

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

COMMON LAW

SUIT NO. C.L. 1998 of 1973

BEFORE THE HON. MR. JUSTICE WRIGHT

ASSESSMENT OF DAMAGES

BETWEEN	LORNA MELVIN (By next friend Ivy McLean)	PLAINTIFF
A N D	JOSEPH CAIN	
A N D	WILBURN ROBINSON	
A N D	LEONARD THOMPSON	DEFENDANTS

Dates of hearing: 28/4/76, 29/4/76, 20/5/76 and 7/7/76.

Mr. R.S. Pershadsingh, Q.C. instructed by Mr. Alvin Mundell for the Plaintiff.

Mr. Allan Rae instructed by R.C. Livingston for 1st and 2nd Defendants.

The 3rd defendant did not appear and was not represented.

JUDGMENT

The action arose out of an accident along the Old Harbour Road in the parish of Saint Catherine on the 25th day of August, 1972 between motor vehicle No. FG 983 owned by the First Defendant and driven by the Second Defendant and motor vehicle No. BF 499 owned and driven by the third defendant. As a result of the collision the first defendant's vehicle left the road, over-ran the plaintiff who was standing at her gate some 10 feet from the road and dragged her for a distance somewhere between 12 and 20 yards. The result was, to quote an eye-witness, "she looked dead to me".

And when regard is had to the medical evidence it will be seen that this description is not an exaggeration.

She was taken to the Kingston Public Hospital in an unconscious state and thence to the University Hospital under the care of Mr. Andrew F. Masson, Professor of Neuro-Surgery with whom was associated Dr. Stephen J. Satlow, a medical intern at the time.

On the medical evidence she "came around" on the 25th September 1972 when "she spoke rationally and tried to write". But from the Plaintiff's testimony from the time she was hit down she recalled nothing until about two weeks before Christmas of that year. I do not think her testimony was feigned. Rather I regard this as an indication of her subsequent inability to handle details. There is further evidence of this too on the question of dates.

Because the burden of the Plaintiff's claim rests heavily on the personality change occasioned by the injuries sustained it will be necessary to deal with the evidence in some detail in order to portray the "before" and "after" picture sought to be projected. She claims that her entire future has been changed because she can no longer pursue her chosen field of endeavour namely, that of being a secretary, which she felt was well within her competence. However, before embarking upon a review of the evidence I wish to record my sense of relief at the degree of her recovery and that she did not end up being a "vegetable". Indeed

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Dr. Satlow's evidence is that patients in the condition in which he saw her usually die!

The Plaintiff gave her age as just past 17 years at the date of the accident. Apart from being at her gate and receiving the blow there was nothing she recalled until about two weeks before Christmas that year. She had no recollection of being in Hospital and when she did remember anything again she was at home.

She found herself suffering from tormenting headaches and pains all over her body. She felt as if she would go mad. Her right eye itched, pained and ran water. She couldn't see clearly - if she looked at any object she would see two. She suffered from occasional fits, there was weakness in her arms and legs and her face was "stitching up". She suffered from bad night-mares and would wake up at nights crying. She had fever, became very forgetful and irritable. Giving further details of her suffering she said re:

Headaches:

"Like something beating down and I am going mad"

Forgetfulness:

If she put something down she could not recall where she had put it and in an effort to find this object she would have to sit and make a definite effort at thinking. This method was successful sometimes. Pre-accident events are sometimes difficult to recall as well.

Irritability:

With the slightest provocation - she would become vex and felt as if she would quarrel and fight. She was not like this before.

Occasional fits:

She is not aware of what takes place during the episodes and sometimes finds herself in bed.

This is the extent to which she was able to testify as to the

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injury and its effects which she claimed had not disappeared up to the time of the hearing.

In contrast to what she now found herself to be she set forth that she had not suffered from any of these abnormalities before the accident. She gave evidence of her schooling - Primary, through Junior Secondary to The Kingston Commercial College where she was a student for almost two years pursuing a secretarial course. She testified that she had maintained good grades in the relevant subjects and had a very good prospect of succeeding in the field. She had hoped to sit her Final Examination and graduate in December, 1973. Those hopes were all dashed.

By way of showing that hers was not a case where "ambition should be made of sterner stuff" she offered for the inspection of the defence her school records which would support her testimony of her school career. This offer was not accepted.

