

J A M A I C A

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 9/71

BEFORE: The Hon. Mr. Justice Luckhoo, J.A.
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Graham-Perkins

BETWEEN HERMAN BURRIS Plaintiff/Appellant

and

ALCAN JAMAICA LTD. Defendants/Respondents

Mr. Norman Hill, Q.C. for appellant
Mr. Hugh Small for respondents.

March 6 & 8, 1974

EDUN, J.A.:

On Wednesday this week we dismissed this appeal and affirmed the judgment of the trial judge with costs to the respondents to be taxed or agreed upon. We now give our reasons in writing.

This appeal concerns an assessment of damages. Mr. Hill's main submission on behalf of the plaintiff/appellant was that both special and general damages awarded were inordinately low and, in particular, the trial judge failed to take into account the evidence of Dr. K.C. Royes who stated that the appellant had a degree of psychological impairment of five percent permanently for the rest of his life. Mr. Hill urged that if Dr. Royes' evidence was taken into account, the general damages had to be substantially increased.

As to special damages, it is stated in Kemp & Kemp on the Quantum of Damages, Vol. 1 (2nd Edition) pp. 8-9:-

"Expenses actually incurred before the date of the trial constitute special damage and should be pleaded."

And Asquith, L.J., in Shearman v. Folland (1950) 2 K.B. 43 said:-

"Expenses which up to the time of the hearing have not yet been crystallised in actual disbursements should be claimed as general damages."

The basis upon which the trial judge awarded the sum of \$512.30 as special damages was in keeping with those principles,

He awarded \$312.00 for eight weeks actual loss of earnings at \$39.00 per week and \$200.30 for actual medical expenses incurred.

The appellant also claimed \$1,272.00 under the head of special damages: that sum being the difference between his pre-accident rate of pay and the sums he actually earned for 14 months after the accident. The trial judge did not award any part of \$1,272.00 so claimed. We hold that the trial judge was not wrong as it cannot be said that the whole or any part of that sum was ever crystallised in actual disbursements and although it has been pleaded, it was dependent upon a disability to earn and it may well have been reflected in the award of general damages. When we look at the amount of \$1,600.00 awarded as general damages, in the circumstances of this case, that sum for pain and suffering is rather high.

As to the award of general damages, Mr. Hill submitted that the trial judge did not take into account the evidence of five percent permanent psychological impairment. It is quite clear that the trial judge has accepted the evidence of Drs. McHardy and Masson. Dr. McHardy did state that he found evidence of brain damage but it could not have existed six months after the accident. Dr. Masson said he found no brain damage and he would not have expected any from the history of the case. It is undisputed that neither of these two doctors said there was any degree of injury to the brain which could have resulted in any permanent psychological impairment.

Immediately before the trial judge gave his decision, he was addressed on the evidence of Dr. Royes' finding of permanent psychological impairment. In his reasons for judgment he stated that Dr. Royes did not know the appellant before he saw him or his intelligence quota prior to the accident relative to further studies. We are of the view that the trial judge did take into consideration Dr. Royes' evidence in awarding the general damages.

For those reasons we dismissed the appeal and made the orders as stated.