SUPREME COURT LIBRARY
KINGSTON
JAMAICA
Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. S 415 OF 1993

BETWEEN	OWEN SMALL	PLAINTIFF
A N D	UNITED ESTATES LIMITED	DEFENDANT

Ainsworth Campbell for the plaintiff
Garth McBean, instructed by Dunn, Cox,
Orrett & Ashenheim for the defendant

Heard: January 20, 21, 22 and March 2 and 10, 1998

PANTON, J.

The plaintiff's claim against the defendant is for damages for negligence. The plaintiff has alleged that while working as a sprayman for the defendant, his eyes were invaded by chemicals used in the spraying, and that as a result he became blind in both eyes.

The defendant has denied that the plaintiff was employed as a sprayman during the period in question. At such times as he was employed as a sprayman, the plaintiff was provided with appropriate protective gear which he failed to use.

The determination of this matter rests to a large extent on the credibility of the witnesses. In addition to that, the effect of the documentary evidence has to be considered.

At the outset, it ought to be pointed out that the plaintiff had no input in relation to the documents that have been produced by the defendant as work record. For example, these documents do not bear the signature of the plaintiff. They are documents prepared solely on behalf of the defendant, and there is nothing to vouch for their accuracy and or completeness.

The issues for determination in relation to liability are indeed as enunciated by learned attorney-at-law for the defendant -

(1) was the plaintiff employed by the defendant to spray plants during the relevant period?

(2) did the defendant provide the plaintiff with the appropriate protective gear?

(3) if there is a positive answer to (1) and a negative answer to (2), did the plaintiff suffer his injury during his employment, and as a result of negligence on the part of the defendant?

Having carefully considered the evidence, and the demeanour of the respective witnesses, I find that some impressed me as being reliable and credible while others did not.

The plaintiff was particularly impressive. I accept his evidence that he worked on the defendant's farm as a sprayer between February, 1990, and May, 1992. He was required to handle and use the chemical gramaxone during this period. No protective gear was provided for his use - particularly, he was not provided with goggles or respirators.

I find that several times during his use of the chemical, the wind caused it to be blown into his eyes. The last of such occasion was in May, 1992. This fact was, I find communicated on more than one occasion to Mr. Gary Gordon, who was then a trainee supervisor employed to the defendant. Mr. Gordon told the plaintiff that he (the plaintiff) had been employed to spray, and that he (Mr. Gordon) couldn't do anything about it. I accept the plaintiff's evidence that on May 29 he had bawled out due to fright when he noticed that his right

eye was locking up; that he called Mr. Gordon who came to his assistance and took him to a building where he saw Messrs Egbert DaCosta and Mr. Taylor, employees of the defendant. Mr. Taylor had then given the plaintiff vaseline to use to ease his discomfort.

The next day, the plaintiff went to the Linstead Hospital where he was seen by Dr. Kotiah. Eventually, Dr. Kotiah sent the plaintiff to the Kingston Public Hospital where he was admitted for one month, three weeks and two days. He was operated on, but to no avail as he lost the sight in both eyes.

I find that Mr. Gordon is merely pretending ignorance in relation to the calls to him by the plaintiff. His claim that he was merely a trainee so the plaintiff would not have sought his aid is, in my view, quite hollow. The evidence of the plaintiff has convinced me that it was to Mr. Gordon that he related.

Mr. Gordon did say that he didn't know if in 1990 there was anyone to show a worker how to spray; and that since 1993 he has been the person doing that. He also said that since he has been in charge, once the breeze is blowing the spraymen are not allowed to spray herbicides. This, to my mind, has strengthened the plaintiff's case that he had received no instructions on operations, and that the breeze had from time to time affected the spraying, blowing the chemicals in his face.

I find that the plaintiff also went to see Mr. Lawrence Bowie on the matter. Having made these findings, the next matter for consideration is whether the plaintiff's blindness resulted from the exposure to gramoxone.

I do not agree with learned counsel for the defendant that the medical report does not assist. It clearly does. I find that Dr. Kotiah saw the plaintiff and

referred him to Kingston Public Hospital. There, he was examined by Dr. Albert Lue, consultant in the Eye Department. He concluded that without doubt gramoxone can be toxic and irritating to the eyes; and that with a history of exposure for two years, it is the likely cause of the plaintiff's blindness.

The evidence is to be assessed on a balance of probabilities. There is nothing to indicate, nor even to cast suspicion, that the plaintiff had any congential defect in his sight, or that he was engaged in any other form of dangerous activity that could have so adversely affected his sight. The probabilities are clearly indicative of his blindness having been caused by the exposure to the gramoxone. Judgment is accordingly entered for the plaintiff.

In assessing damages, the Court has to consider that in Jamaica, for all practical purposes, the plaintiff's life has been ruined. The mental anguish is obvious. He is a young man who has virtually lost all. He, if he is to be of use to himself and to his community, has to be trained. It is impossible to fix a sum of money that can compensate him for the inability to ever see again. He has to be dependent on someone else at various stages of his life to come.

On the basis of the helpful submissions that the attorneys-at-law have made and my view that the case of **Palmer v. Walker and St. John** (C.L.P 072/90 and C.L. P 176/1990) is a useful guide, I award the sum of $7 million to the plaintiff for the pain and suffering caused by the disability. At the time of the injury the plaintiff was earning $800.00 per week. He is entitled to compensation for loss of future earnings and for the services of a helper. I am of the view that a multiplier of 14 is appropriate.

The award is summarized thus:

General damages

Pain and suffering and loss of amenities	:	$7,000,000 plus interest at 3% from March 31, 1994
Loss of future earnings	:	$560,000
Future help	:	$364,000
Special damages	:	$240,500 plus interest at 3% from June 1, 1992.

This latter sum is in respect of expenses for travel ($2,000), medical bill ($400), ointment ($100) and loss of earnings calculated at $800 per week ($238,000).

Costs to the plaintiff are to be agreed or taxed.