Complaint is also made that she can no longer indulge in any of her favourite pastime - netball, dancing and watching cricket - principally because of her inability to concentrate on anything for any appreciable length of time.

As regards employment prospects - she fears she will be obliged to settle for something much lower than she had been preparing for - maybe as low as a household helper.

Loss of actual earnings related to help which she rendered to

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an old lady in the mornings and evenings - before and after school hours - for which she was paid \$10 per week. This old lady died in 1975.

Cross-examination of the Plaintiff, which was commendably humane, centered on limiting the extent and effect of the injuries. She maintained throughout that she is still handicapped by the effects of the injuries and that there was no pretence about her loss of memory and inability to continue her schooling.

After careful observation of the Plaintiff I was impressed that she was sincere in her contentions and find as a fact that she has not recovered totally from the effects of the very serious injuries received. Her efforts to answer some questions were accompanied by a pained expression as she endeavoured to recall certain details . Further evidence of the Plaintiff's condition and ability before and after the accident came from Mrs. Gladys Leviene, the retired Principal of the Kingston Commercial College who had supervised the Plaintiff's training from she entered the college in the Christmas Term of 1970 up to sometime in 1973 when her condition forced her to leave school.

Lorna had been a good student, she said, and had been recommended for the secretarial course. In monthly tests she fared well. In the basic subjects for the course - shorthand, typewriting, English, Book-keeping and Business Correspondence she did well and in shorthand had passed the 90 words per minute test in the term just before the accident. In December, 1972 she should have sat the

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examination for 100 words per minute.

On Lorna's return to college in the January 1973 term her performance was very poor. She was absent-minded and not very capable of concentrating and her memory was not very good. She had difficulty reproducing anything dictated to her, she could not handle figures and would sometimes leave class complaining of head-aches and dizziness.

Her condition deteriorated and she was no longer recommended for the secretarial course. In frustration arising out of her inability to cope she left college. It would have been a waste of time for her to continue.

The Plaintiff's 32 years old uncle, Ernal Reid, a clerical Officer in the Government Service who lives in the same house with her and who knew her from her birth testified. He told of her being a bed-patient at home for weeks after she was discharged from hospital needing help to get out of bed. She did indeed leave hospital in October, 1972 as the medical evidence shows but he felt she did not recognise him until sometime in December, 1972. Even up to March, 1973 she would keep asking the same question repeatedly thus indicating she was not comprehending.

I do not believe this condition lasted as late as March, 1973 but I accept that she was still under incapacity after leaving hospital. Indeed Reid's evidence, which I accept on this aspect, is that after discharge she still had to return to the hospital for treatment, and

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having regard to the severity and extent of the injuries it would have been remarkable if that were not so.

The medical evidence, which is not free from controversy in certain respects is of the utmost importance and will now be canvassed.

Evidence was given by Dr. Stephen J. Satlow and a specialist in

Neuropsychology, Dr. Ilma J. Evans. In addition a report by

Professor Masson, who has left Jamaica permanently, was put in by the

Defence.

It was Dr. Satlow who admitted her to the University Hospital at 8:30 p.m. on the day of the accident and I will set out his essential initial findings in detail:

1. She was unconscious
2. Reacted to very painful stimuli
3. Right pupil dilated and only slightly reactive to light
4. Left pupil reacted to direct consensual light stimulation
5. She was decerebrate - limbs rigid, head thrown back, eyes dilated.
6. She had hyper-reflexia in left arm and left leg
7. There was an up-going plantar response in her left foot.
8. There were focal seizures involving the left side of her body
9. Weakness in left arm and left leg - right side normal
10. Vital signs - pulse and blood pressure - normal.

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11. Clinically obvious bilateral fractured collar bones
12. No evidence of blood from ears, mouth or nose
13. Chest, abdomen and cardio-vascular system normal
14. No skull fracture on X-Ray
15. X-Ray showed bilateral fracture of collar bones.

She remained unconscious for roughly four weeks; he last saw her at time of discharge - October 4, at that time she was not capable of remembering normally.

Her clinical signs and diagnosis showed that she had a severe injury to her cerebral cortex and her brain stem. In view of this it was quite surprising that she made as rapid a recovery as she did. It is impossible for him to prognosticate the long-term result. This is a question better suited for a neurologist. He feels, however, that she may be left with a deficit in her higher cerebral functions and this may well affect her ability to become a secretary.

Amnesia is likely, to result from the brain stem injury though he could not tell how frequently this would occur. The brain stem does not affect memory which is a higher cortical function.

