

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO C.L.W042/97

BETWEEN	GLADSTONE WHITE	PLAINTIFF
A N D	DORRINGTON ELLIS	1ST DEFENDANT
A N D	ASTON NAIRNE	2ND DEFENDANT

Mr. Barry Frankson for the Plaintiff

Defendant not appearing and not represented

Heard: 2nd February, 1999, 5th February, 1999
& 23rd November, 1999

RECKORD, J

This matter came before me for assessment of damages arising out of a motor vehicle accident along Crescent Main Road, St. Catherine on the 14th of October, 1994.

Mr. Gladstone White, the plaintiff, is a sergeant of police, a member of the Jamaica Constabulary Force for over 20 years, married, 41 years old with 4 children, the eldest 18 years old and the youngest 4 months old, all residing with him.

The plaintiff was riding a motor cycle towards St. Ann on his correct side and was struck by a motor car coming in the opposite direction. He felt lots of pain on the right leg in the region of the knee; the cycle fell and he lost consciousness. He was being taken to the Spanish Town Hospital in a pickup and regained consciousness on entering the hospital

compound. He lost consciousness again while being taken into the hospital. He felt that his right leg and right arm were broken and he was feeling severe pains to his arms, leg, chest, neck and right hip. He recovered consciousness and was transferred to the Kingston Public Hospital where he was admitted as a patient. He remained there for two months , two weeks and two days. He had lots of pain during the entire period. He was confined to bed; unable to move about as his foot was in traction. He was on his back all the time. A hole was drilled into right foot and weights were hanging from it. His neck was also in a cervical collar, his right hand was in plaster of paris. He had a severe wound to his forearm and a wound to the right knee area. Sometime after plaster of paris was put on right leg from above knee down to the foot.

The plaintiff had surgery in respect of his injuries to his right arm. He was not able to lift his right arm by himself, had to use the other hand to lift it. After discharge he received further treatment from Kingston Public Hospital - two occasions February 1995 he started seeing professor John Golding. He was fitted with a caliper metal brace. He continued treatment there, for several months. "Up to now I am still being treated there." His right leg was not healing as it should and that's why he saw Professor Golding.

He could not walk - feeling lots of pain. Professor Golding operated on the right leg along with Dr. Vaughn. In 1995 he had been admitted to University of the West Indies for 8 -10 days.

After discharge he continued to receive follow up treatment to to the date of trial. Each time he returned his leg and arm were X-rayed. He got medication for infection to his right forearm. It was healing for a time and then broken out again. This area has now healed but it has left some scars. The arm has now reduced in size - smaller than the other arm. The muscles area very soft.

The cast on the leg was removed the following year. A window was cut in it for the purpose of dressing - finally remove after 6 - 7 months. Up to the time when cast was removed he could not do anything. In the early stage he had assistance at home in preparing meals, bathe and bring in bed pan as he could not go to the bathroom. He had to employ someone to assist him. This lasted for about 6 months. He also employed assistance for about three months after leaving University Hospital.

The plaintiff eventually returned to work in September, 1997. He was a senior sergeant at the time of the accident in charge of trafffic for the parish of St. Ann. He was 13 years in the traffic department. His duties included setting daily duties for his staff; training them in accident investigations and general traffic work; supervising them on their various assignment; counselling staff when necessary; mounting road and speed check operations. This involved he going out in the field riding motor cycle. He was very happy in his job and very anxious to go out to work each day. When he returned

to work he could not carry out work he was doing before. He can not now ride a motor cycle. He is now in charge of the process department - a sedentary occupation. He was now unable to write with his right hand. He was right handed. He started learning to write with his left hand. He was unable to bend his right knee; have trouble in going upstairs; have difficulty in work at the desk as he can't sit properly in chair due to pains in his back. He also had pains in his right hip.

The plaintiff complained that sometimes he felt depressed, angry and frustrated. He joined the force in March 1978, promoted to acting corporal, November 1985; corporal, August 1987, sergeant, December 1991 - for promotion he had to pass an examination. He took and passed the initial accelerated examination - he wanted to make the force a career.

