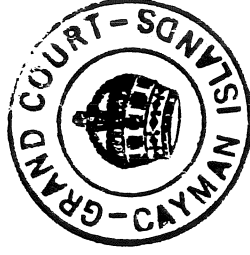


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

CAUSE NO. C 327/91



ROBERT HAMMER

3-04-92

v.

JAMES MARTIN AND SYLVESTER SHECKLES

Mr. Murray for the Plaintiff  
Mr. Shea for the Respondent

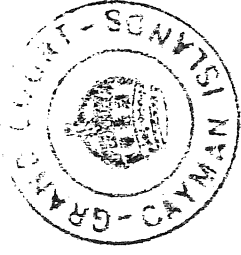
Schofield J.

Robert Hammer, the plaintiff, is a 23 year old Austrian who is employed in the restaurant business. In 1990 he worked as a waiter at the "Wharf" restaurant in George Town on a gainful occupation licence which was due to expire in October, 1990. On 5th April 1990, he was knocked off the motor cycle he was riding and sustained a fracture to his left kneecap and lacerated and contused wounds to the forehead, chin and upper lip. The question of liability in this suit has been settled between the parties. I am left to determine the question of damages.

The plaintiff's kneecap was shattered and a complete patellectomy (removal of the kneecap) was performed with restructuring of the quadriceps and pattellar tendons. A plaster cast was put in place. There were no bony injuries to the head and the lacerations to the face were sutured. The plaintiff remained in George Town Hospital until 26th April, 1990, when he was discharged on crutches. He travelled home to Austria on 3rd May, 1990.

A very full report was admitted from Dr. Gert Glaser a medical expert for accident surgery who has his consulting rooms in Graz, Austria.

When the plaster cast was removed on 10th May, 1990 it was recommended\* that the plaintiff stay in hospital as an in-patient



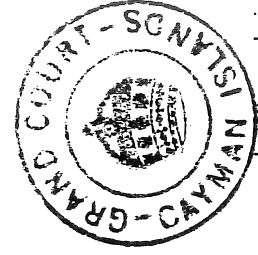
because of high grade muscular atrophy and inflexibility of the quadriceps muscles. He stayed in hospital for 3 days and after intensive physiotherapy he was released from stationary treatment.

As a result of the injury to the knee the muscles of the left leg are significantly weakened. If further intensive training of the muscles is carried on strengthening of those muscles is expected but a slight weakness of the left thigh will remain. At present there is a 10 degree restriction in the flexion of the left knee joint but this can be cured completely if adequate flexing exercises are carried on. Small bone regenerates of about pinhead size have developed in the former bed of the patella. These are not expected to grow but if any of them do they will have to be removed surgically.

The plaintiff testified that he used to ski, play soccer, tennis, squash and ride horses. He can still ride a horse and play tennis, but not as before the accident. The other activities are no longer open to him. He now cycles and swims alot and occasionally goes to a physiotherapist.

The scars to the face were described by Dr. Glaser as eye-catching but not repulsive or disgusting. When the scars mature, particularly two scars to the forehead, a corrective plastic surgical operation is indicated. The cost of that operation would be between A \$ 50,000 and A \$ 60,000 (US\$38,175 to US\$45,010). The plaintiff testified that having regard to his profession, in which he deals with members of the public, he considers he should have the operation.

Special damages, except for loss of earnings, have been agreed at US\$3761. The plaintiff's evidence is that Dr. Glaser said he was fit for work in July, 1990 and this is borne out by Dr. Glaser's report. The plaintiff said he started work on 3rd July, 1990 but he only lasted 12 days and had to stop. He worked



in an hotel restaurant and the walking was too much for him. He resumed work at the end of October, 1990. Defence counsel points to there being no medical evidence that the plaintiff required treatment between July and October and asks the court to accept Dr. Glaser's report that the plaintiff was fit to work from 2nd July, 1990. I have seen the plaintiff whom I regarded as an honest witness. He is not, in my opinion, a malingerer and was not exaggerating the severity of his injuries or the results thereof. At the date of Dr. Glaser's report, 12th March, 1991, there was still substantial weakness of the muscles to the left leg and restriction in movement of the knee. I accept the plaintiff's evidence that he could not work until the end of October, 1990. He admitted that although he had been earning US\$700 per week at the "Wharf" restaurant during the high season he would expect to earn less, say US\$600 per week, from April and during the summer months. Although there is no evidence on this he would probably have seen out his contract at the "Wharf" restaurant and I award damages for loss of earnings of US\$600 per week from the date of the injury to the end of October, 1990 less the salary for the 12 days he worked in July, 1990. That, if my arithmetic is correct, comes to US\$16,800 less US1,006., totaling US\$15,794.

The plaintiff will certainly have to undergo plastic surgery for the injuries to his face. The highest estimate of the cost of such surgery is US\$48,010. There is a remote possibility that he will have to undergo further surgery to his knee. I consider that if I award the highest figure given for surgery to the face that should also cover the remote possibility of further surgery to the knee.

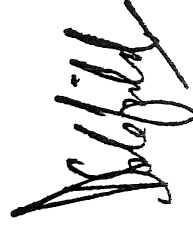
I have been referred to numerous authorities on general damages from the English treatise Kemp and Kemp, The Quantum of Damages. These, as I stated in Huddleston v Hassan and another (cc 301 of 1990), can be taken only as guidelines or pointers to the kind of awards that can be made in this jurisdiction. Money

does not have the same value in Cayman as in England. Different considerations apply in Cayman. The Jamaican authorities cited by defence counsel cannot be relevant to this jurisdiction. These were severe injuries to this young man who suffered considerable pain for a short period of time and who has undergone a severe disruption to his life. He has to undergo further surgery. A plea was made by his counsel that an award be given to compensate his mother who has had to undertake substantial nursing care of the plaintiff since his return to Austria. There is authority that such family home care should be compensated, but I am not prepared to apply strict commercial financial considerations to this aspect of the award. Although I do not doubt that the plaintiff's mother did look after the plaintiff at home there is no suggestion that she had to give up remunerative employment or that she was acting out of other than normal maternal concern. The young man had flown the nest and returned to his mother's care for a short period to recover his health. I consider I should make some award, which the plaintiff is expected to pass on to his mother, but it should to a nominal award in this case. A claim was made for an award for possible future home care, but there is no evidence that such care will be necessary.

Assessing the overall injuries and doing the best I can in the circumstances I award, for pain, suffering and loss of amenities, US\$55,000. I add to that amount US\$48,810 for the cost of future medical care and a further \$1,000 for the plaintiff's mother's home care.

General damages are therefore assessed at US\$104,810. Special damages are assessed at US\$19,555. Interest will follow the award.

Costs to the plaintiff.



D. Schofield

