

ROYAL COURT  
(Samedi Division)

19.

25th January, 1995

Before: F.C. Hamon, Esq., Commissioner, and Jurats  
Gruchy and Potter

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Between                   Maureen Kerr-Dunn (née Donovan)                   Plaintiff  
And                         Bon Air Nursing Home, Ltd.                   First Defendant  
And                         Thatcher, Ltd.                   Second Defendant

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Advocate A.D. Robinson for the Plaintiff  
Advocate C.M.B. Thatcher for the Defendants

JUDGMENT

THE COMMISSIONER: In this case which concerns damages for a personal injury there is no issue as to liability. We are to ascertain the general and some of the special damages due to the Plaintiff.  
5 It has been adjudged in a consent order dated 2nd November, 1988, that while the accident under review was caused by the negligence of the the first and second defendants there was contributory negligence on the part of the plaintiff to the extent of fifteen per cent and the damages recoverable by the plaintiff shall be  
10 reduced by that proportion.

At about 9 a.m. on the morning of Saturday 5th January, 1985, the plaintiff, then aged 48 years and employed as a domestic at Bon Air Nursing Home, opened a door of the laundry room to the  
15 rear of the Nursing Home to go to the main building. A contractor had left a pile of builders blocks unguarded and she tripped over them. She fell heavily to the ground. It was a nasty fall. She fell on her face, she was unconcious for some 5 to 7 minutes with an antero-grade amnesia of 30 seconds or so.  
20 She was taken to the casualty department of the General Hospital. She tried to return to work soon after the accident but was clearly not well enough and was put to bed at the Nursing Home, she stayed there for a number of days. She was for 3 days admitted to the hospital. She has suffered a wide range of  
25 medical symptoms and has had an equally wide range of treatment.

Before the accident we formed the impression from hearing her evidence, and that of her husband and her medical practitioner, Dr. M.A.H. Guillochon (who has been her General Practitioner for  
30 20 years) that we had a lady who was intelligent, who genuinely

loved working (she had worked since she was 16 even when her two children were born), and who was lively and outgoing. Dr. Guillochon had seen her on only 20 occasions between 1968 and 1985. This compared with the 180 times that he had seen her since the accident. She had always had what he described as a "ready smile" and was able not only to work happily at Bon Air but also to do some outside catering work with notable success. He gave as an example her catering at a reception at the French Consulate which on 14th July would host a gathering of three to four hundred people.

The plaintiff and her husband have been married for 35 years. Mr. Kerr-Dunn, some eighteen months before the accident, had to stop work because of ischaemic heart disease. The plaintiff had become the main breadwinner of the family.

The change in Mrs. Kerr-Dunn since the accident has been dramatic. After the accident she noted a variety of symptoms. She has been examined by a wide range of consultants, all of them experts in their field. We heard from Dr. Gwyn Evans, the consultant psychiatrist, from Mr. J.P. Hollywood, the consultant psychologist and from Dr. Richard Greenwood a consultant neurologist who works in London, to whom the plaintiff was referred at the request of the defendant's advocates. Dr. Greenwood had before him a great number of reports not shown to us but we can best sketch the medical attention that the plaintiff has received as follows:

"In May 1985 she was referred to Dr. Gwyn Evans as she was still complaining of a variety of symptoms 'including a huge increase in appetite and, consequently, weight, severe insomnia, lack of energy, interest and drive, depression, inability to enjoy herself and difficulty in taking minor decisions. There has also been a fairly striking loss of confidence and a certain amount of self-reproach'. She had difficulty in getting to sleep and Dr. Gwyn Evans felt she 'has a depressive syndrome following head injury'. He prescribed Dalmane and Surmontil. She was seen by Mr. J.P. Hollywood, who on 27th August, 1985, documented a full-scale IQ of 70 and he felt it was 'difficult to reconcile this level of performance with the degree of competence shown by Mrs. Kerr-Dunn prior to her accident earlier this year'. She 'presented as a picture of total confusion, disorganisation and dramatically faulty memory. She was unclear about her age (although she did know her date of birth, but could not calculate her age), her address and for how long she had lived in her present accommodation. She reports that she has virtually ceased watching television as she is unable to follow the contents of the programme. She also reports a form of uninhibited eating, out of keeping with her earlier eating habits. Not only has the amount of food eaten increased significantly, but also the range of things eaten.

