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**SUPREME COURT JUDICATURE
KINGSTON
JAMAICA**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. G012 of 1979

BETWEEN	LLOYD GOULBOURNE) (By Next Friend Gloria Williams) and)	PLAINTIFFS
	GLORIA WILLIAMS)	
AND	UNITED DAIRY FARMERS LIMITED) and)	DEFENDANTS
	LASCELLES McCULLUM)	

R.S. Pershadsingh, Q.C. and E. Hall instructed by A.C. Mundell for Plaintiffs.

R. Williams, Q.C. instructed by I. Robin of Clinton Hart and Company for Defendants.

HEARD: 30th September, 1981

DELIVERED: 7th October, 1981

ASSESSMENT OF DAMAGES

WRIGHT, J:

This assessment of damages is in respect of injuries sustained by the 1st plaintiff when at the age of sixteen (16) he was struck from his bicycle by the 1st defendant's truck and also with regard to consequential loss to the 2nd plaintiff, his mother.

Mr. Williams has quite admirably conceded the Special Damages as proved.

The items under this head are:

Medical Expenses	\$596.20
Transportation	65.35
Loss of Earning of Next Friend	504.00
Extra Nourishment	13.68
Property Damage	101.40
TOTAL	<u>\$1,280.43</u>

That sum is accordingly awarded as Special Damages.

But the rest of the case is as difficult as this section is easy. The plaintiff testified of receiving a blow by the truck and of falling to the ground hitting the right side of his head. There was

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immediately temporary blindness for a brief period.

When examined by Dr. J. Williams the said day he was found to be suffering from:

1. Swelling and deformity of the right thigh.
2. Contusion of the right leg.
3. Small lacerated wound of the right thigh.

X-Rays disclosed a fracture of the right femur.

He was hospitalized for seven (7) weeks and thereafter released on crutches to receive out-patient treatment for some four (4) months.

From the plaintiff's testimony it is gathered that he suffered great pains, nervousness, giddiness and periods of black-outs.

The leg injury has healed but the result is that it is 1" shorter than the other. This is not his greatest problem. This has to do with the head injury.

His school reports up to the time of the accident do not disclose any remarkable attainment. But whatever he had hoped to attain fizzed out. The post-accident report from St. Jago High School to which he transferred after the mishap is dismal. He succeeded in failing every subject in his syllabus and from the report and oral testimony of Dr. Ruth Rae Doorbar, Clinical Psychologist of thirty-two (32) years experience this decline is attributed to organic brain damage. Dr. V.O. Williams, a practicing psychiatrist of vast experience had diagnosed that he was suffering from a neurosis and needed treatment; the duration of the illness could^{not} then be assessed and he opined that it was likely that the illness was precipitated by the motor-vehicle accident. This was on 28th November, 1977. Treatment was prescribed. But when seen by Dr. Williams again on 28th April, 1980 the findings were: -

- 1) He remained in the same objective condition as reported but subjectively there has been some exacerbation of his symptoms.
- 2) His condition remains stationary and he is still in need of treatment.

- 3) Unless he continues regular treatment his condition is more likely to worsen than improve.
- 4) Assessment of the duration of his illness remains uncertain due to the hiatus in his treatment, though his present condition indicates that prolonged relief from his symptoms is likely to depend on continuing therapy for an indefinite period.

Dr. Doorbar's conclusions after examining the plaintiff on 17th July, 1981 -

Diagnostic Impression

"Organic Brain Damage coupled with a post traumatic Psycho-neurosis in a man of Basically Average Level Intellectual endowment."

Recommendations:

- " I believe that some of Lloyd's symptoms could be helped considerably by medications, and I would also recommend any eye examination to determine if he needs corrective glasses."

Dr. Doorbar's conclusions were aided by an Electroencephalographic Examination (EEG) at the University of the West Indies which showed brain abnormality but did not disclose any focal injury.

It will be seen that both Specialists - one a Psychiatrist and the other a Psychologist - agree on the need for continued treatment. It was however elicited from Dr. Doorbar that the medications which would prove most effective in alleviating the plaintiff's condition have the effect of depressing the central nervous system. Hence the danger inherent in the help recommended.

