

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

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JAMAICA
Judgment Book

SUIT NO. C.L. M-036 OF 2001

BETWEEN	MIRRIAM MARTIN	PLAINTIFF
AND	DESMOND WALKER	1 ST DEFENDANT
AND	SILBERT ANDRADE	2 ND DEFENDANT

Miss Marion Rose Green instructed by Marion Rose Green & Co. for the plaintiff

Defendants not present and not represented

Heard: April 26 and May 17, 2002

ASSESSMENT OF DAMAGES

JONES, J. (Ag.)

This is an assessment of damages for injuries sustained by the plaintiff as a result of an accident which took place on December 24, 1996. The defendants were not present or represented, and there was no issue as to liability. The plaintiff is a business woman (higgler) residing at 243 Simms Court, Montego Heights, Montego Bay in the parish of St. James. She is forty-three years old. At about 3:00 p.m. on December 24, 1996, she was a passenger in a motor vehicle travelling along the Linstead bypass going towards the Bog Walk main road in the parish of St. Catherine when on reaching the intersection with the Guys Hill Road, the 2nd defendant driving a vehicle owned by the 1st defendant collided with the vehicle in which she was travelling.

The plaintiff described her ordeal in language which illuminated her condition at the time of the accident:

"... my nose mouth and head were bleeding, my right wrist was broken and swollen. I was all over in pain and my back was hurting. My teeth was hit out and my dentures broken. My mouth could not open. My lips were burst and I had pain all over my body. I felt I was going to die. I don't know how long I was in Linstead Hospital. I had a cast on my hand. I could not move about. I spent five days in the Spanish Town Hospital. The pain lasted until when I got out of the hospital"

The plaintiff's evidence was that she had to remain in bed after being discharged from the hospital. She said that she returned to the Spanish Town Hospital on five occasions for treatment. She received medical treatment from Dr. Nesbeth, Dr. Cheeks and Dr. Shaw. She told the court that she was unable to walk for a couple of months and was not able to do domestic chores at home. She complained that her eyes were now dark and she was now incapable of stringing a needle to do her sewing. Prior to the accident she manufactured teddy bears and sold childrens' clothes at the Linstead, Falmouth and Montego Bay markets. She alleged that she is now "deafish" and was not capable of standing or sitting for long periods without her back hurting her. She complained that when she eats her teeth "cramp up" and said that for months after the accident she had to be fed by straws as she was incapable of eating properly.

The following medical reports were relied on by the plaintiff. These were admitted into evidence pursuant to Section 31 (E) of the Evidence Act:

**RANDOLPH E. CHEEKS, F.R.C.S.
CONSULTANT NEUROSURGEON
KINGSTON REGIONAL HOSPITALS**

Please reply to:

3A Pateley Avenue
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Kingston 5
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30 January, 2001

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MEDICAL REPORT re: Miriam MARTIN, 43 years

This is to certify that the above captioned individual was seen by me in neurological consultation on December 14th 2000 for the purpose of having an assessment of her current status in respect of injuries allegedly sustained in a motor vehicle accident in December of 1996.

HISTORY

Ms. Martin stated that she was in her usual state of good health until December 24th 1996 when the vehicle in which she was traveling as a passenger was in a collision with another vehicle. To the best of her recollection she can remember being inside the vehicle and hearing the sound of the crash, the impact of which knocked her unconscious and then her next memory is of regaining her senses lying in a bed in the Linstead Hospital suffering from multiple injuries. According to the hospital records her injuries were as follows:

- Head injury with concussion and evidence of bleeding via the nose and mouth. This bleeding via the nostrils is clinical evidence of fracture of the base of the skull.
- Laceration to the lower lip and injury to the upper teeth which were loosened. In addition she had difficulty closing her mouth properly.
- Injury to right wrist
- Pain in the low back area

She was transferred to the Spanish Town Hospital where she was kept under neurological observation for four days, and during this time she recovered well from the acute effects of the concussion. The injury to her mouth and teeth were referred to the dental department at the Kingston Public Hospital for definitive care.

PRESENTING COMPLAINTS

This subject who was a higgler by trade previously was now employed at a hardware store where her duties were confined to the stock room.

She made the following complaints:

- Intermittent headaches
- Pain in the low back area which was particularly bothersome after periods of long sitting, and tended to be aggravated by bending
- Aching in the lower jaw when eating

MEDICAL REPORT re: Miriam MARTIN

30 January, 2001

- Intermittent aching in the area of the right wrist at times of physical activity.

