

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA *Judgment Book*

IN COMMON LAW

SUIT NO. C.L. 2001/F062

BETWEEN JACQUELINE FORD PLAINTIFF  
A N D MAURICE SMITH DEFENDANT

Assessment of Damages

Mr. Charles Campbell for Plaintiff

Defendant not appearing or represented

Heard on: 17<sup>th</sup> October 2002

**BROOKS, J.**

The Plaintiff was injured on the 5<sup>th</sup> August 1996 when the motor vehicle in which she was a passenger was involved in a collision. The vehicle was owned and driven at the time by the Defendant.

Judgment in default of appearance was entered against the Defendant on the 2<sup>nd</sup> April 2002.

The Plaintiff suffered a fracture to the right femur but her process of recovery was extra-ordinary having regard to the fairly straight forward fracture. The evidence revealed that she was admitted to the Saint Ann's Bay Hospital on the day of the collision. Her right leg was swollen and she was in a lot of pain.

A Dr. Francis Lindo who saw her sometime afterward, stated in the history that he gave for her that at the time of her admission to the Saint Ann's Bay Hospital she was "treated with surgery and open reduction and internal fixation." He says further that the "operation was complicated by deep infection and the patient developed a chronic draining sinus of the (R) thigh."

It transpired that the Plaintiff remained in the Saint Ann's Bay Hospital for one month and was discharged to her home where she spent three months more in bed "lying on (her) back."

She then was started on crutches and used them for 10 months because her right leg, wasn't able to bear her body's weight and she suffered from pains in her hip.

It was between October and November 1997 that she started experiencing the draining related by Dr. Lindo, in the above quotation. There had to be daily dressing of the wound from which the drainage occurred. When the condition failed to be resolved, even after a course of antibiotics, the Plaintiff sought the assistance of Dr. Lindo. This was in January 1998. She was then still using the crutches. Dr. Lindo reports that on 31/1/98 his review of her condition showed (on X-ray):

“Healed fracture (R) femur with Intra – medullary nail in situ. A piece of dead bone (sequestrum) was visible within the (R) femur.”

Based on Dr. Lindo’s advice the Plaintiff underwent another operation but this was not until 16<sup>th</sup> November 1998. The surgery involved:

- “ - removal of intra – medullary nail
- excision of sequestrum (R)
- Femur (sequestrectomy).”

The doctor reports that “she made an uneventful recovery and was discharged on 20/11/98.” The Plaintiff gave evidence that during the period of her recovery the wound on her thigh was open for 12 weeks.

Dr. Lindo in his report dated July 7, 2002 reports that the Plaintiff on examination had:

- “- normal walking gait
- broad flat scar (R) thigh
- postero – lateral aspect (R)  
thigh well healed and no sign of infection
- normal alignment and rotation (R) = (L) lower limb”

He went on to say that X-rays revealed a well healed fracture to the right femur and no sequestrum was seen. His prognosis was that the Plaintiff had “chronic osteomyelitis, a disease not curable by sequestrectomy” but that he was pleased to relate that there had been no recurrence since the November operation. He cautioned that recurrence of the condition was however likely over the years.

Although Dr. Lindo did not express any figure representing the permanent disability of the Plaintiff, Dr. Emran Ali, with whom the Plaintiff consulted in August 2002, opined a permanent partial disability of 10% of the function of the right lower limb. This he says translated to one of 3% of the whole body.

From the above it will be seen that the Plaintiff underwent two operations and she was incapacitated from August 1996 to February 1999. In referring to the scar the Plaintiff (now 26) says that people stare at her when she wears shorts.

In assessing an appropriate award for General Damages I was referred by Mr. Campbell to three cases namely.

1. Jason Edwards vs Phoebe Buchanan reported at page 69 of Volume 3 of Miss Khan's work "Recent decisions in Personal Injury cases"  
(an updated award would be \$534,726.00)
2. Floyd Miller vs Fitzroy Hamilton and another reported at page 63 of the said work  
(an updated award would be \$547,123)
3. Alfred Cunningham vs Maximum Investigators and Covent Action Limited and another.

reported at page 79 of Volume 4 of Miss Khan's work.

All three cases concerned fairly straight forward fractures to the femur but only the Cunningham case (supra) reported a permanent partial disability of 2% of the whole person. In that case the Plaintiff Cunningham suffered a gun shot wound to the distal 3<sup>rd</sup> of the right leg resulting in an "undisplaced diaphyseal fracture of the right femur with canister in site".

He was in hospital for 14 days and discharged on crutches. He discontinued the use of the crutches less than two months later. He was unable to walk for a period of four weeks. Though he had recovered, the bullet causing the injury had not been removed because of the "probability of damage to nerve and blood vessels". Mr. Cunningham was awarded \$250,000.00 which, when updated, converts to \$604,531.00.

Bearing in mind the longer period of recovery and the effect on the Plaintiff resulting from the 12" scar on her thigh I am of the view that \$700,000.00 is an appropriate figure for pain and suffering and loss of amenities.

The Plaintiff gave evidence in proof of the special damages claimed and provided documentary support for each item except for her loss of earnings. In that regard she has claimed lost wages as a secretary at the rate

of \$1,000.00 per week after tax for 69 weeks from August 12, 1996 to December 8, 1997.

I am satisfied that the loss is reasonable and is in keeping with the time incurred by her recovery and find that special damages as proved are.

Costs of Medical reports	8,000
Costs of Hospital Fees	10,100
Costs of Doctors Office Visits	5,500
Costs of Surgery for insertion of K. Nail	35,000
Costs of Surgery for removal of Intramedullary Nail and excision of (sequestrum) dead bone in femur	54,000
Cost of Dressing	200
Costs of Medical Services	400
Costs of Consultation	2,000
Costs of Crutches	600
Costs of X rays	2,800
Costs of Police Report	1,000
Loss of Earnings	<u>103,000</u>
<b>Total</b>	<b><u>\$222,600</u></b>