While Dr. Williams is non-specific as to the cause of the neurosis stating it is likely to have been precipitated by the accident Dr. Doorbar concludes it was caused by the accident. There was nothing in the plaintiff's pre-accident history to account for his present condition - occasional giddiness and black-outs, foggy vision, frontal headaches, loss of memory, dramatic decrease of concentration span to about fifteen (15) minutes, poor memory recall, irritability. Classical signs of organic brain damage are present. The question arose as to whether the plaintiff contributed to his present condition by

not having the prescribed medication. Between November, 1977 and April, 1980 he had not taken any medication for a long time. The result was that by April, 1980 symptoms which apparently were being alleviated by the treatment had, because^{of} the hiatus in the treatment, returned.

It would seem that this young man was a victim not only of the motor-vehicle accident but of poverty and other circumstances beyond his control. Questioning revealed that his support is his mother, a counter clerk, who has other children to support as well; the medication in addition to being expensive could not be obtained at the pharmacies. Why then did he not seek the assistance of the Government Clinics? Dr. Williams, experienced and renowned though he be testified of great difficulty in making the necessary contact with the Clinics let alone a poor unknown boy. It seems the odds are against him so that he should not be made to suffer any greater pain by being held partly to blame for the prolongation of his condition.

When asked what he had hoped to become the plaintiff replied a doctor, an engineer or a chartered accountant. But in the light of his school record prior to the accident, Dr. Doorbar's opinion that he could have attained to become a chartered accountant notwithstanding, my view is that his ambition does not impress me as being attended with the necessary ability. Nonetheless with his average intellectual endowment egged on by his ambition he would in all probability have attained to some level within his capacity.

And this is so although Dr. Williams thinks that with continued medication or just spontaneously his conditions would mend. The prospects more favour a prolonged course of treatment with the suffering brought on by the realization that any satisfactory level of attainment has been irrevocably put beyond him. Dr. Doorbar's

report discloses that he cannot manage his present job which he obtained, it would seem, not on merit but with the aid of some relative. After about fifteen (15) minutes he has to get up and walk about as he can concentrate no longer. Also his personality has suffered a change. Prior to the accident he seemed sufficiently pacific in his way to earn the nicknames of 'Baby Lloyd' and 'Angel'. Now he is irritable and quarellsome over trivia.

In the witness-box the plaintiff gave details of the accident and, to some extent, of his treatment and to the layman this would tend to belie the allegation of organic brain damage. However, both Drs Williams and Doorbar explained the two diverse and independent functions of the brain - one or both may be lost. The one seen in action is not the damaged one. The damage prevents the acquisition of new knowledge or at a unsatisfactory rate resulting in frustration or irritability.

What then is the measure of damages and what factors are to be considered?

The elements as I see it are:

1. Pain and suffering and loss of amenities.
2. Prospective loss of earnings.
3. Loss of earning capacity.
4. Future medication
5. Fractured femur resulting in 1" shortening

While the desirability of quantifying the award under the various heads is recognised I must confess to some difficulty here.

For instance, the need for prolonged medication is clearly indicated but there are no figures to aid computation. Again there is very little, if anything, to go by when considering Prospective Loss of Earnings.

Loss of earning capacity must be assessed even if difficult. A factor to be borne in mind is that there is no evidence that his life expectancy is in any way affected; so whatever detriment he suffers will in all probability be there for a long time.

In the state of the evidence it is difficult to quantify the damages under each relevant head but an endeavour will be made :

1.	Pain and Suffering and Loss of Amenities	\$30,000
2.	Prospective Loss of Earning)	
3.	Future Medication)	\$30,000
4.	Loss of Earning Capacity	\$10,000
5.	Fractured Femur resulting in 1" shortening & 15% - 25% disability	\$20,000
	TOTAL	\$90,000
	Final assessment of	\$91,280.43
	being Special Damages	\$ 1,280.43
	General Damages	\$90,000.00

and costs to be taxed or agreed.

Special Damages to bear interest at 4% from 6th February, 1975 to 7th October, 1981.

\$50,000 of General Damages to bear interest at 8% from date of the Writ 22nd February, 1979 to 7th October, 1981.

Mr. Williams: Applies for stay of execution for six (6) weeks.

Mr. Mundell: Further stay will be to the detriment of the plaintiff who has suffered considerably already. If court acceds defendant should pay to plaintiff's attorney-at-law a sum of \$50,000 within seven (7) days of today's date.

Mr. Williams:

See merit in Mr. Mundell's contention. He should have some money to carry on treatment.

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Order

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