NMLS

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

SUIT NO. C.L. W 421/OF 1995

BETWEEN	**SYDNEY WHONDER**	**PLAINTIFF**
A N D	**COURTS JAMAICA LIMITED**	**DEFENDANT**

Mrs. Jacqueline Samuels-Brown and Miss Thalia Maragh instructed by Jacqueline Samuels-Brown for Plaintiff.

Mr. Garth McBean instructed by Dunn Cox Orrett and Ashenheim for Defendant.

HEARD: June 13th, 14th and 25th September, 2001

McDONALD J (Ag)

The plaintiff brings this action in negligence and/or breach of statutory duty and/or breach of contract against the defendant claiming damages/injury and loss and expense arising out of a fall by the plaintiff on 30th November, 1994, whilst conducting business as a customer of the Defendant Company.

PLEADINGS

Particulars of Negligence and Breach of duty alleged by the Plaintiff:-

(i) Failing to take any or any reasonable care to see that the plaintiff would be reasonable safe in using the premises as a customer.

(ii) Providing a staircase for the use of the Plaintiff which was partially unrailed and unguarded and hence inherently unsafe to the user thereof.

(iii) Failing to provide any or any adequate warning of steps which were concealed and/or not immediately obvious to the user thereof.

(iv) Permitting the Plaintiff to use the stairway when it knew or ought to have known that it was unsafe for her to do so.

(v) In the premises failing to discharge the common duty of care to the Plaintiff in breach of the Occupiers Liability Act.

(vi) The Plaintiff relies on the doctrine of Res Ipsa Loquitor.

DEFENCE

On the trial date the plaintiff's attorney consented to the Court granting leave to the defendant to file an amended defence in terms of the draft amended defence.

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

Paragraph 4 "The defendant denies paragraph 5 of the Statement of Claim. The defendant avers that the Plaintiff's fall was caused or contributed to by her own Negligence.

PARTICULARS OF NEGLIGENCE

a) Failing to keep any or any proper look out whilst climbing the staircase;

b). Failing to have any or any sufficient regard for her own safety;

c). Failing to observe or heed a sign in the defendant's store which was clearly visible to her which stated, "watch your step."

d). Failing to pay proper attention whilst ascending the said staircase".

THE PLAINTIFF'S CASE

The Plaintiff was by profession a life insurance underwriter working at Life of Jamaica at the time of her accident. Up to this time she had been employed in the Life Insurance Industry as a sales agent for 6 ½ years.

On the 30th November, 1994, she entered the Courts Jamaica Store at 29 Constant Spring Road alone, not to shop but to make her monthly payment on a refrigerator she had purchased on hire – purchase at the said store in October, 1994. On the lower level she enquired as to the location of the cashier and as a result of what she was told, she climbed the stairs. It was the first time she was going upstairs. She describes the stairways as having rails to the sides, and when climbing the stairs she used the railing to the left side. On reaching the top of the stairs she saw a display of furniture laid out infront of her. To her right there was also furniture displayed that was adjacent to the staircase and the same obtained to the left hand side.

On reaching the top of the staircase, she states that she took about 2 steps and looked around for the cashier's sign. She saw an office sign to the rear of the floor and saw people lined up where the cashier was located.

She turned left which she describes as the first left, the "short one" and then a second left and fell down two steps. She testifies that these steps were not visible to her before she fell; there was no sign indicating where the steps were, there was no railing, there was a little wall but no rail, there was nothing to indicate that she would need to hold onto anything. Further she states "there was nothing to indicate that having ascended those stairs I would have to descend again to get to the cashier.

The plaintiff states that she fell and landed up on her back at the bottom of the two steps. She felt a terrible pain in her left ankle and right big toe. The pain was excruciating, she broke out into sweat and the place appeared to get dark. A male employee came and helped her to get up. He put her on a chair. Other employees came around and sent for the supervisor. A person who seemed to be the supervisor came and took control and asked them to place her on a reclining sofa so that she could sit back with her two feet on the sofa. The female supervisor sent for ice because the ankle had started to swell. The plaintiff asked for water which she received; and when the ice came, the supervisor iced the left ankle. The supervisor asked the plaintiff who she could call to take her to the doctor and the plaintiff gave her secretary Maureen Doig's number to call.

