Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. G 044 OF 1995

BETWEEN **GEORGE GUSCOTT** **PLAINTIFF**

AND **V.G. SCOTT TRUCKING AND TRACTOR LTD.** **DEFENDANT**

Sherie-Ann McGregor instructed by Nunes, Scholefield, Deleon & Co. for the Plaintiff and Christopher Malcolm, Esq. Instructed by John G. Graham & Co. for Defendant.

Heard on November 1, 2,7 and 11, 2001 and May 17, 2002

ANDERSON: J

This is a claim arising out of an accident on September 28, 1991, in which the plaintiff, then an employee of the defendant company was injured. The plaintiff's case is that his employer, the defendant, was negligent in that it failed to provide him with a safe place of work in the course of carrying out his duties with the defendant company and also failed to provide him with proper supervision, and that as a consequence of that failure, he was hit by a motor vehicle and sustained loss and damage.

The plaintiff's evidence was to the effect that he was employed as a forklift operator. The forklifts were used to unload trucks owned by the defendant company. His normal place of work was at the company's sugar warehouse on Marcus Garvey Drive. However, on Friday the 27th September 1991, he received instructions that he was to accompany the truck to a business premises on Grants Pen Road where there was a juice manufacturer. He did not recall the name of the juice manufacturer. However, the forklift was to be used to unload sugar at this business premises, which, it later emerged, was "Kiskimo". Witnesses referred to "trucks" and "trailer" interchangeably during the evidence heard in the case and there is no evidence that anything turns on the nomenclature.

On Saturday the 28th September, the forklift was tied to the truck taking the sugar to the juice manufacturer in Grants Pen. When it arrived there the truck drove into the manufacturer's business premises. The forklift was used to unload the sugar. Thereafter, the tractor/trailer which carried the sugar on behalf of the defendant company had to back out of the juice manufacturer's premises as there was not enough room for it to turn around in those premises. It accordingly backed out unto the main road at Grants Pen. There the plaintiff was involved in assisting in the tying of the forklift back to the truck to ensure that it was secure and would not swerve, as the truck towed it back to the Marcus Garvey premises.

The trailer was parked on the left hand side of the road and the plaintiff was at the right hand back side showing the side men how he needed to have the forklift secured, when he was hit by a passing vehicle. As a result, he was rendered unconscious. As he said, when he came to, he was in the University Hospital of the West Indies. According to the plaintiff it was the first that he had been asked to go to these premises on Grants Pen Road to unload sugar. He stated that when the trailer backed out of the juice premises, he drove the forklift slowly ahead of the truck and when it was to be tied to the trailer, the four side men on the truck were the ones who were doing it. He came off the forklift on the right side in order to show the men how he wanted the forklift to be tied securely to avoid it "swagging". He further indicated that the driver of the truck, at this time, was at the back of the truck on the left hand side, but he was not sure what the driver was doing. In answer to questions from his counsel, the plaintiff indicated that there was no special person among those at the scene, who was in charge and responsible, to ensure that the forklift was properly tied to the tractor/trailer. He also indicated that the position in which the tractor/trailer was, as the employees sought to tie the forklift, was on the left side of the road and close to the curb. In his view, traffic could pass freely on the remainder of the road in both directions.

The plaintiff, however, complains that when he was required to assist in tying the forklift to the trailer, there were no cones or any other markers put at either end of the truck in order to warn other users of the road that there was a possible hazard. The plaintiff

having been taken first to the University Hospital on Saturday the 28th, was transferred to Kingston Public Hospital on Sunday the 29th September where he remained for about one week. On Tuesday following the accident, his broken right foot was reset and he remained in hospital for a further four days. However, he kept returning to hospital for the dressing to be changed on his right leg, on which he had suffered a compound fracture.

He testified further that about twelve (12) months after the accident, Mr. Scott, the Managing Director of the V.G. Scott Trucking, the defendant company, came to see him and sent him to Bernard Lodge to see if he could get employment there. He apparently remained at Bernard Lodge for a short while but was unable to continue working because of pains from the injured foot. After working at Bernard Lodge he returned to work at V.G. Scott for a while but finally stopped working for that company in 1993 and did not work again until he took a job at Tools Hardware & Supplies in 1996 where he still remains currently employed. In the intervening period between leaving V.G. Scott and commencing work at Tools Hardware & Supplies, he did work for a Mr. Chisholm for about three (3) months but, as he said, when his injured foot started acting up, had to give up that employment. At his present job at Tools Hardware & Supplies, he states that because of the continuing pain in his foot, he is unable to work every day of the week. He says he works for about three (3) days driving the forklift, while somebody else carries out that job the other two (2) working days.

