

NMCS

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO: 9/91

BEFORE: THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.
THE HON. MR. JUSTICE GORDON, J.A.

BETWEEN ALFREDO WILTSHIRE APPELLANT
AND ALFREDO IVY RESPONDENT

Ainsworth Campbell for Appellant

Miss Dorothy Lightbourne for Respondent

10th & 11th February, 1992

FORTE, J.A.

This is an appeal from the judgment of Patterson J, in which he found for the plaintiff and awarded as follows:

Special damages	\$ 135.00
General damages	75,000.00

In the trial of the case liability was in issue but the learned trial judge having found in favour of the plaintiff on liability, there has been no appeal in relation to same. This appeal is brought by the plaintiff attacking the quantum of the damages awarded by the learned trial judge.

The grounds of appeal relied on by Mr. Campbell who argued for the appellant are as follows:

- "1. The learned trial judge erred in not making:
 - (a) An award for loss of earnings;
 - (b) an award for future loss of earnings;
 - (c) an award for special assistance.

- "2. That the learned trial judge erred in holding that the plaintiff/appellant could have carried on his farming activity while he was in the hospital and while he was still on crutches and while he was still convalescing.
3. The learned trial judge failed to make a sufficient award for pain and suffering and loss of amenities."

Mr. Campbell in the process of his arguments in relation to ground one on being questioned by the Court eventually conceded and stated that he would not pursue that ground. In addition, having regard to the opinions expressed he thought that pursuing ground two was also unnecessary.

His appeal therefore rested on the complaint in ground three. This case is unfortunate in one respect. The evidence in relation to the injuries suffered by the plaintiff was not as detailed as the court adjudicating on matters such as this would like it to be. As a result the court aided by Miss Lightbourne for the respondent had to glean from the evidence of the doctor what exactly were the injuries complained of and the following is arrived at:

There is a fracture of the right femur, there is a flexion of the right knee causing a 40° deficiency and the right limb was 1" short. There is no deformity in the left foot but the plaintiff complained of pains in the left knee which apparently was caused by Osteo-arthritis in the left knee. The disability in the right limb was 10-15% and in respect to the left limb the doctor found that there is a 10% disability caused by the Osteo-arthritis.

However, Miss Lightbourne's submissions pointed out to this court that the doctor in giving evidence in relation to the Osteo-arthritis in the left knee could not assist the court to determine whether that condition was caused by an earlier injury which the plaintiff had received in 1969 or whether it was caused by the accident out of which this case arose. In those circumstances the

MORGAN, J.A.

I agree with the observations of my learned colleague and express the view that the figures awarded for Pain and Suffering and Loss of Amenities are adequate.

I agree also that the amount awarded for handicap on the labour market exceeds the evidence given, but in the absence of a Respondent's Notice it will not be disturbed.

As to Special Damages, there is no evidence on which the Court could properly assess the claim for loss of earnings and a similar situation exists with respect to an award for special assistance.

On the whole, it is my view that the global amount of Seventy-Five Thousand Dollars (\$75,000) is adequate and agree with Forte, J.A. that the appeal be dismissed.

GORDON, J.A.

I agree with the judgment of Forte, J.A., I just wish to make reference to the observation of Lord Justice O'Connor in the case of Housecraft v. Burnett [1986] 1 All E.R. page 332. The cases that were referred to by both counsel for the appellant and the respondent showed a spread in the awards that were made for injuries to limbs and these are the observations of Lord Justice O'Connor:

"... the bracket which emerges from the decisions of the Court of Appeal will necessarily have a spread because the Court of Appeal will not interfere with such an award unless it is manifestly too high or too low or it can be shown that the judge has erred in principle in relation to some element that goes to make up the award ..."

This in principle is in keeping with the decision of the Court of Appeal in a case that was cited by Mr. Campbell Winston Layne (b.n.f. Stanley Layne) v. Beverley Dryden Suit C.L. 1980 L 051. In that case the Court of Appeal found that the global award was within the bracket of awards for damages of that nature I agree that the appeal should be dismissed.

FORTE, J.A.

The appeal is therefore dismissed with costs to the respondent to be taxed if not agreed.