Previously distasteful foods are now eaten with relish. She is also frequently ravenously hungry a very short time after a full meal'. That period in 1985 was undoubtedly the worst period. "She was subsequently seen by Dr. M.D. O'Brien, consultant neurologist, in September, 1985, and a change of Clonazepam to Temazepam was advised, and from Surrmontil to Prothiaden, and she continued follow-up with Dr. Evans." Mr. Hollywood at that time had no doubt whatever there had been a significant degree of brain damage. "An EEG in 1986 at Guys Hospital was normal and a CT head scan initially showed 'a very small area of high attenuation in the left parietal lobe' which was not present in a second scan performed a few months later.

On 3rd November, 1986, her progress was reviewed by Mr. Hollywood, who found that 'her physical appearance is dramatically better as a result of losing in excess of 3 stones in weight. She was infinitely more relaxed and without significant difficulty could recall the day of the week, the date and her own age, all of which she was unable to do previously'. There was also a 20-point increase in her full-scale IQ to 90 and 'her scores are no longer in the range associated with significant organic impairment, although they are still below the mean for a lady of Mrs. Kerr-Dunn's age'.

During 1987 she continued to complain of left-sided head pain which she dated from the accident and for which she was taking up to six capsules of Fortral a day. She was referred to Dr. Philip Kennedy, consultant neurologist, for injection of the pain with steroids and local anaesthetic. She continued with Temazepam and Fortral and Dr. O'Brien on 15th October, 1987 felt these should be changed to Temazepam and Prothiaden, and in 1988 her tiredness, headache and depression had apparently improved on Prothiaden and Ponstan, but worsened and she returned to Fortral. She was seen again by Dr. O'Brien in 1988 and subsequently seen by Dr. Wedley, consultant in pain relief, for injection of the left-sided head pain again with steroids and local anaesthetic, followed by a cryolesion to the occipital nerves in October 1988. She was at that time taking Temgesic 0.2 - 0.4 mgs four times daily, and Prothiaden 100 mgs at night, and subsequently the head pains improved but she still complained of tiredness. She was taking five or six Temgesic tablets daily in 1989." This is a morphine based drug.

At one time she was advised not to drive but following further advice she took an informal driving test with an established driving instructor on 25th September, 1986. He could see, after this one hour's drive, no reason why Mrs. Kerr-Dunn should not drive a motor. It is perhaps significant that in September 1986 Dr. Evans was encouraged enough to believe that she might make a satisfactory recovery. This prognosis has not proved correct. Both Dr. Guillochon, Dr. Evans and Mr. Hollywood

are convinced that the plaintiff will never work again. It must be recalled that the plaintiff had never seen a psychiatrist nor any professional of that calling before the accident. Now, they quite literally govern her life. She complains of a pain in the left hand side of her head; she is often so exhausted after even short attempts at work that she has to retire to bed.

The numerous psychometric tests carried out by Mr. Hollywood bear out the truth of the symptoms which she complains of and, in our view, totally negate any concept of financial gain. She is consistent (albeit consistently in the lower scale for a lady of her age) in tests carried out over a number of years. The problem that the plaintiff faces and which convince us (as it has convinced Dr. Evans and Mr. Hollywood) that she will never return to work is the overwhelming fatigue that continually bedevils her. By way of example, in the assessment sessions, which would normally have been completed in one session of 90 minutes it took four separate sessions of 45 minutes each to complete because the plaintiff was exhausted after each 45 minute session. Mr. Hollywood said he felt hesitant at having to compel a lady who was so full of enthusiasm and determination to go through this continuing ordeal. We are confident that the Plaintiff's poor showing before Dr. Greenwood was possibly due to her nervousness at having to see him in London (even though she was accompanied by her husband) and the fact that she was just recovering from a viral infection, recorded by Dr. Guillochon.

We can dismiss the suggestion that the plaintiff's complaints are the result of deceit for the purposes of financial gain or malingering. Dr. Greenwood in his first report was able to conclude that her symptoms were not manifest for financial gain nor did he think that they would have occurred had the accident in question not happened. We have no doubt that all her problems flow from the accident.

