

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW

SUIT NO. C.L. 1994/N-102

BETWEEN LLOYD NEEDHAM PLAINTIFF
AND ALICE SILVERA 1ST DEFENDANT
AND VALENTINO SILVERA 2ND DEFENDANT

Mr. Ainsworth Campbell for the Plaintiff.

Miss Racquel Dunbar instructed by McGlashan Robinson & Company for the Defendant.

Heard on 20th April 2002, 3rd June 2002 and 18th September 2002

Campbell J.

The plaintiff commenced his action for negligence by Writ of Summons, dated 16th March 1994.

(a) The plaintiffs case:

On the 3rd September 1993, the plaintiff, a plumber, was on his way from Cornwall Agencies, on Spanish Town Road, where he had gone to collect a cheque. The plaintiff testified that it was about 2:30pm. He said he was riding at a "normal speed", easterly, and very close to the sidewalk "a foot or less". When something hit him in his back, he lost consciousness, "until I came to know myself again about 7 o'clock in the evening at Kingston Public Hospital." He denied that

he had rode from the minor road onto Spanish Town Road without stopping. He denied that he rode into the path of the defendant's car on Spanish Town Road. He said in cross-examination that he had on the handle of the bicycle a tool bag. The tool- bag was about one yard in length and eighteen inches deep. The plaintiff estimated the tool bag weighed about 60-70 pounds. The handle on which this bag was carried was sixteen inches across. The width of the bag was resting between the handle, the length was in the air. In addition to the tool-bag, the plaintiff had strapped along the bar of the bicycle, a plumbing implement called a dye, which was made of iron, about one yard in length and weighed about 5-6 pounds. The suggestion to the plaintiff that he could not see over the tool-bag was denied. He also denied the suggestion that he was unable to control the bicycle because of the tools.

The plaintiff's witness, Kenneth Martin, a sewerage worker of a Bob Marley Way address, testified that about 2:30-3:00pm, he saw a car hit a man off his bicycle, "in the extreme left" lane on Spanish Town Road. The witness testified that when the car hit the man, "he flew off the bicycle up in the air". He said the "bicycle was hit from back ways, and it went into a handcart." Of the plaintiff, Martin said, he dropped on the road; Martin said that he, along with others, "went and picked him up". The plaintiff was knocked out completely. He was not talking and appeared to be dead. He was placed in a jeep. There was blood all

over. Martin said in his examination-in-chief, that he had seen the car before "it actually hit" the plaintiff. He testified that the car was coming "hard", about 40 mph. It was on Spanish Town Road.

Cross-examined, Martin said he was standing with his back to the Market by the Gas station, and he was in conversation with a friend, Bev. He describes Spanish Town Road as being divided by a median, with traffic flowing in opposite directions on either side of the median. He was on the opposite side of the road from the accident. Of the plaintiff, Martin said he fell on his back in the roadway. He fell on his head. The traffic did not block his view. He never saw what became of the car after the accident. He saw tools scattered in the road. He said that traffic was able to pass on the road in all the lanes after the accident. He has not seen any other person in the defendant's vehicle, and had not seen what became of the vehicle after the accident.

Dr. John Hall, Neurologist, was called for the plaintiff. He said he saw the plaintiff on the 14th August 1997. The plaintiff was examined clinically. An E.E.G, a specialised test of brain-wave function was also done. The doctor opined that the plaintiff had a head injury of sufficient severity to cause him to lose consciousness, and awareness of his environment. Dr. Hall said that the period of unconsciousness indicate and correlate with the magnitude of the head injury. The injury was a 4, on a scale of 1-10, with 10 being the highest, indicating

unconsciousness over many days of the week. One (1), indicating brief periods of unconsciousness of a quarter of an hour or so. The consequences of a "number 4 injury" that results in unconsciousness for 4-5 hours can be quite varied dependent upon the area of the brain that was "insulted" by the injury.

