

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN COMMON LAW
SUIT NO. C.L. S.116 OF 1981

BETWEEN JUDITH SCHROUDER
(Suing by next friend Monica Schrouder) PLAINTIFF
A N D WALDIN WALTERS DEFENDANT

Pershadsingh Q.C., Frankson Q.C., and A. Mundell for Plaintiff.

E. H. Williams Q.C., and A. Hamilton instructed by C. Hart and Company for Defendant.

July 31, 1985; March 18, 19, 1986; April 15, 1986;
November 24, 1986; February 2, 1987, and
February 27, 1987.

ELLIS, J:

The plaintiff alleges that on the 30th of September 1980, she was on the soft shoulder of the main road at Halse Hall when the motor car owned and driven by the defendant swerved onto the soft shoulder and collided with her.

As a result of the collision she sustained severe injuries to her head (brain) and legs with consequential pain and loss of amenities. She says that the defendant negligently caused her injuries and she claims damages from him.

The defendant admits a collision with the plaintiff but says he is not liable as the plaintiff crossed the road into the path of the vehicle driven by him.

The plaintiff in support of her case called:

(i) Professor John Golding who described the injuries to her limbs and the consequential disability in those limbs.

Professor Golding saw no visible bone damage to the plaintiff's forehead. There was however, severe damage to both her legs with the right leg being 15/8" shorter than the left resulting in the plaintiff walking with a limp and a "knock ~~knee~~" gait. He assessed the permanent partial disability to be 15% in the right leg and 10% in the left with a likelihood of arthritis developing in the limbs.

He said that in his opinion a girl of the plaintiff's age could dance and that physiotherapy would minimise the cramps and tingling sensation which she now feels in her legs;

(ii) Dr. Ruth Doorbar a clinical psychologist. Dr. Doorbar examined and tested the plaintiff on three occasions. The results of the tests revealed very marked feelings of inadequacy and inferiority in several areas:

- (a) Accademic;
- (b) Vocational - she can not achieve much in complex employment;
- (c) Social in that she feels that she is a cripple;
- (d) emotional - she has personality changes which manifest anger and irritability without reason and concern for physical incompetence to be a wife and mother.

Dr. Doorbar said ~~she~~ was told of the plaintiff having epileptic seizures and she is of the opinion that if they continue she will become less able to cope with life.

From her tests and the results, the Doctor concluded that the plaintiff has suffered brain damage and according to her, the plaintiff's future looks grim;

(iii) Several witnesses who evidenced the facts of the accident.

The defendant challenged the evidence of Dr. Doorbar by calling Dr. Aggrey Irons a Consultant Psychiatrist who is in charge of Bellevue Hospital. Dr. Irons did not find any significant degree of organic brain damage that will impede the plaintiff's realization of her original potential (see Exhibit 1).

He found that the plaintiff was ambitious but a low achiever. According to him, the plaintiff is now in a depressed anxious state with poor self image and of low average intelligence for her age. Lastly, he said that although he had no history from the plaintiff of epileptic seizures he is aware as any Doctor would, that head injury may result in epileptic fits.

LIABILITY:

On a consideration of the evidence I find:

- (i) that the plaintiff was walking on the right side of the road as one faces May Pen;
- (ii) the plaintiff did not cross the road into the path of the defendant's vehicle;
- (iii) the plaintiff was on the soft shoulder of the road;
- (iv) the defendant's vehicle collided with her and she was severely injured as a result;
- (v) the defendant was negligent.

In the circumstances I have no hesitation in holding the defendant liable for damage. He is solely liable as on the evidence of the collision I can find no contributory negligence.

DAMAGES:

The plaintiff claims Special Damages in a total of \$1596.75 being amounts expended for transportation, crutches, medical expenses and property destroyed.

There was no serious contention as to the expenditures and the plaintiff will have an amount of \$1596.75 as Special Damages with interest at 3% as of 30th September 1980 to date.

As to General Damages, it is necessary to consider the evidence of the professional persons.

First Professor Golding described serious injuries to the plaintiff's lower limbs. He concluded that the right leg was permanently partially disabled by 15% whilst the left was similarly disabled by 10%. Those conclusions were not challenged. He did say however that in his opinion, the factors of her shortened leg and the "knock knee" gait would not considerably militate against her dancing if she was so inclined.

I accept the evidence from this witness as to the injuries to the plaintiff's legs.

Dr. Doorbar's evidence is to the effect that the plaintiff has suffered organic brain damage and that she operates in the mild

- 4 -

mental retardation range. She said the plaintiff would be unable to manage her own affairs. Dr. Doorbar's evidence paints a most gloomy picture of the plaintiff's future.

The defendant called Dr. Aggrey Irons. Dr. Irons said that on his examination of the plaintiff she showed signs of anxiety and depression and poor self image. According to him she evinced no organic or functional psychosis. He found plaintiff to be well oriented in time and place and she impressed him by her ability to talk to him about hairdressing.

He acknowledged the competence of Dr. Doorbar as a clinical psychologist but he did not share her view as to the gloomy future of the plaintiff.

I have seen the plaintiff and I am not convinced that she is as hopeless and incapacitated as Dr. Doorbar stated.

She has been seriously injured but not with the consequences stated by Dr. Doorbar.

In this case, damage are assessable under the heads:

- (1) Pain and suffering and loss of amenities;
- (2) Mental impairment consequent upon head injury;
- (3) Disadvantage on the labour market.

Fracture to both legs resulted in one being 15/8" shortened and must have caused the plaintiff considerable pain and suffering.

Professor Golding's opinion that she would not be inhibited in dancing appears to me to be objective. I have to decide for this particular plaintiff and I hold that she has lost amenities.

In total, I would assess the damages under this head to be \$70,000.00.

The epileptic seizures which the plaintiff now suffers are likely to be permanent but are remediable. Dr. Irons also stated that the plaintiff's mental state could be remedied at a cost of about \$2,000.00.

It is not the evidence in this case that the plaintiff showed any high degree of intellectual promise prior to ~~the~~ accident nevertheless injury to the brain is attractive of substantial damages.

- 5 -

In my opinion, a figure of \$110,000.00 would be adequate compensation under this head.

The injury to the plaintiff physically and mentally will indubitably result in her being at a disadvantage when it comes to obtaining and holding employment.

Not many cases are on this point and one has to assess damages here according to the circumstances.

I would assess damages under this head to be \$40,000.00.

As General Damages, the plaintiff is awarded therefore, an amount of \$220,000.00 with interest on \$180,000.00 thereof at 4% as of date of filing this Writ.

Costs to the plaintiff to be agreed or taxed.