The plaintiff asked the supervisor if she could make her monthly payment and gave her the money and purchase bill. The supervisor asked a store clerk to do so, and by the time the clerk returned with the receipt, the plaintiff's secretary had arrived.

Miss Whonder states that the youngman who made the payment and her secretary assisted her down the stairs to her car, and her secretary drove her to Oxford Medical Centre. There she was treated by Dr. Fisher who was on emergency duty, her toe and ankle were x-rayed. She saw Dr. Fisher again on 13th December, 1994, and 13th January, 1995. He prescribed medication and referred her for psysiotherapy. The cost of same by Kay Barned amounted to $2,000 – 20 visits at $100.00.

The plaintiff consulted Dr. Christopher Rose for a second opinion on 6th April, 1995, as she was having continuous pain and severe tenderness in her right big toe and subsequently in May, June and October, 1995.

Dr. Rose gave her an injection in the toe and recommended psysiotherapy with Anna Chai Chung.

Transportation to and from medical treatment/psysiotherapy were agreed at $8,000.

On the recommendation of Dr. Rose the plaintiff purchased metatarsal pads.

THE DEFENDANT'S CASE

Mrs. Heather McKoy testified that she recalled an incident taking place at the Constant Spring branch of Courts where she was working as manager at the time.

On the day in question her desk was located right below the staircase which leads to the upstairs where there are additional showrooms and where the cashier is located. She heard a loud noise, a thud coming from upstairs, and it took her less than one minute to go upstairs to investigate. There she saw a customer sitting on the landing at the top of the stairs. She was assisted by male porters who lifted her from the floor and placed her in a chair which was nearby. Mrs. McKoy asked the trainee manager what had happened in the presence of the customer. She said they got ice and placed it on the customer's foot and asked someone to make the payment at the cashier, which was done. She does not recall what the customer looked like but recalls her name "Whonder" because it was so unusual. She had a few words with the customer, the contents which she does not recall. She recalls that the customer called some type of transportation and was assisted downstairs by the male porters. The trainee manager and herself went with Miss Whonder to the door downstairs and to the front main entrance. The actual cash for transportation was given to the trainee manager.

Mrs. McKoy states that she reported the incident to the Head Office by telephone and next heard about the incident this year.

In evidence-in-chief Mrs. McKoy testified that at the top of the stairs at the landing if one turns left, there are two short steps downwards, each thread is 3 – 4" in height and two threads would be 7 – 8" in height. In that vicinity Mrs. McKoy testifies that there was nothing in particular in the region of two steps, there is furniture as it is a showroom floor and a sign saying "please watch your step". She testified further that up to the day of that incident there has always been a sign of that sort saying "please watch your steps".

In cross-examination Mrs. McKoy states that at the top of the staircase there is a landing which is not separate but a part of the floor of the upperstore. She explained that the landing she refers to in her evidence is the area right at the top of the stairs where there is no furniture display; that area is not physically separated from the showroom floor – there is no separate landing and it is on the same level.

Mrs. McKoy agreed that the structure of the area of the two steps and the steps going up has not changed from that shown in Exhibits 7 and 8; and further that the area has always been carpeted. The length of these steps down to the wall are 15' and these half-steps extend from the wall when one turns left to the wall of the bathroom upstairs.

She further states that when one comes up the stairs and turns immediately left there is a white wall. This wall continues with the same trim as the rail coming up. The rail continues on the wall but she cannot

recall if the trim is on the inside or outside. She also states that the white wall continues with the same blue metal trim of the step coming up.

When asked if there is no rail to the left, right beside the half steps, she replied that there is a rail to the left, right beside the steps but it is not of the same construction as the rail coming up.

Mrs. McKoy testified that on Friday when she visited the Courts Store and Exhibits 7 and 9 were taken,she saw a sign saying "please watch your step" about 24" high and 20" wide which was braced up by some material at the back of it which meets it at an angle was resting on the floor. However she states that in 1994 the sign was resting on the top of the stairs to the left of the stairs. It had no brace, but was attached to a base about 2" and this base rested on the rail of the stairs to the left. The sign presently at the shop has graphics whereas the previous ones did not have any graphics.

Mrs. McKoy states that from she commenced working at the store in 1993, there were signs saying "please watch your step" already there and that some sort of sign was always there. She states that at that time the signs were not on the floor but were always of a movable kind. She specifically gave no evidence of seeing a sign resting on the rails of the staircase on the day in question.