Since the accident he had received no further promotion and he had not been invited to partake in the accelerated programme. Had it not been for the accident he believe he would have been a Deputy Superintendent of Police by now. He did not know of any sergeant in 1994 who is now a Deputy Superintendent. He knew one who is now a Senior Inspector. His present salary was \$37,000 per month.

Prior to the accident he enjoyed good health. Since the accident he claims he has been drastically incapacitated. It has affected him at home - his sexual relationship with his wife who is the mother of his 4 children. His injuries have affected

the discipline of his children in particular his biggest son. He is unable to play games with them as prior to the accident eg. cricket, skip rope or cards. He cant lift up his 3 months old baby, take him out for walks, change or feed him. He can't help cooking, bush his yard or do back yard gardening, or help wife cleaning the house. He now has to employ a man to clean his yard. Before, he used to play cricket, football, dominoes, swim, jog - can't do them anymore.

He is now unable to use his right hand and his right leg is several centimeters shorter than the left. He now walks with a pronounced limp and wear a specially adjusted shoes on both feet.

The injuries affected his participation in social activities. He cant play with friends anymore or meet friends for drinks. He avoids going out at nights. He is from the district of Connors in St. Catherine. Before the accident he would go to Connors to visit his father and enjoyed to go his bush to get food - He can't go to the bush anymore. He is unable to use his right arm - sometimes it is sweaty and cold.

The plaintiff incurred medical and travelling expenses. He kept some of the bills and receipts. He paid for travelling \$89,591.66 (receipt admitted in evidence as exhibit 1.)

At the Kingston Public Hospital he was treated by Dr. Dixon. At the University Hospital Professor Golding and Dr. Vaughn, treated him. In April, 1998, he had surgery to his right arm at the University Hospital spending eight days there - costs \$20,400.00. He is having back pains due to

shortness of one leg when he walks and stand for extended periods.

The day following the crash he had been scheduled to go to Sweden on a police traffic management course which he believed would enhance his promotion. He had suffered lots of embarrassment due to his injuries. He received commendations in the force - one of which was published in Force Orders.

The plaintiff now had to visit the University Hospital once every 3 months. It cost him \$2,000.00 per trip by taxi from Ocho Rios to Kingston.

Mr. Carlton Wilson, Deputy Superintendent of Police and Acting Personnel Officer for the Jamaica Constabulary Force next testified - he had the service record for Sergeant Waite - He was enlisted in the force on the 28th of March, 1978. He was transferred from Kingston to Traffic Department in St. Ann on 1st April, 1979. On the 21st April, 1984, he passed the grade 2 examination and was promoted to corporal in 1st August, 1987 - Sat grade 3 examination in 1991 and promoted to sergeant 4th April, 1991.

It was the opinion of this officer that the injuries the plaintiff had would certainly affect his changes of promotion, this would have kept him out of assessment for a time. Had it not been for this accident maybe he would have been promoted taking into consideration his steady advancement up to the time of this accident.

The salary of an inspector at time of this trial was \$208,286.00 per annum with increment at \$5,340.00 per annum to maximum of \$234,936.00. He receives an allowance of \$19,580.00 per annum for travelling.

The salary of a sergeant is \$179,646.00 with increment of \$4,728.00 per annum to maximum of \$203,286.00.

Dr. Kenneth Vaughn, Orthopaedic Surgeon at the University Hospital treated the plaintiff after he had been seen by Professor Golding on the 1st February, 1995. The plaintiff was a previous patient at the Kingston Public Hospital - his injuries were causing problems and he sought the assistance of Professor Golding. The plaintiff had received multiple injuries and was unconscious. His injuries were primarily on the right side of his body - the right upper limb had been broken - both bones in the forearm and had sustained injury to the main nerve that supply the right upper limb. He had a fracture to the right thigh bone and also to both bones of the right leg.