She says that prior to the accident she had never experienced these symptoms and was enjoying good health.

EXAMINATION

She presented the clinical picture of a middle-aged female in good general health. No clinical stigmata of any general medical disorder were noted, and her higher mental functions were judged to be intact.

- The vital signs were physiological
- All the special senses are intact
- The entire neuro ophthalmic examination is unremarkable, and the optic fundi show flat healthy appearances indicative of normal intracranial pressures.
- An old scar is present on the left side of her forehead anterior to the hairline, and the subject states that this resulted from an injury which pre-dated the accident
- All 12 pairs of cranial nerves tested normally.
- I did not detect any obvious evidence of malocclusion of the jaws but this should properly be assessed by her dental surgeons
- All four limbs are normal in all neurological respects
- The cervical spine has a full painless range of motion
- The lumbar spine has a full painless range of motion and I did not detect any evidence of paraspinal spasm or tenderness. There is however a distinct point of focal tenderness situated over the L5-S1 region of the interspinous ligament which indicates a chronic lumbar strain.

ASSESSMENT

In the accident of December 1996 this individual sustained multiple injuries. The impact to her head was of sufficient severity not only to render her unconscious, but also produced a fracture of the skull base manifested by the bleeding via the nostrils on the day of the accident.

She has made a fairly good recovery following the concussion which she undoubtedly suffered, and has a period of posttraumatic amnesia. The absence of retrograde amnesia however suggests that the concussion was not severe. The headaches which she is experiencing represent a post concussional headache disorder which is a recognized sequel of this type of head injury. These headaches are intermittent and do not disrupt her activities of daily living. The PPD resulting from this is rated at 1% of the whole person.

A head injury of this type carries a theoretical risk of the order of 4% of developing delayed onset posttraumatic epilepsy for a period of 5 years from the date of the accident.

The pain in her low back area is related to a chronic lumbar strain which has resulted from injury to the lumbar interspinous ligament. The stability and strength of her lumbar spine has not been compromised but she will be liable to experience bouts of low back

MEDICAL REPORT re: Miriam MARTIN

30 January, 2001

pain at times of heavy physical exertion. The PPD resulting from this is rated at 3% of the whole person.

Therefore, from the neurological standpoint the PPD to this individual resulting from this accident amounts to 4% of the whole person.



R.E. Cheeks
Senior Consultant Neurosurgeon

RC/cr

HOSPITALS (SPANISH TOWN REGION) MANAGEMENT BOARD
SPANISH TOWN HOSPITAL,
SPANISH TOWN

June 26, 1997

United General Insurance Company Limited
4-6 Trafalgar Road
Kingston

Dear Sir/Madam

MEDICAL REPORT - RE: MIRIAM MARTIN

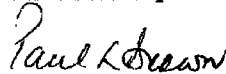
The patient was admitted to Spanish Town Hospital on December 24, 1996 having allegedly been involved in a motor vehicle accident earlier that day. There was a history of loss of consciousness and she complained of injury to her head, mouth and right wrist.

On examination she was alert, her vital signs were stable. She had injury to the front teeth with some abnormal movement in the jaw. She also had a deformed right wrist, which showed a fracture of that radius on x-ray.

She was treated with neurological observation, analgesia, referred to dental clinic and application of a right below elbow plaster of Paris cast. Her progress was uneventful and she was sent home on December 28, 1996 with a two weeks appointment to Surgical Out-Patient Department.

She was seen in Surgical Out-Patient Department on January 16, 1997 and again on February 20, 1997, when she was discharged from our care, having fully recovered from her injuries.

Yours sincerely



Paul Brown
Consultant Surgeon

tm

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CONSULTANTS

DR. CHARLES LYN M.B.B.S., F.R.C.S., M.S. (ORL).
DR. HAL SHAW, B.Sc., D.D.S., M.R.S.H., M.B.S.S., M.S. (ORL), F.A.C.S.

February 9th, 2001.