In re-examination Mrs. McKoy was asked when she ran upstairs where was Miss Whonder from the edge of the stairs. Mr. McBean specifically put to her "what you call the landing". She replied that Miss Whonder was to the left of the step – she was not directly infront of the step, she was more to the left.

When asked in relation to the two steps down – how far was Miss Whonder from them when she first saw her. Her reply was "she was very close to the steps, she was on the upper side before you go down".

THE LAW

The plaintiff has alleged a breach by the defendant of its duty under the Occupiers Liability Act and/or negligence on the part of the Defendant.

THE OCCUPIER'S LIABILITY ACT

Sections 3 (1)-(5) of the Act are relevant.

There is no dispute that the defendant is an occupier and the plaintiff is a visitor/invitee. The duty placed on the occupier under section 3 (2) of the Act is to take such care as in all the circumstances of her case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which she was invited or permitted to be there.

Section 3 (3) reads inter alia:-

> "The circumstances relevant for the present purpose include the degree of care and of want of care which would ordinarily be looked for in such a visitor .....

Section 3 (4)

"In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances".

Section 3 (5)

Where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe".

NEGLIGENCE

There is no doubt that the defendant owed the plaintiff a duty of care. There is no contest that the plaintiff suffered injuries and loss. The question is whether the defendant breached its duty of care by failing to take reasonable care to prevent injury to the plaintiff and whether this breach caused the plaintiff injuries and losses.

The defendant has pleaded in the alternative and alleges contributory negligence on the part of the plaintiff. The plaintiff also prays in aid the doctrine of res ipsa loquitor.

Clerk & Lindsell on Torts 15th Edition paragraphs 12 – 14 is instructive in determining whether what was done or not done by the occupier was in fact reasonable, it reads:-

> "The Court is free to consider matters that have proved relevant in the past such as the obvious nature of the danger, warnings, lighting, fencing, the age of the visitor, the purpose of his visit, the conduct to be expected of him, and the state of knowledge of the occupier".

Mr. McBean referred the Court to a number of authorities:

In Doherty v London Co-operative Society Ltd (1956) 10 Solicitors Journal at page 94, the plaintiff, a customer in a supermarket, on her way to the cashier was looking in her purse and walking when she negotiated a corner and not seeing a pile of 4 cartons each 9" high in the corner fell and stumbled over same – It was held that:-

> "No reasonable occupier of a shop ought to expect a customer to keep her eyes down in the expectation that there might be something she had to step over or steer around, and if the obstruction had been a single carton nine inches high, the defendants would not have taken reasonable care for the reasonable safety of

customer; but the defendants ought not to have foreseen that the plaintiff would not see an obstruction between three and four feet high, and the premises were reasonably safe in spite of the pile of cartons near the corner around which she had to turn on her way to the cashier".

This case is distinguishable from the instant case. In the latter the danger was in the nature of something projecting above floor level which would have been more readily visible than a step down. The Court held that the defendant would have been liable if the obstruction had been a single carton 9" high. In this case the step down was 6 – 8".

The case of Wheat v E Lacon & Co Ltd (1966) AC 552 is also distinguishable from the instant case and in my opinion does not assist the defendant.

ASSESSMENT OF THE EVIDENCE AND THE ISSUE OF LIABILITY

I accept the plaintiffs evidence that on the 30th November, 1994 she fell down the two steps on the upper floor of the Courts Jamaica Limited store and sustained injury and losses. I reject the defendant's contention that she fell on the landing at the top of the stairs.

I find that the exact area the plaintiff calls the top of the landing is not the same place so referred to by Mrs. McKoy. The plaintiff in her evidence said "where employees came and were attending to me at the top of the landing after you ascend stairs where all the sofas and reclining sofas are".

Mrs. McKoy in her evidence said that "the landing I am referring is the area right at the top of the stairs where there is no furniture display – that area is not physically separated from the showroom floor – there is no separate landing – and it is on the same level".

Mrs. McKoy's evidence is to the effect that she did not actually see the plaintiff fall but that she heard a loud noise, a thud coming from upstairs and ran up the stairs and reached upstairs in less than a minute and saw the customer sitting at the top of the stairs. She was being assisted by male porters who assist with moving furniture, they lifted her from the floor and placed her in a chair which was nearby. Mrs. McKoy said that she enquired of the trainee manager as to what had happened and she explained.