The right forearm was broken in more than one place and this was similar in the right lower limb. A rod was placed into the right ulna bone at Kingston Public Hospital and he had plate and screws on the radius side of the forearm. A pin was placed through the top portion of the leg bone so as to apply traction to restore the length of the lower limb. Following this he was placed in a plaster cast to the right lower limb after some 2½ months in hospital. When he was seen by Professor Golding on the 28th February, 1995 the fractures in the right lower limb had not healed and as a result he was scheduled to have an official fusion of the right knee as it was felt that the fracture would not unite. His right forearm wounds

had broken down and he had developed infection at the fracture site.

Throughout this period he had had limited functions in the right upper limb. The nerve had not regenerated from the injuries he had sustained. He had surgery done to fuse the knee also surgery done to the right forearm to get rid of the infection there and also to remove the implants that had been used to fix the fractures.

Post - operatively, the plaintiff had difficulty walking with a stiff knee. After discharge he was seen at the out-patient department between 1995 to 1998. The right shoulder and elbow joints were quite stiff and he only had very small movement of the right wrist joint. He could not make a full fist and he had difficulty picking up small objects with his fingers. There were scars in the right upper limb that had no sensation at all. His right lower limb was short by 2½" and the right limb was quite solid - there was no movement. He walked with a marked limp and used a stick to aid him in his walking.

The plaintiff's right shoulder was quite stiff - this right upper limb was just lying by his side with no control.

This injury was consistent with the plaintiff using one hand to lift the other.

The Doctor assessed the plaintiff as been totally disabled for eighteen (18) months. Subsequently he will be partially disabled. "It is not likely at this stage for any further improvement. The prognosis for the future is poor.

He is going to remain as is . He has reached maximum recovery."

The doctor said that impairment of the upper limb is 54% of the whole person - of the lower limb - 35%. Combining both it amounts to 70% of the whole man . The injuries would affect his ability to perform playing of soccer, cricket, swimming. He would be severely affected as he would not have the balance. He cant run. He would be restricted in doing household chores. He would suffer discomfort - his right leg would have to be extended all the while - Injuries consistent with he not able to write with his right hand. He would have lots of pain. When one has a short leg he would get pain in the leg muscle and unequal pull. The condition he now was in will remain with him for the rest of his natural life. He would never be able to ride a motor cycle.

This was the case for the plaintiff. As stated at the commencement the defendant did not appear and was not represented. On the question of Special Damages, Mr. Frankson submitted a claim of \$89,591.66 for travelling expenses incurred.

For General Damages, counsel referred to a number of cases that have come before the Supreme Court.

See C/L S174/94 Smith v Green et. al. reported in Mrs. Khans work. Volume No. 4 at page 118. In this case the plaintiff suffered inter alia multiple fracture of the pelvis, fracture of the illium, extensive loss of skin, degloving injury to lumbar area.

Fracture of the pelvic rami - This plaintiff underwent treatment for 2½ years and was left severely handicapped as a result of a motor vehicle accident. On the 21st November, 1995, McIntosh J (Ag.) awarded him \$3 million with interest for pain and suffering and loss of amenities. This equivalent to \$4.26 when converted. C.L. 176/85 Campbell v Sanguinette.

This 15 year old boy was injured in a motor vehicle accident on the 29th of May, 1984. Damages were assessed by Patterson J, as he then was on the 14th of July, 1988. The plaintiff suffered severe head and limb injuries: - compound fracture of the left femur and fibula; fracture of the pelvis - he developed severe abduction deformity of his hip; transferred to Mona Rehabilitation Centre for intensive physical therapy. Examination in March, 1986 showed that his left lower extremity was so deformed and useless that this prevented him from sitting or walking.

Examination in September, 1987 showed inter alia :- left hip and left knee were in fixed flexion deformity of 45 degrees. Left lower limb was 6" shorter - the plaintiff was wheel-chair confined - it was likely to be permanently so. Final disability were as follows:

- (a) 20% permanent partial disability of the function of the right lower limb.
- (b) 100% permanent partial disability of the function of the left lower limb.

- (c) 60% permanent partial disability of the left upper extremity.
- (d) whole person disability was assessed at 65% The learned trial judge made an award of \$300,000.00 with interest. When converted this award would be equivalent to the sum of \$3.6 million at date of trial of instant case.

C.L. S109/91 Lealan Shaw v Coolet Limited et. al.

