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In the Grand Court of the Cayman Islands
Held at George Town 16.3.19.
Before His Lordship, Sir John Summerfield, Q.C., C.B.E., Chief Justice
Cause 718 of 1978

James A. Dailey

v

Harry Bush

Mr. Harding for plaintiff
Mr. Barrow for defendant

JUDGMENT

In this claim for damages resulting from the negligent driving of the defendant liability is admitted. The accident occurred on 9th September 1978.

At the outset of the hearing the special damages set out in the particulars of special damages were admitted with the exception of the first, sixth, seventh, eighth, ninth, eleventh and thirtieth items. Following evidence on these disputed items the dispute narrowed down to the last three. It was contended that the sum claimed for general expenses for Mr. Uzlik was unnecessary; that the period for the rental of a replacement car was unreasonably long and that the remuneration of Mr. Uzlik who worked in the plaintiff's business for a short time while he was incapacitated was unreasonably high. Only these three items therefore need be considered.

Mr. Uzlik was brought down from Miami to take over part of the responsibilities formerly assumed by the plaintiff in his business. He was experienced in the particular type of work for which he was employed and worked in the plaintiff's business for about a month during the time of his serious incapacity. The wages paid during that period amounted to \$1425.00. One can take judicial notice of the fact that had there been suitable local assistance available for that short period a work permit would not have been given for Mr. Uzlik to undertake this work. I accept Mrs. Dailey's statement that no local assistance was available and the plaintiff's own statement that the wages paid to him were reasonable bearing in mind his background. One must take account also of the very temporary nature of the employment required at short notice which would normally command a higher rate. In my view the amount claimed for this service was not unreasonable. There is no

evidence to the contrary.

In addition to his wages Mr. Uzlik was provided with accommodation. The \$100. for general expenses related to a further outlay, namely, food, travel tax, and minor expenses. I accept the plaintiff's statement that this figure was a rounded off one which fairly estimated these outgoings and was, if anything, on the low side.

The rental of a replacement vehicle (the plaintiff's car having been written off in the accident) covered a three week period immediately after the accident and amounted to \$252. The rented car was used by Mr. Uzlik in the course of his work for the plaintiff and for carrying the plaintiff around during part of his period of incapacity. Although the plaintiff and his wife both knew that their own car was a write-off and had to be replaced I do not think that three weeks is an unreasonably long time within which to make the necessary decision as to the type of replacement, make arrangements for its purchase, conclude arrangements with their insurance company etc. It should be noted that the plaintiff was seriously incapacitated for most of this time.

Both the plaintiff and his wife struck me as honest and fair witnesses who were not trying to inflate damages or make unfair claims.

I allow the special damages claimed in full in the sum of \$2,895.00.

As to general damages I accept the evidence of Dr. Bankay, the agreed reports of Dr. Magnus and the evidence of the plaintiff himself.

The brunt of the injury the plaintiff received in the accident appears to have fallen on his neck. X-rays showed a fracture of the spinous process of the fifth vertebrae and also ~~of~~ that vertebrae itself. He suffered some contusion of his spinal cord in the cervical region. There was weakness and paresthesia in the entire left side. He was placed in a cervical collar. He suffered very severe pain, initially all over his body but later this was confined mainly to the neck and shoulder. He had to have regular treatment for the pain he suffered.

He was discharged from hospital some three days after the accident and was virtually bedridden at home for about two weeks. He

still had pain in his head, side and neck together with a loss of sensation on the left side. He was taking muscle relaxants, pain killing and anti-inflammation drugs.

After this he was able to get up for short periods and do some work and the length of these periods increased progressively. He ceased having to wear the collar by the first week of January this year but he still wears it at night when he gets pain or is in stress.

The pain in the neck and shoulder reduced progressively but he still gets it intermittently - particularly in cold weather or when exhausted. However, since the middle of January he has been able to continue in full time employment in his diving operations although his capacity is somewhat reduced. He still has a loss of sensation in his left side. This is likely to be permanent. The mild damage to his spinal cord will never repair. He has, however, recovered most of the function in his left side.

There is a 60% probability that the plaintiff will suffer traumatic osteo-arthritis as a result of his injury. This will result in greater pain and may well result in some loss of function in the affected joint. He will need pain relievers and may have to wear the collar again. While it has been pointed out that many people contract arthritis which does not have its origin in trauma there can be no doubt that the plaintiff's chances in this regard have been substantially increased. Furthermore, it is likely to come about after about ten years and he is still a young man of thirty seven.

Despite the prognosis the plaintiff's recovery has been good on the whole and his condition is likely to improve. Apart from the occasional lapse of pain he is more or less back to normal although slightly weaker than before the accident and exhausts more easily.

Taking account of all the foregoing factors I assess general damages in the sum of \$8,500.

There will, therefore, be judgment for the plaintiff in the sum of \$11,395.00 with costs.

I leave open the question of interest for further argument.

SIR JOHN SUMMERFIELD.

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