It was never put to the plaintiff at anytime that she was sitting on the landing i.e. at the top of the stairs; nor was it put to her that she was helped by two male employee porters.

Her evidence is that a male employee came and helped her to get up and put her in a chair. Other employees came around and sent for the supervisor. A person who seemed to be the supervisor came and took control and asked them to place her on a reclining sofa, so that she could sit back with her

two feet on the sofa.

On the defendants case Mrs. McKoy was not the first person on the scene and the plaintiff was already being assisted. Mrs. McKoy states that she saw the customer to the left of the step, she was not directly infront of the step, she was more to the left; and that when she saw her in relation to the two steps she was very close to the steps – "she was on the upper side before you go down".

Mrs. McKoy is not in a position to indicate to the Court whether or not the plaintiff moved position from where she had fallen.

I accept the plaintiff's evidence that there was no sign which read "watch your step" resting on the left side of the rail of the stairs.

Was the Plaintiff fall caused or contributed to by her own negligence or by the negligence or breach of duty under the Occupiers Liability Act on the part of the Defendant?

I find that the plaintiff was a visitor/invitee to Courts Jamaica Ltd store and that the defendant the occupier. It follows therefore that section 3 of the Occupiers Liability Act is applicable.

At trial the plaintiff provided evidence in support of paragraphs 6(i) (iii) and (v) of the Statement of Claim. In relation to paragraph 6(ii) , the use of the word 'staircase' appears to be loosely used, and there is no evidence whatsoever before the Court that the main staircase was partially unrailed and unguarded at any time and there is no evidence of any concealed step or steps not immediately obvious on the staircase.

Mr. McBean submitted that the defendant was not saying that the step down was a danger, but even if it was so, it must have been obvious to someone paying attention, and it would be unreasonable to ask the defendant not to have any steps in their store.

Mrs. Samuels-Brown submitted that the two steps created a concealed danger of which visitors ought to have been warned and assisted in their use of same by rails.

I accept the evidence of the plaintiff that the day of her fall was the first time she had occasion to visit the upper floor of the building, and that her only reason for so doing was to make a payment at the cashiers office in respect of a refrigerator which she had purchased.

There is no dispute that after ascending the staircase and making a short left turn and second left, one comes immediately upon the two steps. There is therefore a short distance between the double turn and the step down. I find that the location of these steps give a visitor little or no time to observe her surroundings before she is required to negotiate these steps.

There is no dispute that each tread is 3 – 4" in height and extend 15' in length.

There is no dispute that the upper floor is carpeted in the same colour throughout; and that no rails exist at the sides of the two steps.

There is no dispute that after the plaintiff 's second left turn there was furniture displayed to her left. It would be reasonable and I so find in the absence of any warning sign or anything to put her on notice, for her to believe that on proceeding straight ahead she would be walking on the same floor level.

The defendant contends that the steps down of 7 – 8" must have been obvious, (it not being a 1 – 2" step down) to anyone paying attention and having regard for their own safety. However, I reject this in circumstances where the plaintiff had no knowledge of the risk, the

colour of the carpet on the steps was the same as that covering the rest of the flooring; there was no sign or warning by the steps indicating a step down, the steps are situated a short distance after ascending the staircase to the upper level and also in relation to the general configuration of the building.

The building appears to operate on two floors and there was nothing in the structure of the building to indicate that after ascending the staircase to the upper floor, one would be required to negotiate to another lower level.

The construction of the staircase is also relevant. The stairs leading from the lower floor were railed and I find that it would be reasonable for a visitor to expect that any further change in elevation would also be railed.

The only place on that staircase leading from the lower to the upper level where the angle of the rail is horizontal is on the part-way landing where the floor is level and also horizontal. Having ascended the staircase, I agree with Mrs. Samuels-Brown's submission and so find that it would have been reasonable to expect that if a visitor saw a wall with horizontal top, the riving which the staircase and its railing had caused the visitor to become accustomed to would cause the visitor to think that the flat top of the wall also indicated a level area with no steps.