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Marion Rose-Green & Co.
Attorney At-Law
62 Duke Street
Kingston

Dear Madame,

Re: Miriam Martin, Age 43 yrs

Ms. Miriam Martin consulted me on December 22, 2000 complaining of:-

- Cramping of teeth when eating hot and cold things worse over the past seven (7) months.
 - Ears "deafish" sometimes since the accident on the 24th December 1996.
 - Headaches in frontal and back of head on and off since accident.
 - Lower back pain and difficulty moving for over two years. She has been seen and treated at the Cornwall Regional Hospital where she was admitted in September 1999.
 - Can't sit or stand for long due to lower back pain.
 - Still has pain in her right wrist.
 - Can't string a needle due to deterioration of vision since motor vehicle accident.
- Upon enquiring, she was unconscious when admitted to Linstead Hospital. She bled from her nose and mouth but had no cuts on her face. She could not open her mouth properly for months. Four of her lower teeth were knocked out and her upper denture cracked.

Examination: Face - There is a 4.5 cm mid forehead scar - not related to the accident. The symmetry of her face was within normal limits. Her nose and pharynx were normal. She is very tender over the left temporomandibular joint with restricted movement.

Neck - normal movement without pain.

Eyes - movements and light reaction were within normal limits. Visual acuity was not tested.

Oral cavity - there were four lower anterior teeth missing, mild to moderate gingival recession of her lower remaining teeth.

Ear - External ear was normal. Both tympanic membranes were retracted.

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Audiograms were not done.

Skeletal system - there is mild tenderness over the right wrist and which was bigger than the left wrist.

Discussion: - Ms. Miriam Martin must have had severe injury to cause loss of consciousness with bleeding from her nose and mouth. This type of bleeding is commonly seen with skull base or midface fractures. In either case post traumatic headaches, migraine or neuralgia is possible and will explain her persistent headaches. These episodic headaches maybe permanent but may vary in intensity and frequency.

The cramping of her teeth is a direct complication of trauma and subluxation, which must have occurred when the four anterior teeth were avulsed. The extreme trauma she experienced during the injury coupled with the present tenderness over the left temporomandibular joint suggest a fracture near to the head of the mandible. This fracture can cause persistent painful arthritis and aggravated by malocclusion due to lost teeth.

Replacement of her teeth and upper dentures-

Upper denture \$15,000.00

Lower six unit bridge \$84,000.00

Physiotherapy to temporomandibular joint \$12,000.00

Desensitize teeth \$4000.00

Percentage disability 35% of the whole person. *H. Shaw*

No attempt was made to include complaints of eyes, wrist or back. Final comments on these should come from an Ophthalmologist and Orthopedic surgeon.

Hal Shaw
Dr. Hal Shaw.

The plaintiff's attorney Miss Rose Green drew the court's attention to a number of cases, which she believed would be of assistance. The cases were *Stanley Wade vs. Leon Ingram* reported in Volume 2 of Khan's Reports, *Isiah Muir vs. M.P.M and Dennis Whyte* at pg. 185 of Khan's Reports Volume 4, and *Jackson vs. Punancy and Gibbs* reported at pg. 58 of Harrison's Casenote 2. These cases were not particularly helpful, as the injuries stated were not analogous to the injuries in this case, and in fact, were a great deal more severe.

At the lower end, a useful case was *Marie Bryan vs. Yvonne Terrelonge* reported at pg. 48 of Harrison's "Assessment of Damages". In that case the plaintiff gave evidence that she had bleeding through her nose and mouth. Three of her front teeth loosened, her forehead was swollen and she had cuts over the right eyelid and her nose leaving a scar. The right hand was swollen and there were bruises on both knees and a cut on the right shin. The cuts were dressed and the right hand placed into a plaster of paris from the shoulder to the fingers. The medical evidence diverged on the issue of whether the patient suffered any damage to the brain. Reckord J. in resolving the difference of opinion said:

"On totality of the evidence, I accept Dr. Cheeks evidence that there was no brain damage and the reasons he gave to support such a conclusion"

In that case general damages were assessed at \$150,000 in July 23, 1993. This award when updated to today's dollars would amount to \$472,693.

In the case of *Tricia Thompson (b.n.f Alethia Sheriffe) vs. Junior Harriott* reported in Harrison's book (supra) at pg. 55 the injuries incurred had more positive resemblances to the case at bar. In that case the plaintiff was a school girl who received the following injuries:

"Brief unconsciousness and a minor concussion; laceration on the left side of the head behind the ear and bruising of the left shoulder; small laceration on the outer aspect of the left foot; dizziness and darkening of vision intermittently; impairment of recent memory; impairment of hearing in both ears (moderate severity); risk of 4% epilepsy developing."

