

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. S 226 of 2000

BETWEEN	DAVID SIMMS	CLAIMANT
AND	SHIRLEY BROWN	1 ST DEFENDANT
AND	SANTO RUSSELL	2 ND DEFENDANT

Ms Dundee Ferguson instructed by Ferguson Campbell and Company for Claimant.

Mr. Burchell Brown for both Defendants.

HEARD; 6th June, 2007

CORAM: D. O. MCINTOSH J.

The second Defendant was the driver of the motor vehicle which collided with the claimant resulting in damages to claimant's bicycle and multiple injuries being sustained by him. The vehicle was owned and insured by the second defendant who gave evidence that the first defendant was insured to drive the said vehicle.

Before this case could be tried, the second defendant, who had been alone at the time of the collision, died. This court allowed the purported witness statement of the second defendant to stand as evidence for the defence although claimant's attorney objected to it on the basis that it was, at best, of dubious

authenticity. This court was of the view that objection should have been made at the pre-trial review or in writing before this trial.

The claimant's case was that he was riding his cycle behind his friend Barrington Harvey, who was also on a cycle, along the Drax Hall main road, in the direction of St. Ann's Bay, on the left side of the road; that the Honda motor car driven by the second defendant, overtook a line of traffic going in the opposite direction; that the car was going at a fast speed; that he moved closer to the curb where there was a ditch and stopped; that the car collided violently with his cycle causing him to be thrown from the cycle, over the bonnet of the car and landing in the middle of the road.

Although Harvey did not see the impact he saw the car as it approached and heard the impact. He saw the claimant lying in the road, the damaged cycle and noted that the second defendant had not stopped but continued on his way after the collision.

The defence was that the second defendant was overtaking a truck when he saw two men on one cycle, the claimant on the crossbar. The cycle swerved into the car knocked off the car's wing mirror and he, the defendant, drove off to the police station because he knew in his heart a crowd would be waiting to hurt him.

It is clear from the defence that the second defendant blames the cycle for swerving into him while he is overtaking on the wrong side of the road and that his apprehension of danger from a crowd would only be because he knew he had hit down the cyclist. It is highly impossible that if there were two persons on the

cycle and a collision took place, only one of the two persons would have been injured, given the damage to the cycle and the uncontroverted evidence that the claimant was flung over the car's bonnet and into the road.

This court finds that the defence strains credibility and rejects it as a fabrication made in an attempt to escape liability.

This court finds, on a balance of probabilities, that the second defendant, while furiously, recklessly and negligently overtaking a line of motor vehicles on the Drax Hall main road in St. Ann did collide with the claimant's cycle, damaging same extensively, and causing multiple injuries to the claimant and that the second defendant was solely responsible for the said collision.

Accordingly, this court enters judgment for the claimant.

Special damages were contested only in terms of Thirty-five Thousand Dollars (\$35,000) for loss of earnings. The evidence is that the claimant was in hospital for six (6) weeks and upon discharge, left on crutches. This court is of the view that only seven (7) weeks claim for loss of earnings is extremely generous to the defendants and that Thirty-five Thousand Dollars (\$35,000) is more than reasonable in all the circumstances.

The court on special damages awards:

\$115,269.83 with interest at 6% from the 31/10/1995 to 6/6/2006.

There is some difficulty in assessing general damages as the claimant clearly aggravated the injuries he had suffered when he fell from a horse about three months later. The difficulty is in assessing how much greater was his suffering and loss of amenities.

For these reasons also this court makes no order in respect of future loss of earnings.

Based on the initial medical report before the historic fall from the horse, and evidence of the claimant this court will award general damages of Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) with interest at 6% from the 23/1/01 to the 6/6/06.

Cost to the claimant in the sum of \$120,000.00.