The plaintiff had complained of bouts of giddiness, and that hearing and memory were not as sharp as prior to the accident. The result of the E.E.G. was abnormal, in that it showed Beta activity in a sustained manner throughout the test. In a normal test, the indicator would be alpha. Dr. Hall said the report he had seen indicated that the x-ray on the head of the plaintiff was normal. The head injury of the type the plaintiff suffered was commonly associated with damage to the so-called semi-circular canal. This is a specific area of the brain linked to the hearing mechanism and in which resides the elements of the mechanism of balance. The complaint of giddiness was therefore relevant. The doctor testified that there was no abnormality demonstrated in the Rinne and Webber test. These are standard test to demonstrate whether there was damage to the auditory nerve. He did not do an audiometry. This is another requirement usually done by the E.N.T. specialist. The standard test did not demonstrate any loss; the audiometry would demonstrate the subtleties of loss not demonstrated by the cruder method.

The giddiness that the plaintiff suffered was an obstinate and persistent sequelae of that type of injury the plaintiff suffered. In cross-examination, the

doctor said the plaintiff had indicated that he had used alcohol, tobacco and cannabis for many years. Dr. Hall thought the plaintiff's combination of drugs was odd. The abnormal showing on the E.E.G. could be the result of the one of three main probabilities (1) an anxiety state (2) use of anthropic drugs.....to calm nerves (3) use of cannabis. Dr Hall concluded that the E.E.G. signs are consistent with the use of cannabis. His memory was found to be above average for past events and satisfactory for recent events.

Dr. Hall opined that the plaintiff's melantinos of the conjunctiva which he observed was consistent with chronic cannabis use.

(b) The defendant's case:

The defendant, 49 years old farmer from Brampton, in Trelawny testified that he was travelling in the 2nd defendant's red Suzuki Gemini 2794 AN. There were two other persons in the vehicle, Mr. Harriot, now deceased and Harriot's assistant. He was travelling on Spanish Town Road, which he describes as having three lanes on left and three lanes on the right; both set of lanes being separated by a wall. He was travelling in an easterly direction. He said that the traffic was not "bumper to bumper"; the cars were travelling about a car length from each other. He was driving in the extreme left lane. There were cars in front and cars behind, and a truck right beside him in the next lane. The defendant said that on reaching

the last intersection, before approaching the roundabout, he observed a pedal cyclist with something in front on the frame, emerge from the minor road in front of the car and hit the left front section. The cyclist flew onto the bonnet, into the windscreen of the car and fell on the embankment. The defendant said he tried to stop by stepping on the brake. He could not swerve to the right because the truck was beside him. The bicycle was caught under the front section of the car. The car came to a stop on the embankment. The defendant said he came from the car and tried to assist the plaintiff but was forced to run when he heard a man who had a knife saying, "mek we kill him". He ran to the nearby Hunts Bay Police Station, where he made a report. He was advised by the police not to return to the scene immediately. He returned at about 6:00pm and removed the bicycle from under the car, and transported it to the station. The bicycle was an exhibit in the case. The car was detained at the Hunts Bay Police station for examination.

The plaintiff's witness, Martin, has testified that vehicles were able to pass on the roadway in all lanes after the accident. In this regard, there is no divergence between the testimonies of both sides. On the defendant's case, the road being clear was as a result of the "car ending up" on the embankment, with the cycle underneath. It is inexplicable how the car could have been on the embankment, on the testimony of Martin. The testimony of Martin makes no reference, and is inconsistent with the plaintiff falling on the bonnet of the car, breaking the

windshield and the falling on the embankment. Martin's evidence is that the plaintiff fell on the roadway. If that had in fact happened, would it not have caused a cessation of traffic in the lane the plaintiff was travelling in? Yet, Martin says that the traffic was able to flow in both lanes. There was no suggestion that the windshield of the defendant's car was not damaged along with other areas, amounting to some \$30 - 40,000.00 in repairs. This damage is inconsistent with the evidence of Martin. On Martin's evidence, the only contact was the front of the car hitting the bicycle from behind. The defendant gave his evidence in a forthright and credible manner. I am impressed that he spoke the truth. The distance Martin was from the scene of the accident would have affected his ability to see all that took place there that morning. He had not seen anyone else in the defendant's car, although the defence is unable to dispute that the two occupants of the car had given statements to the Hunts Bay Police that day. He had not seen what had become of the car, although the undisputed evidence of the defendant was that the car remained there until 6 o'clock. I accept the defendant's case that the plaintiff rode his bicycle from the minor road onto Spanish Town Road without stopping and collided into the defendant's vehicle. Judgment for the defendant on the claim.

Cost to the Defendant to be agreed or taxed.