In any event, Dr. Gwyn Evans pointed out to us that the question of "compensation - neurosis" has been much disputed since it was first propounded by a Professor Miller in 1961. He cited to us passages from Brain's Diseases of the Nervous System (10th Ed'n (1993) which, in his view, illustrated the fact that a patient can definitely suffer long term symptoms from small injury. As was said at paragraph 5.8.6:

*"The post-concussional syndrome - unquestionably headache, giddiness, impaired concentration and the other symptoms described above occurring after moderate or severe head injury are the result of organic brain damage and may take between 1 and 3 years to recover, if indeed they ever do so (Cartlidge and Shaw 1981). These symptoms tend to be directly proportional in severity and duration to the duration of the post trauma amnesia (Steadman and Graham 1970) but may sometimes occur after relatively minor head injury (Cromwall and and Wrightson 1974)."*

We were deeply impressed by Dr. Gwyn Evans' description of the Plaintiff when he said (and his views were totally supported by Mr. Hollywood):

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*"She never seemed to me to make any attempts to exaggerate the symptoms. She always co-operated in anything suggested to help herself. She, I think, very early on was prescribing for herself, this was before she'd seen Mr. Hollywood, a series of memory training tests to help herself. She's always maintained that she is improving really, persuading herself that she is. And, I think amongst her symptoms - it isn't one she ever mentions - she has an acute sense of loss of the personality she used to have. She was a very busy, active and effective woman and I think she is, if you like, mourning the change into an ineffective worrying lady who can't be busy because she is not efficient enough to be busy any more. I think that this is a huge loss for her and I think one of the main interests of her life has gone."*

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We share the view of Dr. Gwyn Evans and Mr. Hollywood that the plaintiff suffers from a disability which has the effect of rendering her permanently incapacitated for work. This permanent disability is the direct result of the head injury and there is no element of compensation-neurosis (which we realise is not a precisely delineated clinical entity but a continuum of symptoms).

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There has been one interesting development in this case which has taken up a considerable part of the Court's time. The insurers employed a private detective covertly to follow the plaintiff and video her activities. There were three incidents recorded. The 16th February, the 7th March and the 18th July, 1991. Strangely only one of these incidents (the video of 18th July) was put to the plaintiff by Advocate Thacker but it was this twenty minute video that the Court watched at the commencement of the hearing.

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It showed Mrs. Kerr-Dunn driving competently but cautiously over a period. She parked her car on two occasions. She walked with a shopping basket and walked up some steps to her doctor's consulting rooms. She had no problem reversing her car. Indeed, the investigator, Mr. Watkins' assistant, Mrs. Paula Warren, followed the plaintiff into the Central Market after the video had stopped where Mrs. Kerr-Dunn purchased groceries, joked with the assistant and a fellow shopper, was very certain as to what she wanted to buy, bought these articles without a list and had the money for the purchases ready.

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The sight of the video led Dr. Greenwood to write in his second report:

*"The cognitive deficits manifest when I saw her cannot be largely the result of the residual effects of organic brain damage, and must be largely generated by non-organic factors for secondary psychological or for financial gain."*

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Dr. Greenwood seemed particularly alerted to the fact that he had been told by Mrs. Kerr-Dunn when he saw her in 1993 (some two years after the video had been taken) that there was always someone with her when she was out driving. However, there was some strong disagreement between the experts. Dr. Gwyn Evans felt that the remarks of Dr. Greenwood concerning her ability to drive, climb steps, turn her head and walk steadily, made no sense to him at all because a person with severe cognitive depression can perform well tasks that he or she has been carrying out for years even though he felt that criticisms lay within the field of expertise of a psychologist rather than a psychiatrist. Mr. Hollywood was not, however, persuaded to change his views in any way. He was surprised that her performance in London was not as good as it had been in Jersey, but he had no doubt that this was due to the strangeness of the surroundings and the nervousness that the plaintiff would have felt. The cautious driving came from skills learned before the accident - "a well learned language" - and would not have been affected by the problems that she now faced. The question of secondary psychological gain was dismissed by Mr. Hollywood because the benefits lost by not working were far greater than any supposed benefits gained by being with her husband in a home environment.