There is no dispute that a short white wall is situated to one side of the steps

(i.e. to the Plaintiff's left in the direction in which she was walking) and that this wall has a horizontal top and is higher than the rails.

An examination of Exhibits 7 and 8 show a difference in construction and appearance between the wall and rails of the staircase coming up. Mrs. Samuels-Brown submitted that

this would clearly send a message that it was there for a different purpose than what the staircase was made for. She contends that it was something one could hold unto if stumbling but it was not reasonable to say a visitor prima facie should know that it was for the purpose of being held unto. I agree with that submission.

The plaintiff states in cross-examination that she did not put her hand unto the little wall and if she had done so she would not have fallen and would have seen the steps/would possibly have seen the steps. Further that after she took the second left, possibly she was not looking down on the floor.

Mr. McBean submitted that the only reasonable inference to be drawn from the above is that the plaintiff was not paying attention to where she was walking.

In my opinion it is not customary to walk and hold onto walls unless one is feeble, blind or ill.

The plaintiff also stated that she did not see the two steps until after she had fallen. Mr. McBean submitted that the only reasonable inference to be drawn is that the plaintiff was not paying attention to where she was going.

It is well known that people do not walk and look down, they look in the direction in which they are walking. I find that the plaintiff did not see the steps because they were not obvious.

It is noteworthy that in January 1995 and on the day when photographs Exhibits 7 and 8 were taken, a warning sign was present on the floor by the two steps and that there was no such sign on the railing of the staircase. The significance of this seems to be that the defendant has recognized a need for a warning sign to be placed by these two steps.

It is clear from the plaintiff's evidence on the day of her injury that there was no sign near or at the steps and as to whether or not she paid attention to consumer notices and signs that day is irrelevant. Even if the she had been looking at the other signs that day the fact remains that there was no sign by the step.

I have considered the submissions made by both Counsels. I have had the opportunity of seeing and hearing the witnesses and I must say that the plaintiff has impressed me as an honest and forthright witness.

I find therefore on a balance of probabilities that the defendant failed in its duty to see that the premises were reasonably safe for the purposes for which the plaintiff was required to be there and further that the plaintiff has not contributed to the injury that she sustained.

DAMAGES

I will now give consideration to the matter of damages and will first make reference to the claim for general damages. Items 1 (i) – (vi) of the Particulars of Special Damages have been agreed by Counsel for the plaintiff and defendant,medical reports, letters, notes and receipts concerning same were tendered and admitted as **Exhibit 1-6** of Bundle of agreed documents. Item 1(vii) which claims loss of earnings – commission not earned and policies not sold and serviced December 1994 – March 1995 totalling $80,000 has been left for determination by the Court.

This is against the background that Mr. McBean has stated that he was not consenting to the claim but not objecting. He did not challenge the amount claimed except for taxes.

Mrs. Samuels-Brown submitted that she did not seek to more rigorously establish this claim in light of the fact Mr. McBean told her he was taking a certain position in relation to the earnings.

The plaintiff's evidence is that her salary is calculated on the basis of commission which is disbursed from month to month. She would usually earn $40,000 per month and for 4 months she would earn $160,000. Between December 1994 – March 1995 she suffered a reduction of half of what she would usually earn which was $40,000. She states that $40,000 (i.e. 4 months) was net and that she had made income tax returns on same.

I accept the plaintiff's evidence as to her loss of earnings as being truthful and so award her $80,000 as claimed; and it is significant that this evidence was not challenged.

I will now address the matter of general damages. It was the plaintiff's complaint that at the time of the injury she experienced excruciating pains and that she visited Dr. Fisher on the said day and thereafter on 13th December 1994, and 13th January, 1995.

Due to continuous pain in the toe, she had to wear flat open toe shoes and she was not able to continue daily functions in the usual way. The injury considerably affected her ability to walk, drive to clients and prospective clients. The ankle was continuously bandaged until mid – January, 1995.

She consulted Dr. Christopher Rose on 6th April, 1995 at which time she was having continuous pains in her right big toe but no pain in the left ankle. She also stated that the pain in the ankle stopped mid – way (Miss Barned) physiotherapist's treatment – January, 1995.

On 6th April 1995, Dr. Rose made a diagnosis of sesamoiditis. In May 1995, the Doctor states that there was some improvement in her symptoms.