The plaintiff gave evidence of the losses which he incurred as a result of the accident. In particular he detailed the loss of a pair of boots valued at Six Hundred and Fifty Dollars ($650.00) and trousers valued at Two Hundred Dollars ($200.00). He also stated that when he had to make visits to the hospital, he had to go by taxi and this cost him Two Hundred Dollars ($200.00) each way or Four Hundred Dollars ($400.00) round trip. These visits to the hospital continued for over a year after the accident. He had to secure a medical report from the Kingston Public Hospital and also one from Dr. Warren Blake orthopaedic surgeon for which he paid One Thousand Eight Hundred and Fifty Dollars

($1,850.00). He had also been required to pay Dr. Adolfo Mena, a total of Eleven Thousand Dollars ($11,000.00) in charges for medical treatment.

In cross-examination by Mr. Malcolm, the plaintiff admitted that he did not have to stand on the right hand side of the truck in order to tie the forklift nor did the side men tying the forklift to the truck specifically ask for his assistance. He admitted that on the trip from the sugar warehouse where he was employed to the juice business in Grants Pen, the forklift had appeared to have been tied securely, and that this had been done by the side men without any assistance from himself. However, he stated in further answer to a question by Mr. Malcolm, that he was not satisfied with how it had been tied because it "swagged" across the road on the way in a dangerous manner. He rejected the suggestion that because of the position where he stood as he tied the forklift, he was unable to see vehicles going in either direction along the road. In fact, he said that he did see vehicles passing, but he did not see the vehicle which hit him.

In an interesting development, the plaintiff agreed under cross-examination that he knew one Mrs. Wong who, apparently, was the driver of the vehicle that had hit him. He further admitted that, as a consequence of his contacting his attorneys, they had written to Mrs. Wong's insurance company and he had received a payment in relation to the accident. He however, did not remember how much was the payment he had received. He also further admitted that after the accident for about six (6) weeks, Mr. Scott, the Managing Director of the defendant company, had sent him about Four Hundred Dollars ($400.00) each week and that he had come back and taken him back to work about twelve (12) months later.

As a consequence of the information concerning the receipt of money from the insurer of the driver of the car that hit Mr. Guscott, Mr. Lowell Morgan attorney-at-law of the legal firm Nunes, Scholefield and Deleon, who had previously acted on behalf of Mr. Guscott, testified on his behalf. He indicated that he had received instructions from Mr. Guscott and after making the necessary inquiries, he had proceeded to write to Jamaica International Insurance Company, the insurer of Mrs. Wong, the driver of the car in

question. After correspondence and negotiations it was agreed that the insurance company would accept "50% liability" on the basis of a claim of Three Hundred and Twenty Thousand Dollars ($320,000.00) and accordingly, the firm, having advised Mr. Guscott and secured his consent, received a payment for One Hundred and Sixty Thousand Dollars ($160,000.00) on his behalf. Mr. Morgan did however, indicate that he had also advised Mr. Guscott that he could pursue a claim against the defendant, his employer, on the basis that it had failed to provide him with a reasonably safe place of work.

The plaintiff also called Dr. Adolphus Mena, orthopaedic surgeon, who had treated him at the time of the accident in 1991 and had also examined him more recently. Dr. Mena testified as to the injuries which he had found which included a compound fracture of the tibia and fibula of the right leg with a third of the piece of the bone floating outside of the injury. He had treated the plaintiff by means of cleaning and debridement and the fracture was reduced and put back in place. An above knee plaster of paris cast was put on. A window was left in the cast to allow for daily treatment of the wound. The plaintiff also received antibiotics and pain killing drugs. After some days, the plaintiff was discharged from hospital and was advised to have daily follow-up dressings. Subsequently, the plaintiff was required to use crutches and he was later seen in the fracture clinic on some three (3) occasions between January 1992 and May of 1992. That was the last time Dr. Mena saw him at the K.P.H., and he confirmed that the report tendered in evidence dated 29th May 1992, was his report. Dr. Mena's most recent examination showed that there remained a three-centimeter scar on the anterior aspect of a deformity on the distal two-thirds of the right leg. There was no pain on palpation of the fracture site. However, the right leg was now three centimeters shorter that the left leg, and the diameter of the right thigh was approximately three-centimeters less than the left. The calf of the right side was also three-centimeters less than the diameter of the calf of the left leg. There is marked wasting of the muscles of the right leg and the plaintiff now walks with a marked limp. It was suggested by Dr. Mena that the plaintiff may still need corrective surgery. He also indicated that the cost of the corrective surgery would be approximately One Hundred and Fifty Thousand Dollars ($150,000.00) but this did not include