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We are persuaded by the evidence that we have heard that Mrs. Kerr-Dunn has suffered head injury and that all the symptoms that she displays are genuine and are a direct result of the fall. She has had a traumatic head injury, she will not work again and will have to take drugs daily for the foreseeable future. There is no evidence of epilepsy.

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We have to decide whether the plaintiff is to have damages to compensate for future loss of earnings assessed to age 65 or 60 (the normal retiring age). We have seen Mr. Law, a director of the Nursing Home. He has told us of his company's general policy. On 5th April, 1994, he wrote a letter. He said this:

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*"At the time Mrs. Kerr-Dunn left Bon Air Nursing Home we could see no reason why she should not have continued in our employ until the age of 65 years, but for the accident and barring any unforeseen eventualities."*

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We have no doubt that this unusual, exuberant and hard-working lady who said to Dr. Guillochon:

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*"I am not worried about the money, just get me better so that I can go back to my work."*

would have been able and would have wished to work until 65, We will make our award accordingly

1. The special damages are agreed at £55,547.49.
2. Loss of future earnings.

Because we have found that the plaintiff could have worked until aged 65, we have had regard to Munkman's Damages for Personal Injuries and Death (9th Ed'n 1993). We have taken the multiplicand of £5,100 net of Social Security payments. We have followed Table 4, deducted 5 years from the plaintiff's age (to compensate for working to 65), applied a rate of interest of 4%, taken off the decimal point and award under this heading £35,700.

3. Future medical expenses.

No change is anticipated to the plaintiff's medical condition. Both her treatment and her medication should remain the same. She will lose her Health Insurance Exemption status upon an award. Letters were supplied by Dr. Guillochon. Her annual medical fees between 19th March, 1993, and 25th March, 1994, (nineteen visits) were £300. Her medication cost £240 per annum and home care £270 per annum. We have applied Table 2 "Multipliers for Pecuniary Loss of Life (females)", taken the plaintiff at her present age of 56 (because the figures are based on a mortality table) and used a multiplier of 13 to give a claim of £810 x 13 = £10,530.

#### Interest on Damages

We have deferred this heading at Counsel's request.

#### General Damages

We had regard to a work entitled "Guidelines for the Assessing of Damages in Personal Injury Cases" compiled for the Judicial Studies Board.

There has been moderate brain damage but the question of epilepsy has never been mooted. The ability to work has been removed permanently because of the exhaustion that sets in after any reasonable period of concentration. There is a distinction drawn in the guidelines between brain damage and psychiatric damage. We feel that from an objective point of view an injection of the left side of the head with steroids under a local anaesthetic and a further cryolesion to the occipital nerves do not lead us to a view that the London consultants who carried out the treatment viewed the plaintiff's problems as psychological.

Dr. Gwyn Evans' report of 16th January, 1995, leaves us in no doubt that he attributes her symptoms to the head injury and dismisses any other suggestion. Mr. Hollywood shares his views precisely. The two cases referred to us were of no real assistance. The letter of Dr. Gwyn Evans (referred to above) and

the letter of Mr. Hollywood of 19th January, 1995, allows us to make an award, within the guidelines, of £30,000.



Authorities

Guidelines for the Assessment of General Damages in Personal Injury cases, compiled for the Judicial Studies Board by Cherry, Glasgow, Hughes Sutcliffe, and Co:

Chapter 2: Head Injuries: pp. 6-8.

Chapter 3: Psychiatric Damage: pp. 9-11.

Re Lucas (30th March 1998) C.I.C.B., Plymouth.

(reported in Kemp: R.52: August, 1994: L.8 - 077: pp 62610 - 1)

Biggs -v- Willsher Brow Transport (29th July, 1987) Queens Bench Division (B.P.I.L.S. issue 19: pp x/161 - 165.)

Munkman: "Damages for personal injuries and death" (9th Ed'n) pp. 56-71; Appendices I & III.

Brain's Diseases of the Nervous System (10th Ed'n: 1993): para 5.8.6.