Medical report of Dr. Rose dated 16th November, 1995 show that on 17th June, 1995 while receiving physical therapy, the plaintiff was pain free. It further revealed that on 25th October, 1995 apart from occasional mild discomfort in the right forefront, she was fully functional and does not suffer from any permanent functional disability as a result of the injury.

Miss Whonder returned to work on a part-time basis on the third week of December, 1994; she did not go everyday as she was still having pain in the ankle And big toe. She was able to resume full duties July/August, 1995.

She testified that in January, 1995 she went to the upper floor of Courts to pay the cashier her premium. In December she had sent her son.

Miss Maragh placed reliance on five cases in support of this head of damages. These cases are Isiah Marriott v D&K Farms Ltd & Evan Phipps – Harrisons Assessment of Damages for Personal Injuries page 382; Aldine Miller & Shirley Miller v Winston Smith – Khans Volume 4 page 68; Charmaine Powell v Milton O'Mealy & Edward Allen – Khans Volume 4 page 56; Egbert Campbell v Leggern Parks and Janroy Ltd – Harrisons Assessment of Damages for Personal Injuries page 374; Delroy Williams v Adina Daley – Harrisons Assessment of Damages for Personal Injuries page 213.

Mr. McBean made reference to the following cases:-

Finn v Herbert Nagimesi and Perceival Powell – Khans Volume 4 page 66; Cynthia Wilks v Lenworth Phillips et al – Harrison's Assessment of Damages for

Personal Injuries page 375; Lenroy Lee v Commissioner of Police and Attorney General – Harrison's Assessment of Damages for Personal Injuries page 375; Stafford Hamilton v Deward Singh & Ors – Harrison's Assessment of Damages For Personal Injuries page 381 Pauline Cunningham v Carlton Black – Harrisons Assessment of Damages for Personal Injuries page 374.

The cases of Cunningham v Black, Marriott v D&K Farms Ltd and Williams v Daley do not offer appropriate guidance in computing an award, as the injuries suffered by the respective plaintiffs exceed those suffered by the plaintiff in the present case. The plaintiffs also suffered permanent disability and in Marriott's case permanent partial disability. This is not so with the plaintiff in the present case. In Powell v O'Meally the plaintiff suffered total partial percentage whole person disability of 7% and the injury was a severed ligamentum patella, there was no diagnosis of sesamoiditis.

I do not find the cases of Wilks v Phillips, Hamilton v Singh & Ors or Miller v Smith helpful in estimating an award.

In my opinion some assistance in the calculation of an award can be obtained from the cases of Finn v Nagimesi, Campbell v Parks, Lee v The Commissioner of Police.

In Finns Case, the plaintiff, a 27 year old welder/businessman on 5th August 1990, sustained a compound fracture of 5th metatarsal of left foot and wound at fracture site requiring stitches. At hospital his wound was sutured and lower leg and foot immobilised in a plaster cast. He attended out-patient clinic and was instructed to rest for 2 weeks. By 30th August, 1990 he was able

to weight bear and was discharged from clinic. He was totally disabled from the date of the accident to end of August, 1990. He then had a disability amounting to 30% of his extremity for one month and of 10% for a further month with no significant final disability. He was awarded $64,365 in May, 1994 as general damages. Today that award values approximately $143,126.19.

In Campbell's case, the plaintiff sustained the following injuries:-

Undisplaced bismalleolar fracture of the left ankle which resulted in swelling around the ankle and pain. Weakness and numbness in the left leg and ankle and abrasions to the left leg and ankle. He received treatment at hospital and was sent home with drugs and other and other medications. He was awarded $50,000 in September, 1991 for pain and suffering and loss of amenities. When converted this award now values $289,273.

In Lee's case the plaintiff sustained a sprained ankle. He was awarded $8,000 in November, 1991 for pain and suffering and loss of amenities. This award now values approximately $39,424.46. There is no record of the period of disability or treatment received.

It is my considered view that when all the circumstances are taken into consideration an award of $230,000 would be reasonable.

There will be judgment for the plaintiff in the sum of $336,719.13 being general damages of $230,000 for pain and suffering and loss of amenities with interest at the rate of 3% per annum from the date of service of writ up to today.

special damages of $106,719.13 with interest thereon at rate of 3% from 30th November, 1994 to up to today...

Cost to the plaintiff to be agreed or taxed.