hospitalization which would add approximately another Forty Five Thousand Dollars ($45,000.00). He further estimated the permanent partial disability of the lower limb to be approximately 25% unequal to 10-12% of the whole person. I accept this evidence. At the end of Dr. Mena's evidence, the plaintiff closed his case.

Mr. Malcolm opened the defendant's case by indicating that the injury and damage was caused, either by the plaintiff's own negligence, or were the result of the combined negligence of the plaintiff and the driver of the car that hit him, who the court had now become aware, was Mrs. Wong. The defence then called Mr. Vernon Scott, the son of the Managing Director of the defendant company, and the driver of the truck in question. The account of the incident from young Mr. Scott, the driver, was slightly different from that of the plaintiff. He stated that after unloading and backing the trailer out of the premises of the juice manufacturer which he identified as Kiskimo, the forklift was attached to the trailer. While driving along Shortwood Road, he noticed that the forklift was swinging from side to side in a dangerous manner and he therefore pulled over to ensure that it was properly attached with the chains. The chains, it appeared, had been too slack and that allowed for the forklift to be swinging from side to side. He stopped, and one of the workers was re-tying the chain. At that time, he saw the plaintiff standing on the right hand side of the forklift while he, the driver, was standing on the left. He could see the men tying the chain and there was space for other people to stand on the left, but the plaintiff was standing on the right hand side which is to the road. He, the plaintiff, was assisting them and said to them that it was not the way to tie the chain. He, the witness, did not ask Mr. Guscott to tie the chain, but does acknowledge that the sidemen were told that that was not the way to chain the forklift to the trailer.

In cross-examination by Miss McGregor for the plaintiff, Mr. Scott accepted that at the time when he left the sugar warehouse, he was aware that the trailer would not be able to turn in Kiskimo's premises. He claimed that he was in charge of the operations on that day. He agreed that the tractor/trailer was attached to the forklift on the road, only after he had backed out from Kiskimo. Mr. Scott accepted that as the person in charge, it was his job to ensure that the forklift was properly tied to the back of the trailer. His evidence

was that this was not the first time that the plaintiff was delivering sugar at this particular location, but the plaintiff's evidence, which I accept, was that it was his first occasion. He agreed that there were no flags on the trailer or any cones placed conspicuously where he had stopped, which would assist other users of the road in realizing that there was a traffic hazard about which they may need to be concerned. He also asserted that he did tell Mr. Guscott to be careful as there was traffic passing by.

The defendant also called to give evidence, Mr. V.G. Scott senior, the Managing Director of the defendant company. I did not find his evidence particularly helpful except that he stated that the plaintiff had not been given instructions to tie the forklift to the trailer either before it left or after. In fact, he pointed out that the sidemen who were employed by the company were responsible for tying the forklift to the trailer. It was he who gave the plaintiff instructions about going to Kiskimo's premises to deliver three hundred (300) palletized bags of sugar, and the need for him to drive the forklift behind the trailer. One thing that I found instructive in his evidence however was that he pointed out that it was the job of the sidemen to secure the forklift to the trailer. This is significant because the evidence of driver, Mr. V.G. Scott (Jr.) was that after driving off from Grants Pen Road, he noticed that the forklift was "swagging" behind the trailer in a manner which was dangerous. It was for that reason that he stopped. At this stage, the evidence coincides, and there is agreement that the forklift was being re-attached to the trailer when the accident occurred. According to the plaintiff, this was the first occasion, according to the driver this was the second occasion. In any event there is sufficient evidence to indicate that the forklift was not securely attached to the trailer when the plaintiff attempted to assist in the reattaching. It is also possible to conclude from this that the sidemen who had previously attached the forklift had not done a good job and the question then arises, whether in providing sidemen to do the job of tying, sidemen who were apparently not competent, the defendant company had failed in its duty to provide a safe place of work for the plaintiff. Mr. Scott (Sr.) also admitted that there were no flags or cones on the truck or on the road.