He could not tell if the four weeks unconsciousness will leave any permanent disability. The brain stem injury had healed completely.

Dr. Satlow expressed himself as being in thorough agreement with Professor Masson's Report which I now set out in full:

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Professor Masson's Report

"This young lady was knocked down on the 25th of August, 1972, and suffered injury to her head. She was initially to the Kingston Public Hospital where she was found to be unconscious but reacting to painful stimuli.

There was a swelling over the right occipital region. The right pupil was found to be dilated and only slightly reactive to light. Her limbs showed a decerebrate posture. She was transferred to the University Hospital on the following day because the Operating Theatres at the Kingston Public Hospital were at that time out of action and it was thought that she might need to have some form of surgery.

At the University Hospital the physical signs found previously were found to be present. In addition, she had started to have focal fits affecting the left facial arm and leg muscles. She had a fever and it was felt that we were dealing with an injury to the right Cerebral Hemisphere and to the brain stem. There was no fracture to be seen on x-ray of the skull. X-ray of the chest showed that she had sustained fracture of both collar bones. She was taken to the Intensive Therapy Unit and her temperature controlled by cold sponges and with the help of drugs. She made some slow progress there, but, was still deeply unconscious when she was transferred back to a female ward on the 29th of August.

A few days later she started to localize at painful stimulus when it was applied and by the 11th of September when painful stimulus was applied she would move it away and actually cry. She was waking up on the 18th of September and crying out. On the 25th of September she had shown very marked improvement. She was speaking quite sensibly and answering questions and also able to write. She was discharged home on the 4th of October, 1972. She has been seen regularly at the Out-patients clinic. At first there was some weakness of the left arm and leg, but this has shown considerable improvement. She returned to Commercial school in January of this year.

I saw her last on the 29th October, 1973, before writing this report and she told me that she was at Commercial school doing shorthand, typing and English and that she hoped to finish there and to get her Diploma in December of this year. She is able to travel on a bus to and from the school. She is able to do shopping but she has to make shopping lists as she finds herself very forgetful. She complains of slight headaches which are no real problem to her. She has had no fits since discharge from hospital. She is not on any anti-convulsive drugs. She has not noted any weakness of her limbs at present.

Her mother told me that the girl was very forgetful and inclined to be irritable, - also that she would put things down in the house and have no idea of where she had put same and her mother said this was a real difficulty for her. I gave her a simple passage of dictation which she was able to write out in shorthand and then to read back to me accurately. She was poor at mental Arithmetic, on current events she had no problems in giving me the Prime-Minister's name, in also giving me the name of a lady Minister of the Government and also naming the Leader of the Opposition and other well-known figures in

political life in Jamaica and there were no weakness of her limbs. Neurological examination was normal.

In conclusion this young lady suffered a severe head injury in August of 1972. Both clavicles were fractured at that time. She was unconscious for just over four weeks because of this accident and her condition was so serious at one time that she was transferred to the Intensive Therapy Unit. She had some fits while she was in hospital, but none since.

On discharge from hospital she still had weakness in her left arm and leg. This has now completely cleared. Her greatest disability seems to be one of memory and I found that her mental Arithmetic was poor. I do not feel that her memory is so bad that it will preclude her earning a living but after an injury of such severity it is not surprising that she may well suffer some permanent defect.

In fact, I feel her recovery has been truly remarkable. There is a small chance that she may have a recurrence of fits in the future. I suspect that her real permanent disability following this injury is a difficult one to assess but evolves around mental agility, and very high intellectual centre function.'

The Plaintiff was referred to Dr. Ilma J. Evans who in addition to being a neuropsychologist holds a Masters Degree in Educational Psychology and has practised as Clinical Psychologist at the Bellevue Hospital for eight years. She examined the Plaintiff on the 9th March, 1976 - over 3 years from the date when Professor Masson last saw her.

It is worthy of note that the penultimate paragraph of Professor Masson's Report lists the Plaintiff's greatest disability as seemingly one of memory and in his final paragraph he states

"In fact, I feel her recovery has been truly remarkable. There is a small chance that she may have a recurrence of fits in the future. I suspect that her real permanent disability following this injury is a difficult one to assess but evolves around mental agility, and very high intellectual centre functions."

Had Professor Masson been able to examine the Plaintiff as recently as Dr. Evans did it is possible that he might have been able to

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assess more positively the settled effects of the injuries.

