

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B094 of 1995

BETWEEN	AUDLEY BROWN	PLAINTIFF
A N D	JAMAICA HERALD LTD.	DEFENDANTS
A N D	KEAN WRIGHT	

Alvin Mundell for plaintiff
Andrea Walters for defendants

Heard: January 12 and 17, 1996

PANTON, J

The plaintiff was unfortunately hit down on May 30, 1993, by a motor vehicle owned by the first defendant and driven by the second defendant. Both legs were fractured. He spent a night in the Black River Hospital from which he was transferred to the Kingston Public Hospital. He spent seventeen days in the latter institution. He was referred back to the Black River Hospital, according to Dr. Mena's report, for treatment as an outpatient.

The plaintiff has insisted that instead of being treated as an outpatient, he was admitted as an in-patient and kept for nearly six months as such. During this period, he was taken on several occasions to the "fracture clinic" at the Kingston Public Hospital. According to the plaintiff he was subsequently treated as an outpatient at that institution for five weeks. He resumed his occupation as a district constable on June 8, 1994.

The medical report indicates that the plaintiff has suffered a permanent functional impairment of fifteen percent to his left leg and ten percent to his right leg, and twelve to fourteen percent of the whole body.

The impairment is more noticeable in relation to his left leg which is half an inch shorter than the right leg. The plaintiff occasionally suffers pain in the left leg.

Prior to the incident, he used to play football. He is no longer able to do so; nor can he run.

Against this background, the plaintiff is seeking general damages in the region of \$800,000.00. His attorney Mr. Mundell submitted that the case of Miller v. Larmand C.L. 1990 M425, an unreported judgment of Granville James, J., delivered on June 5, 1992, supports such an award. In that case, there were fractures of the tibia and fibula of the right leg. There was deformity of the right leg. The plaintiff remained in hospital for six days, and was unable to work for five months. For pain and suffering, the sum of \$208,000.00 was awarded.

On the other hand, Miss Andrea Walters for the defendants submitted that the case Hepburn Harris v. Carlton Walker (Supreme Court Civil Appeal 40/90) is a more appropriate guide. In that case, the Court of Appeal upheld on December 10, 1990 an award of \$100,000.00 for pain and suffering and loss of amenities, which award had been made by Langrin, J. on May 10, 1990. The plaintiff Harris had suffered a fracture of the upper end of the tibia and fibula with an unusual fracture of the acetabulum socket. The consequential injuries were: wasting of the quadruped muscles, swelling around the upper third of the left lower leg, scarring, 3/4 inch shortening of the left leg, and pain in the hip. There was a fifty percent impairment of the left leg which translated into a twenty percent impairment of the whole person.

The disability involved an inability to stoop or stand for long periods, a limping gait, pain in the hip, anxiety, depression, inability to garden and swim, and inability to drive a minibus.

In my judgment, the case of Hepburn Harris v. Carlton Walker is more in keeping with the facts of the instant case. When I consider the suffering of the plaintiff, the level of the disability, and the acknowledged slippage of the Jamaican currency since 1990, it seems that an award of \$550,000.00 is appropriate.

So far as special damages are concerned, the following awards are made:

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|--|---|----------------------|
| (1) Loss of earnings as a district constable for twelve months at \$3,000.00 per month | = | \$ 36,000.00 |
| (2) Loss of earnings as a farmer | = | 1,800.00
(agreed) |
| (3) Transportation | = | 9,800.00 |

(4) Medication	=	\$ 1,500.00
(5) Crutches	=	350.00 (agreed)
(6) Damaged clothing etc.	=	2,000.00
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		\$ 51,450.00

For completeness, it should be mentioned that the plaintiff's age was not given in his oral evidence. However a medical report dated 11th October, 1994 (Exhibit 1) refers to him as aged 28 whereas the other medical report dated 6th July, 1995 (Exhibit 2) describes him as being aged 31 years.

INTEREST

The Court is not unmindful of the fact that Jamaica has been operating for almost a decade within the framework of high interest rates. It is indeed a notorious fact. It seems anachronistic therefore for the Supreme Court to be awarding interest of 3% on damages for personal injuries. It seems also that the interests of justice would be better served if successful litigants in these cases had a higher rate of interest attached to the awards. With this in mind the Court considers that an award of 10% interest is the least that ought to be made.

The assessment is summarised as follows -

General damages: \$550,000.00 plus interest at 10% from the service of the writ.

Special damages: \$51,450.00 plus interest at 10% from May 30, 1993.

Costs to the plaintiff are to be agreed or taxed.