In his closing submissions for the defence, Mr. Malcolm pointed out that the plaintiff had given sworn testimony to the effect that he was employed as a forklift operator. He submitted that in relation to the accident which had happened on the 28th September, it did not matter whether the forklift was being tied for the first time as suggested, by the plaintiff, or the second time as suggested by the defendant. He further suggested that the plaintiff had not admitted that he was actually assisting in tying but that he was only giving advice. The evidence by the driver, Mr. V.G. Scott (Jr.) however, was to the effect that he did see the plaintiff with chains in his hand at the time when they were tying the forklift and he did advise him to be careful.

Mr. Malcolm further submitted that there was no reason for the plaintiff to get off the forklift at the time when it was to be tied or re-tied. He suggested that the plaintiff took on the job himself, a job which was not part of his assignment and that he exposed himself to danger, a danger for which the defendant should not be held liable. Further, he submitted that the warning purportedly given by the driver, was adequate for the purposes of protecting the plaintiff from any likelihood of injury. Finally, he made two submissions. Firstly he suggested that the plaintiff had not appeared to take any precaution to protect himself against the possibility of injury. Secondly, and more substantially, he urged upon the court that the payment which had been received by the plaintiff from Mrs. Michelle Wong, the driver of the car which had hit the plaintiff, should be considered as being full and total compensation for the injuries which the plaintiff had suffered. In the alternative he suggested that the plaintiff must have been contributorily negligent and therefore the defendant should not be found liable for the full extent of the injuries, loss and damage, which had been suffered by the plaintiff.

In the event that it was the view of the court that liability still attached to the defendant, Mr. Malcolm submitted that an appropriate precedent was the case of ***Oscar Lee v The Attorney General, Khan's Volume 4 at p.58.*** The plaintiff in that case had suffered of forty-five percent (45%) permanent partial disability of the right lower limb. In this case the evidence from Dr. Mena was that the plaintiff had suffered a twenty-five percent (25%) permanent partial disability of that limb. In the Oscar Lee case, there had been an award of Four Hundred Thousand Dollars ($400,000.00), which would now be worth

10-16 where a "system of work" is defined. Regrettably, in this case the defendant had failed to set out what was the system of work in which the plaintiff was involved. She further submitted that there is an inadequacy of information as to who particularly was in charge. Mr. V.G. Scott (Jr.), the driver had indicated that he was in charge though the plaintiff is not clear as to who was the person in charge among the four (4) men who visited Kiskimo on that fateful morning. She submits, and I agree with the submission, that it was reasonably foreseeable that the plaintiff, who would have been riding on the forklift as it was towed back to the Marcus Garvey warehouse and who would have been in most danger if the forklift was not properly secured to the trailer would make all efforts, or at least assist in the making every effort to ensure the security of the forklift in the interests of his own safety. Accordingly, it is reasonably foreseeable that he would have come down off the forklift to assist in the secure tying of the chains to the trailer. I accept that submission. Miss McGregor further submitted that that act of tying the forklift was reasonably incidental to the terms of employment of the plaintiff. She submits that the plaintiff has proven his case. If the court should be of the view that the plaintiff was contributorily negligent, then it should find that his contribution was no more than ten percent (10%). She refers to a number of cases including ***Mavis Peterson v The Attorney General of Jamaica and Gilbert McIntosh reported in Khan's Recent Personal Injury Awards Volume 4 p. 43.*** In that case, the plaintiff suffered a permanent partial disability of five percent (5%) compared to Mr. Guscott's permanent partial disability of ten to twelve percent (10-12%) which would be reduced to five to seven (5-7%) should he have the corrective surgery recommended by Dr. Mena. The plaintiff's award in the Mavis Peterson case, would today be worth Six Hundred and Eighty Three Thousand, Seven Hundred and Forty-Four Dollars and Five Cents ($683,744.05) and counsel suggested that it should be adjusted upwards, in light of the difference in the permanent partial disability for the respective plaintiffs. She also referred to ***Charmaine Powell v Milton O'Meally and Edward Allen, Khan Volume 4 p. 56*** where the plaintiff was awarded a sum which would today be worth Six Hundred and Twenty Two Thousand Two Hundred and Eleven Dollars and Four Cents ($622,211.04). Finally she referred to the case of ***Elton Morris v Isaiah Gutzmore reported in Harrison's Assessment of Damages for Personal Injuries p. 341.*** In this case, Cooke J. had

