 6½" x 1 3/4" from the cuboid bone on the outer side of the foot running distally to the base of the 3rd and 4th toes. There was a full range of motion of the ankle, subtalar and midtarsal joints. Further Radiographs were taken which show that the fracture of the medial malleolus was completely healed.

Miss Webb has made a good recovery from her injuries. She has a disability due to the appearance of her foot and the discomfort she gets from time to time due to residual scarring in the soft tissues. I would assess that she was totally disabled for three months from time to time of the injury, then had a disability amounting to 20% of the function of the lower extremity for two months and of 10% for a further two months then she reached maximum medical improvement with a disability of about 5% of the function of her lower extremity due to the appearance."

J.S.R. Golding O.J., Kt., FRCS

In giving her evidence, the plaintiff described the pinning of her foot in the motor vehicle was like torture and was very painful. She was incapacitated for about three months during which time she was away from work. She said it was necessary for her to visit the hospital twice per week for the wound on her foot to be dressed. On her resumption of work she could not walk properly and the ankle would become swollen after standing for long periods. The scar also itched. Although her problems of the swollen ankle was still

plaguing her, she has testified that it was more intense for the first two months after returning to work.

Two cases were cited to me and I think they are quite relevant to assist in the computation of damages. They are **Cecil Jack v. Geoffrey Madden** C.L.1984/J483 in which damages were assessed by Clarke J. on the 23rd January, 1990 and **Nichresha Richards v. Cigarette Company of Jamaica** C.L.1988/R069 in which damages were assessed by Pitter J. on the 8th day of June, 1992. In the former case the plaintiff had sustained:

1. Bimalleolar fracture of the left ankle.
2. ½" laceration over the forehead.
3. 3/4" laceration on the ankle.

This accident had occurred on the 16th day of December, 1978. The plaintiff was admitted into hospital and was discharged the following day with an appointment for out-patient clinic. He left hospital with a residual ankle stiffness and physiotherapy was prescribed. By August 1979 he had a full range of movement of the ankle. He was awarded $12,000.00 for pain and suffering and loss of amenities and a stay of execution was granted for six weeks. It is not known whether the matter went on appeal.

In Richards case the plaintiff was a 10 year old school girl. She was injured on the 30th December, 1987. Her injuries included a fracture dislocation of the left ankle, lacerations over the body and a 5.6 cm transverse laceration of the anterior aspect of the ankle joint. By consent damages were awarded in the sum of $45,000.00 inclusive of costs.

In arriving at what could be considered a reasonable award, I must take into account that the parties have agreed to treat the 5% functional disability referred to in the medical report at 5% cosmetic disability.

Using Jack's case (supra), a proper datum figure to my mind for general damages, were the plaintiff to be awarded damages in January 1990 would be approximately $25,000.00. In arriving at this figure,

I take into consideration that the plaintiff an attractive young lady with a hyperpigmented scar on the outer aspect of the left foot measuring 6½" x 1 3/4" in size. Quite apart from the pain she experiences whenever she stands for prolonged periods, it is quite obvious from her evidence that she intends doing cosmetic surgery to remove this keloid scarring. This means that she does not wish to live with the memories of her traumatic experience. As I have already indicated the disability as it relates to cosmetic appearance, is agreed at 5%. When one applies a consumer price index of 930 in April 1996 to the suffested datum figure of $25,000.00, the result would be $180,232.55. I therefore award the sum of $180,232.00 for pain and suffering and loss of amenities under the head of general damages.

Special Damages

The plaintiff gave evidence that she had spent $718.40 for medication. I would allow the cost of this item even though no receipts have been produced in support.

The cost of the medical report was not pleaded and no amendment was made to include it. I would therefore disallow this item of special damages.

The plaintiff testified that transportation had cost her $1,000.00. Her evidence in support of this item was as follows:

> "I returned to hospital for treatment. I had to visit there at least twice per week for dressing of wound. For transportation costs I paid for part. It cost me $1,000.00."

That was all the evidence concerning this head. I find the words of Rowe P. in the case of Hepburn Harris v. Carlton Walker SCCA 40/90 delivered on the 10th December, 1990, quite apt where he states:

> "Plaintiffs ought not to be encouraged to throw up figures at trial judges, make no effort to substantiate them and to rely on logical argument to say that specific sums of money must have been earned....."

I would substitute the word "earned" with the word "paid" and apply the principle to this case. I therefore hold that the sum of

$1,000.00 is not allowed.

I do agree with Mr. Johnson that there is no evidence to support a claim for corrective surgery under special damages. The evidence is clear that she had consulted Dr. Guyan in relation to plastic surgery but no evidence was given as to cost or even an estimate of the cost. I hold that on the basis of the authority of **Michael Dixon v. J.O.S. Ltd. & Ors SCCA 65/87** delivered on the 2nd October, 1989, that this head of damages need not be pleaded as special damages and it may be awarded under general damages as a prospective expense. It is required however, in my view for some evidence of cost to be given if it is expected to be awarded as a prospective expense under general damages. I therefore disallow this item unde the head of special damages.

CONCLUSION

In fine there shall be judgment for the plaintiff against the defendant in the sum of $180,232.00 for pain and suffering and loss of amenities under the head of general damages with interest thereon at the rate of 3% per annum from the date of service of the writ to today and in the sum of $718.40 being special damages with interest thereon at the rate of 3% from the 26th day of May, 1990 to today. There shall be costs to te plaintiff to be taxed if not agreed.

There shall also be judgment in favour of the defendant against the third party in default of his entering an appearance and filing a defence in the matter. Costs to the defendant aginst the third party to be taxed if not agreed.