While both Professor Masson and Dr. Satlow regard the rate of memory as remarkable Dr. Evans is apprehensive that it could well set the stage for a relapse. She regards Professor Masson's Report as being a recovery pattern and does not as such deal with the permanent brain damage. It is this area which neither Professor Masson nor Dr. Satlow has explored that engages Dr. Evans' attention.

She subjected the Plaintiff to a wide spectrum of tests and, in keeping with standard practice, she had recourse to the patient's previous history. Having regard to the pre-accident level of attainment the intelligence disclosed by the tests was lower than expected e.g. her ability to handle shapes (this relates to a special brain function) was greatly diminished; her memory tests produced very poor results; she had significantly poor functions in the right and left temporal lobes of the brain - damage indicated. There are still signs of brain-stem injury.

There is evidence of damage to the occipital lobe - producing difficulty with light. Severe damage to the right hemisphere to the brain - damage spread to other side of brain affecting emotion, control and co-ordination. She had lost much confidence and couldn't be the same person after the accident. She is an unfortunate pathological case i.e. she would have difficulty remembering things that are bonded together by language and special relation. Her memory is fractionated and

comprehension becomes difficult as she cannot follow a logical argument due to word-search problem. For shape and position she remembered 14% and with regard to verbal material she remembered only 13% of information given her.

As Dr. Evans sees it "the real damage is to her perception of herself. She perceives she is different but can't do anything about it. She finds it difficult to cope with the difference."

From Dr. Evans' tests she concludes that the Plaintiff could not in her present condition cope with being a secretary as a career. She would have problems with spelling, mathematics, thinking and comprehension. Accordingly, she would have to settle for a low level job- e.g. filing which would allow time to think. But she is an ambitious girl and would fight against such a situation.

Dr. Evans was subjected to a very searching cross-examination but she maintained that her tests were objective and her findings are genuine. She said that the fact that the Plaintiff did not pass her 11-plus examination was no indication of low mental ability - Sir Winston Churchill didn't pass his, she said.

I am satisfied from the evidence of Dr. Satlow, Professor Masson and Dr. Evans that the Plaintiff suffered severe physical injuries resulting in personality impairment and that she is not likely ever to be her pre-accident self again.

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Employment:

On the question of salaries in the relevant field the Plaintiff adduced evidence from Mrs. Gladys Leviene (already referred to) and Mrs. Sybil Hibbert, a journalist and Commercial school teacher of some years experience and the Defence called Mr. Alfred Thomas, Principal Lecturer and Placement Officer at the College of Arts Science and Technology (C A S T). It is not surprising that there was no consensus among these three on the issue on which their assistance was sought seemingly because of the different spheres in which they operate though admittedly in the same Commercial field.

I find on the evidence, that the Plaintiff can no longer indulge the ambition of becoming a secretary but will be capable of accepting employment at a lower level - as a filing clerk or copy typist with a differential in earnings of about \$25 per week.

I wish to express my gratitude to counsel on both sides for the assistance proffered by reference to several decided cases and the arguments advanced. It is therefore no disparagement of Counsel's role to observe that the difficulty of extracting help on the instant matters from decided cases is well recognised.

I shall now proceed to the award of damages which I think meets the justice of the case. In doing so I bear in mind the arguments in relation to the change in the purchasing power of money and also the fact that vicissitudes are not necessarily adverse.

The items of Special Damage were largely agreed and are awarded as pleaded.

Loss of earnings are for the most part prospective. I consider a multiplier of 15 years appropriate. Applied to the differential of \$25 per week a sum of \$19,500 is arrived at.

Pain and suffering and loss of amenities are considered together. In a case such as this where the suspencies for alleviation, let alone recovery, are negative and, where, as I find, the suffering will continue indefinitely an assessment under these heads is indeed a difficult one. However, I think an award of \$20,000 should meet the case. The award, therefore is as follows:-

Special Damage:

Medical expense - University Hospital	\$279.30
Transportation	80.00
Loss of earnings @ \$10 per week for 68 weeks	680.00
Extra help-Domestic at \$10 per week for 16 weeks	160.00
	<u>\$1,199.30</u>

General Damage:

Loss of earnings	\$19,500.00
Pain and suffering and loss of amenities	20,000.00
	<u>\$39,500.00</u>

Costs to the Plaintiff to be taxed or agreed.

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