One Million Three Hundred and Forty Thousand Dollars ($1,340,000.00). He suggested that this should be reduced by fifty percent (50%) by way of contributory negligence of the plaintiff and that he should be awarded no more than Six Hundred and Seventy Thousand Dollars ($670,000.00) based upon the precedent of the Oscar Lee case. Secondly, he referred to the case ***Lucille Richards v Attorney General, Khan's Volume 2 p. 63,*** a decision from 1983. There the plaintiff who had suffered a fifteen percent (15%) permanent partial disability, was awarded Five Thousand Five Hundred Dollars, ($5,500.00), a figure which would now be worth One Hundred and Seventy Thousand Dollars ($170,000.00). Using this second case as a precedent, he suggested that the plaintiff should not be awarded more than Three Hundred Thousand Dollars ($300,000.00) in damages. Finally it was his submission that in any event, the plaintiff should not be awarded more than a figure of Four Hundred to Four Hundred and Fifty Thousand Dollars ($400-450,000.00) and should be penalized for not having brought to the attention of the court, the fact that he had received some "payment" from Mrs. Michelle Wong.

In her submissions in her response, Miss McGregor submitted that the plaintiff, during the course of his employment as a forklift driver, was doing what he was supposed to do, and that he therefore suffered the injury loss and damage in the course of his employment. She submitted that when the sugar had been delivered at the warehouse, the plaintiff's job was not at an end and to the extent that the forklift had to be re-tied to the trailer and taken back to the Marcus Garvey Drive warehouse, the plaintiff was still on the job. The defendant knew or should have known, that some portion of the work of the plaintiff would have been carried out on a public road, since they were aware that the trailer having unloaded the sugar at the Kiskimo premises could not turn around inside the premises but had to back out to the road, where the forklift would be secured to the trailer. It was, in her view therefore, reasonably foreseeable that while working on the public road, a person such as the plaintiff would be exposed to the possibility of injury by a passing vehicle. The absence of any cones or flagmen, or flags to draw attention of road users to the possible danger, amounted to a failure to provide a safe system of work. In this regard she referrers to ***Charlesworth and Percy on Negligence Ninth Edition p.***

reflected on the fact of the period of the plaintiff's suffering as a relevant factor in deciding what should be a reasonable award. She urged the court to bear in mind the fact that the plaintiff's evidence is that he continues to suffer pain, ten (10) years after the accident. The damages awarded in that case would today be worth Seven Hundred and Twenty One Thousand, One Hundred and Eighty Nine Dollars and Ten Cents ($721,189.10). Counsel for the plaintiff therefore argued in light of these cases that an award of Nine Hundred Thousand Dollars ($900.000.00) would not be unreasonable for the plaintiff in the circumstances of this case.

In looking at the totality of the evidence, the court has to determine whether on a balance of probabilities, the plaintiff has proven his case. In this case, the plaintiff's case is that the defendant has failed to provide a reasonably safe place of work and that he had also provided inadequate supervision for work which was being carried out by the plaintiff. The court finds, on a balance of probabilities, that the plaintiff has proven his case. I am particularly struck by the evidence which was given by the driver that after the vehicles had retreated from Kiskimo's premises and the forklift was attached, he had noticed that the forklift was swinging from side to side as he drove and it was for this reason that he had stopped. The plaintiff's evidence is consistent with this, although there is some dispute as to whether this was the first stop or the second stop. It seems to me that the clear evidence is that there was an improper fixing of the forklift to the trailer and that this directly led to the plaintiff putting himself in danger and being injured, I also find that the system did not clearly identify the relative roles of the various employees, and in the circumstances, it was in breach of the duty to provide proper supervision, and the injuries and damage, were therefore reasonably foreseeable.