This 41 year old plaintiff suffered injuries in a motor vehicle accident on the 20th of July 1990. He had several lacerations; X-rays showed : -

1. Compound fracture of the right femur with a third fragment over midshaft of femur.
2. Displaced compound comminuted transverse fracture of the right patella involving the knee joint.
3. Segmental fracture over proximal and distal third of right fibula .

On the 24th of July 1990, he had an above knee amputation. His permanent functional impairment was assessed at 70% of his right lower limb.

For pain and suffering and loss of amenities he was awarded by Theobalds, J the sum of \$1.5M with interest when translated this would be equivalent to \$2.35M.

Mr. Frankson submitted that this was a healthy and vibrant police officer who had a consistent movement along the promotional ladder in the Jamaica Constabulary Force. He asked the Court to note that since the accident the plaintiff has had no promotion and the effect the accident has had on his social and family life. He suggested that a reasonable figure to award for pain and suffering and loss of amenities is \$6M.

Re-claim for Loss of Earning Capacity

At the time of the accident the plaintiff was a senior sergeant of police. In all probabilities he would now be a senior inspector whose salary is \$234,936 per annum. His basic salary is now \$203,286.00. Differences in salary is \$31,650.00. Travelling allowance of inspector is \$224,960 per annum. Plaintiff was a 41 year old man in good health who was expected to live to 65 years old. A reasonable multiplier would be 12.

Loss of salary	\$ 31,650.00 x 12	= \$ 379,800.00
Loss of travelling allowance	\$224,960.00 x 12	
		= \$2,699,520.00

If Inspector has no motor car he is entitled to 2/3

travelling allowance =	\$1,799,680.00
plus loss of salary	<u>379,800.00</u>
total =	\$2,179,480.00

In closing Mr. Frankson submitted that a global figure for loss of future earning should be \$3M.

FINDINGS

In my view the case of Campbell and Sanguinette (Supra) is closer to the instant case - in each there was severe head injuries, fracture of a lower extremity, unconsciousness, shortening of a lower limb, inability to use right hand, whole body impairment between 65% and 70%. However, I regard the Campbell case the more serious in that this youngster was confined to a wheel chair probably for the rest of his life.

Accordingly, the award for pain and suffering and loss of amenities is three million dollars.

Re Loss of future earning capacity.

This officer's rate of probation had been fairly steady up to this accident. Probably he would have been promoted to the rank of an inspector, his last promotion to sergeant being in April 1991.

Counsel referred the court to an award made in Suit No. C.L. W103/94 Natalie Whyllie v Carlton Campbell et. al., on the 20th May, 1997. (See Volume 4 of Khans page 86.) The plaintiff there was a medical doctor. The learned trial judge found that there was a substantial risk that sometime in the future before the end of her working life she will be thrown on the labour market and that her chances of successful practice in her field would be greatly affected. At age 26 years old a multiplier of 12 was applied and an award of

\$5.76M was made for loss of earning capacity.

In the instant case, the plaintiff, a sergeant of police, 41 years old, is likely to suffer similar fate before the end of his working life, because of the serious nature of his injuries. A multiplier of 12 was selected in the Dr. Whyllie's case. For this 41 year old man, a more realistic multiplier would be 8 and not 12 as suggested by his counsel. Applying the figure 8 to the difference of salary the loss would be $\$31,650 \times 8 = \$253,200.00$. Travelling allowance per annum = $\$224,960 \times \frac{2}{3} \times 8 = \$1,199,666.00$, Loss of salary and loss of travelling allowances equal = $\$1,452,866.00$. An award of \$1.5M is therefore made for loss of earning capacity.

In Summary Damages is assessed as follows:

Special Damages	\$ 89,591.00
Pain & Suffering and loss of Amenities	\$3,000,000.00
Loss of earning capacity	<u>\$1,500,000.00</u>
Total	<u>\$4,589,591.00</u>

Interest on special damages to be 3% per annum from date of accident to today.

Interest on damages for pain & suffering to be 3% from date of service of the writ to today.

Costs to the plaintiff to be agreed or taxed.