General damages for pain and suffering and loss of amenities were assessed at \$170,000 on October 5, 1990. Updating this award to the last CPI in March 2002 gives a current award of \$1,615,825.

In the present case the medical reports were unchallenged. Dr Cheeks in his report set out above concluded that the plaintiff suffered a mild concussion with a four percent theoretical risk of developing post-traumatic epilepsy within five years from the accident. This assessment by Dr. Cheeks closely resembles the evaluation of the plaintiff in the case of *Tricia Thompson* (supra). As to future medical care, I accepted the evidence of Dr. Hal Shaw as to the cost of replacing the plaintiff's teeth and dentures, and to complete the restorative work on her mouth. This cost was estimated by him at \$115,000.

Let me now turn to the issue of special damages. It is trite law that special damages represent the exact amount of money which the plaintiff has spent or lost as a result of the injury. In one of the leading cases in this area, *British*

Transport vs. Gourley [1955] 3 All ER 793 Lord Goddard stated the principle at pg 803 in this way:

"In an action for personal injuries, the damages are always divided into two main parts. First, there is what is referred to as special damage which has to be specially pleaded and proved. This consists of out of pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation...The basic principle, so far as loss of earnings and out of pocket expenses are concerned, is that the injured person should be placed in the same financial position so far as can be done by an award of money as he would have been had the accident not happened."

After reviewing the pleadings and the evidence presented, I found the following items of special damage proved to my satisfaction:

1. Medical and dental expenses	\$30,175
2. Medical Reports	\$20,500
3. Visits to doctor	\$22,500
4. Transportation to and from doctor	\$12,600
5. Transportation to and from dentist	\$10,000
6. Loss of clothing, shoe and bag	\$5,000
7. Cost of police report	<u>\$1,000</u>
Total	\$101,775

Dr. Cheeks reached the conclusion that the plaintiff had made a fairly good recovery following the accident. In his opinion the concussion was not severe, but the plaintiff would experience post concussion headaches from time to time. He also concluded that the stability and strength of the back has been

compromised and the plaintiff would experience bouts of pain at times of heavy exertion. He estimated the PPD at three percent.

The plaintiff claimed that she hired household help to assist her, and that this continues up to today. She said that she paid \$1,500 per week over a period of one hundred and four weeks, and \$1800 for sixty weeks, after there was an increase in the minimum wage in 2001. She provided no receipts for these amounts, and this court was not prepared to speculate as to what was a reasonable figure for those services at that time. There was no evidence given about the minimum wage rate prevailing on the dates claimed. I therefore rejected that claim: see *Lawford Murphy vs. Luther Mills* [1976] 14 J.L.R 119

The plaintiff also gave evidence that her weekly income after expenses was \$7,000 to \$12,000 per week. She said that she was unable to work for two years after the accident. Since April 2000 she has been employed at a hardware store as a clerk earning \$3,000 per week. Her evidence was that she had to stop from work several times with head and back pains.

The plaintiff was a small business person and the court accepted that she was unlikely to have documented proof of income. She has, however, pleaded loss of income for fifty-eight weeks. Her evidence, though, was that she was unable to work for two years or (one hundred four weeks). No explanation was offered for the discrepancy. After considering the demeanour of the plaintiff and the inherent inconsistency in her evidence, I rejected her claim for loss of earnings.

In rejecting this bit of evidence, I am guided by the observations of Rowe P in *Hepburn Harris vs. Carlton Walker (unreported) SCCA 40/90* delivered on December 10, 1990 where he said:

"plaintiff's ought not to be encouraged to throw up figures at trial judges, make no effort to substantiate them and to rely on logical argument to say that specific sums of money must have been earned..."

General Damages are assessed as follows:

Pain & suffering and loss of amenities	\$1,615,825.
Future medical care	<u>\$ 115,000</u>
Total General Damages	\$1,730,825

Interest is awarded on the amount of \$1,615,825 at the rate of 6% per annum from the date of service of the writ of summons up to today (May 17, 2002).

Special Damages	\$101,775
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Interest on special damages is awarded on the sum of \$101,775 with interest at the rate of 6% per annum from December 24, 1996, up to today (May 17, 2002).

There will be a judgment for plaintiff in the sum of \$1,832,600 together with cost in accordance with Schedule A of the Rules of the Supreme Court (Attorneys- at- Law's Costs) Rules, 2000.

Hepburn v Walker + Andrade