

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. K003 OF 1993

BETWEEN	EVADNEY KERR	PLAINTIFF
AND	EDWARD LYN	DEFENDANT

Mr. Ainsworth Campbell and Mr. Leslie Campbell for Plaintiff.

Mr. Frank Williams instructed by Dunn, Cox, Orrett & Ashenheim
for Defendant.

Heard: 15th, 16th, 17th, 19th April
& 19th June, 1996.

LANGRIN, J.

In this action the plaintiff, Evadney Kerr was a vendor, selling Shrimps along the Middle Quarters main road in the parish of St. Elizabeth when a motor vehicle licensed 0936 AI collided with the plaintiff along the road causing her to sustain bodily injuries and to suffer pain, damages and loss.

The particulars of negligence of the defendant are stated as under:

Particulars of Negligence

- (a) Speeding excessively in all the circumstances.
- (b) Failing to have any or any proper look out.
- (c) Failing to keep the car under control.
- (d) Driving unto the incorrect side of the road.
- (e) Failing to have any or any sufficient regard for the safety of the Plaintiff.
- (f) Failing to brake, stop, slow down, swerve or otherwise manoeuvre to avoid the collision.
- (g) Failing to have any or any sufficient regard for other users of the road including the Plaintiff.
- (h) Driving the vehicle without due care and attention.

The Plaintiff's Case

Evadney Kerr testified that while she was sitting on the left side of the road facing Black River, there were 2 other women and a baby on the other side of the road. One woman was sleeping and the other was a Mrs. Clarke and a child 1 year and 3 months old.

A red car came up and stopped and when she went to the right side of the car to sell the driver some shrimps she saw Miss Clarke come to the side of the car from the other side of the road. She saw her rush back to a baby who was proceeding across the road. She held the baby when the defendant swerving from Miss Clarke and the baby collided with the plaintiff. She was standing by the 'Red car' when the defendant's car which was proceeding from the direction of Black River at a fast rate of speed collided with her. The visibility was good and the road was straight for 5 chains.

Medora Clarke testified that she was on the left side of road proceeding from Black River. Accompanying her was her daughter and another woman who was sleeping at the time. The plaintiff was on the opposite side of the road. She saw a Red car stop by the roadside on the opposite side and the plaintiff went on the right side of car to sell her shrimps. She went across the road, to sell her own shrimps to the passenger in the Red car. The child ran across the road in her direction when she felt frightened and turned back to take the child out of the road. As she took up the child the defendant's car proceeding from Black River at a fast speed swung from her and collided with the plaintiff. The plaintiff was flung across the 'Red car' and fell on the bank in the bushes. The witness corroborated the plaintiff in all the material particulars.

The Defendant's Case

The defendant Edward Lyn testified that he was driving his Lada Motor car between 35 to 40 m.p.h. along the main road proceeding towards Santa Cruz when he observed 3 female vendors sitting on the left side of road. As he approached them he observed that a Blue Volvo motor car travelling in the opposite direction came to a stop on his right as he was about to pass. The three female vendors got up and attempted to run across the road.

Defendant applied his brakes and steered to his right and observed that 2 of the women stopped but the plaintiff continued across when there was a collision between his car and the plaintiff near the centre of the road.

After the impact the car ended up on the incorrect side of the road. He did not see the women until he came about 1½ chains from them.

Conclusion on the Evidence

The question which arises for consideration is whether the defendant driver was exercising that degree of care and attention which a reasonable and prudent driver would exercise in all the circumstances. This question is one of fact and not law.

The defence contends that the driver did everything that was reasonable and no blame should be attached to him. However, in the light of the admission of the defendant that he did not see the women until he came 1½ chains from them leads me to the conclusion that he was not keeping a proper look-out. It was definitely not a situation where the driver was placed in an agony of the moment dilemma. The driver was able to see what was happening and could have avoided the accident if he were taking a proper look-out. The more probable version of the accident and the one which I accept is that in avoiding the witness and her baby the driver swerved and collided with the plaintiff. I accept the plaintiff's evidence as credible.

I find that on a balance of probabilities the defendant was negligent in his driving and is fully to be blamed for the accident.

Damages

The particulars of Injuries pleaded are as follows:

- (i) Blood shot eyes.
- (ii) Fracture of both tibia and fibula.
- (iii) Fracture of the skull bone.
- (iv) Laceration on both thighs,
- (v) Giddiness.
- (vi) Medial displacement of the lateral wall of the right antrum.
- (vii) Enophthalmosis with mild drooping of the eye lid and deviation of nasal bones to the left.
- (viii) Malunion of the left tibia with medial angulation.
- (ix) Shortening of the right lower limb by 4 c.m.
- (x) Shortening of the right lower limb by 4 c.m.
- (xi) Varus deformity of the left leg with pains.
- (xii) Permanent partial disability of 5% in both lower limbs.

The plaintiff testified that after the accident she did not know herself until she realized she was a patient in the Kingston Public Hospital. She suffered severe injuries to her body resulting in fractures to her leg and skull. **She is unable to see out** of her right eye and one eye is smaller than the other. There is until now a severe pain in her legs rendering them stiff and hot. Also there is a feeling of dizziness at times. She is unable to ride a bicycle or even to kneel down because of severe pains. At present she gets tired easily and unable to work as she normally does. She can only sell 3/4 of the shrimp she used to sell. At the time of accident she used to earn a profit of about \$3,700 per week. She was unable to sell shrimps for 18 months.

Dr. Rory Dixon, Medical Practitioner at the Kingston Public Hospital gave evidence that he examined the plaintiff and found lacerations to right leg, swelling and deformity of both legs but no neurovascular deficit. Xrays revealed skull fracture to orbit wall of eye. There was fracture of right tibia and fibula and a overall permanent disability of 5% of both lower limbs. He stated that in his opinion it was reasonable if she was unable to work for 15 months but without rehabilitation it could take up to 2 years.

General Damages

Based on the evidence pertaining to pain and suffering and loss of amenities I make an award of \$850,000.00.

Special Damages

Loss of earnings from the 4/6/91 to 28/12/92 i.e. 82 weeks	
at \$3750 per week. Less 1/3 for taxes	= \$307,500 - 98734
Balance	= 208,766.00 -
Loss of blouse	200.00
" " shirt	150.00
Travel expense	2,580.00
Extra help for 6 months at \$200.00 per week	5,200.00
	<u>\$216,896.00</u>

I do not accept the plaintiff's evidence that she is unable to make the same profit she made prior to the accident solely because of her injuries. However, I am of the view that her disability will result in a handicap which she will suffer on the labour market.

I make an award of \$100,000.00 for this handicap.

Summary

General Damages	\$850,000.00
Special Damages	216,896.00
Handicap on the Labour Market	100,000.00

Judgment is accordingly entered for the plaintiff against the defendant as indicated in my summary with interest on the General Damages at 3% from January 1993 to June 1996.

3% interest on the Special Damages from June 4, 1991 to June 1996.

Costs granted to the plaintiff to be agreed or taxed.