I turn now to the issue of the special damages. Items A, B and E of the amended Statement of Claim, representing cost of medical reports, Two Thousand and Fifty Dollars, ($2,050.00), medical expenses paid to Dr. Mena, Eleven Thousand Dollars ($11,000.00) and damaged property of Eight Hundred and Fifty Dollars ($850.00) are not in dispute. That leaves two items of special damage claims which must be dealt with. The first relates to the transportation costs where the plaintiff claims Six Thousand

Dollars ($6,000.00). I am satisfied that based on the evidence which is before me, there is more than enough to support a claim for Six Thousand Dollars ($6,000.00) as transportation costs. The plaintiff did not submit receipts but between his evidence and that of Dr. Mena who indicated that he needed to return to the hospital for dressing over the next several months after the accident, I believe that it is not inappropriate to award the Six Thousand Dollars ($6,000.00) claimed in the plaintiff's statement of claim. In relation to the loss of income, the evidence before the court is that Mr. Guscott was unable to work for one (1) year, a period of fifty two weeks and that he had previously been earning Four Hundred Dollars ($400.00) a week with the defendant. It is common ground that the defendant paid the plaintiff his weekly salary of Four Hundred Dollars ($400.00) for at least six (6) weeks and this ought to be deducted from the amount claimed for that twelve (12) month period giving rise to a figure of Eighteen Thousand Four Hundred Dollars ($18,400.00) for loss of income. I regret that that figure of Eighteen Thousand Four Hundred Dollars ($18,400.00) is all that I could award to the plaintiff as I am quite dissatisfied with the nature of the evidence upon which counsel for the plaintiff submits that he should be further compensated for loss of income. In dealing with the plaintiff's loss of income, counsel submitted that the plaintiff had not worked between the time he left the job he had taken at "Mr. Chisholm", and commencing work at Tools, Hardware and Supplies, his present employer. I find the evidence of this claim tenuous at best, particularly as it relates to it being a consequence of the injury received, and I decline to make any award in relation to income lost during the period. Further, an injured plaintiff is obliged to mitigate his losses. The plaintiff gave no evidence of attempting to find work which he could do despite his injured leg.

I turn now to the question of the other damages which are being claimed. Counsel for the plaintiff submits that an award should be made for future loss of earnings. This submission is to be based upon the fact that the plaintiff may yet undergo corrective surgery and that there may be a period of recuperation which would amount to about six (6) months. Accordingly, a figure of Thirty Six Thousand Dollars ($36,000.00) representing six (6) months of work at his present rate of remuneration would be an appropriate amount. I am prepared to accept that this is a real consequence of the tort

committed by the defendant for which he must pay compensation to the plaintiff, and I would award the sum of Thirty Six Thousand Dollars ($36,000.00) for the loss of future earnings.

Counsel for the plaintiff has also submitted that the plaintiff ought to be given an award for handicap in the labour market. The principles surrounding handicap on labour market have been well enunciated in previous authorities. Shortly stated, the court must look at the possibility that the plaintiff may be thrown out of his present job and try to make an assessment as to the difficulty which may arise in finding comparable employment in the future given other relevant factors such as his age, and the potential period of his earning in the future. I believe this is an appropriate case to give an award for handicap on the labour market and I do not believe that the sum of One Hundred and Fifty Thousand Dollars ($150,000.00) which is suggested by the plaintiff's counsel is unreasonable. I would accordingly make that award. Finally, in relation to the question of pain and suffering, I would award, based upon the authorities which have been cited, a sum of Eight Hundred and Fifty Thousand Dollars ($850,000.00) for pain and sufferings and loss of amenities. The total awards are therefore as follows:

Special Damages - $36,300.00 with interest at 3% from September 28, 1991 to 14th July 1999 and 6% from 15th July 1999 to November 11, 2001.

Loss of future earnings	36,000.00
Handicap on the labour market	150,000.00
Future Medical expenses	195,000.00

General Damages pain and suffering and loss of amenities - $850,000.00 with interest at 3% from March 22, 1995 to 14th July 1999 and 6% from 15th July 1999 to November 11, 2001

Finally, I need to make two observations. Firstly, a lot of attention was paid to the fact that the plaintiff did receive One Hundred and Sixty Thousand Dollars ($160,000.00) as some compensation from the driver of the car that allegedly hit him on the morning in question and secondly there is more than compelling evidence that plaintiff although

exposed to the risk of injury by the defendant ought reasonably to have taken more care about his own well being and therefore ought to bear some of the responsibility for his injures. I accordingly find that the plaintiff is twenty present (20%) liable for his own injuries and that the award set out above will be reduced accordingly. I would further advise that the One Hundred and sixty Thousand Dollars ($160,000.00), which had been paid by Michelle Wong, ought to be deducted from the net amount which is to be received by the plaintiff in the instant matter. The plaintiff will be entitled to eighty percent (80%) of his costs in this action to be agreed or taxed.