

BARBADOS.

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

Civil Jurisdiction

No. 734 of 2001

BETWEEN

ALLYSON BOWEN                      Plaintiff

AND

MARILYN NURSE                      First Defendant

KENNETH LOVELL                      Second Defendant

Before the Honourable Madam Justice Elneth O. Kentish, Judge of the High Court.

2005: January 10, 26

Mr. Deighton Rawlins, Attorney-at-Law for the Plaintiff.

Mr. Elliott D. Mottley, Q.C. with Miss Marilyn Moore, Attorney-at-Law for the Defendants.

DECISION

The Action

[1] In this action filed on 6th April 2001 the plaintiff Allyson Bowen ("Bowen") is claiming damages from the first defendant Marilyn Nurse ("Nurse") and from the second defendant Kenneth Lovell ("Lovell") for personal injuries allegedly sustained by her in an accident along Worthing Main Road on 21 December 1998.

[2] The second defendant entered no appearance and filed no defence in this action.

The Issues

[3] At the commencement of the trial Counsel for the defendants, Mr. Elliott Mottley, Q.C. informed the court that despite the pleadings the real issue is whether in that accident Bowen sustained an injury to her right ankle which resulted in the right below-knee amputation, there being no dispute on liability in respect of the injury to Bowen's neck, back and right knee ("soft tissue injuries") mentioned in the medical report dated 8 May 2002 of Dr. Euston C. Maynard.

[4] Both defendants were challenging the alleged injury to Bowen's ankle because such an injury was not mentioned in Dr. Maynard's report.

[5] The issues for determination by the court therefore are:

- 1) Did Bowen sustain a cut to her right ankle in that accident as alleged?
- 2) If she did, did that cut fail to heal thereby necessitating the amputation performed on 15 March 2001?
- 3) Are Nurse and Lovell liable to compensate Bowen in respect of that amputation and if so, in what amount? and,
- 4) In what amount should Bowen be compensated for the soft tissue injuries?

Facts Not in Dispute

[6] It is not in dispute that on 21 December 1998 Bowen, then 38 years old and an insulin dependent diabetic, was a passenger in motor vehicle registration No. ZR-179 when it was involved in a collision with another motor vehicle registration No. ZR- 160 and sustained soft tissue injuries to her neck, back and right knee.

[7] It is also not in dispute that at the time of the accident ZR-160 was owned by Nurse, the first defendant and driven by Lovell, the second defendant. Nor is it in dispute that Bowen is entitled to compensation for those soft tissue injuries. It is also not in dispute that Bowen suffered a right below-knee amputation on 15 March 2001.

[8] However, a curious aspect of this action, to which I shall later return, is the testimony of Bowen that she suffered no injury to her right knee in the accident.

Facts in Dispute

[9] The primary fact in dispute is whether Bowen sustained any cut on her right ankle in the accident as she alleges as the question of liability for the amputation stands or falls with the determination of that issue.

[10] It is also in dispute whether the amputation resulted from the failure of that cut to heal and whether Bowen at the date of the accident was employed.

[11] These are essentially matters of credibility the resolution of which depend on whether Bowen has discharged her burden on a balance of probability.

[12] In her evidence in chief Bowen testified that when the collision occurred her foot got stuck in the steel frame of the seat in front of her from the impact of the collision; that she was taken to the Queen Elizabeth Hospital by ambulance, seen by a doctor who examined her and sent home with pain killers.

[13] She demonstrated by pointing to the inside of her left ankle the place where she sustained the cut on her right ankle.

[14] Bowen further testified that she was seen by Dr. Maynard on many occasions starting from 22 December 1998 the day immediately following the accident.

[15] In her testimony in chief Bowen stated and I quote:

"Dr. Maynard treated me for the cut on my ankle. He used to put dressing on the ankle ... I can't recall all the times Dr. Maynard treated me for the ankle. It was about 12 to 14 times. The cut on my ankle never healed".

[16] A medical report dated 8 May 2002 by Dr. Maynard and set out below, was produced by counsel for Bowen Mr. Deighton Rawlins and admitted into evidence as "Exhibit ABI" with the consent of Mr. Mottley, subject to Dr. Maynard being called as a witness by the defendants. As it transpired, Dr. Maynard was not called as a witness by Mr. Mottley, who in any event, relied on that report in support of his clients case that the cut was not sustained in the accident.

"MEDICAL REPORT

NAME: Miss Allyson Bowen                      AGE: 41 years

ADDRESS: #20 Sayers Court,                      DATE: 8th May, 2002

HISTORY

Miss Allyson Bowen was examined in my clinic on 98-12-22 after allegedly being involved in a motor vehicle accident. Miss Bowen gave a history of her being a passenger in a bus traveling along Christ Church Main Road, when the bus in which she was traveling, collided with another public transport vehicle. Miss Bowen said she was thrown forward and then backwards. She subsequently fell on her right side, striking her right knee in the process. She was then transported to the Queen Elizabeth Hospital where she was treated and discharged. On a subsequent visit to the hospital, she complained of neck stiffness and a cervical collar was fitted around her neck.

COMPLAINTS

Miss Bowen returned to my clinic on multiple occasions. Her major complaints were as follows:-

- (1) Insomnia
- (2) Neck pain radiating to her shoulders
- (3) Back pain
- (4) Painful, swollen right knee

## Neck

The neck pain radiated segmentally to the occiput shoulder girdle and anterior chest. The radiating pain was intensified by hyperextension of the neck and deviation of the head to both sides. Re-examination on several occasions often revealed a decrease in cervical spine motion and paraspinal muscle spasm. Muscle trigger points were often localized.

Management. This included neck and head immobilization by traction, administration of antispasmodics and analgesics. A cervical collar was put in place by the authorities at the Queen Elizabeth Hospital.

## Lower Back Pain

The pain radiated down the buttocks and below the right knee, suggesting mild, acute nerve root irritation, since there was no leg weakness.

## Right Knee

Pain, swelling and tenderness were the outstanding clinical features. Straight leg raising produced a feeling of tightness behind the knee and pain on dorsiflexion of the right foot. There was also some pain on movement, however small. The knee joint was mildly distended with fluid. There was no fever nor was there any overlying subcutaneous oedema. The pain was therefore due to mechanical interference by the effusion.

## FURTHER COMPLAINTS – PHYSIOTHERAPY REFERRAL

When Miss Bowen last visited my clinic on 20-03-99, one of her chief complaints related to her CERVICAL SPINE. She had earlier been referred for physiotherapy at the Queen Elizabeth Hospital by Dr. Margaret O'Shea for neck therapy.

On examination, active and passive movements were limited in most directions and the patient still turned her whole body around, instead of the neck, in order to see objects outside of her direct visual field. There was still SPASM of the muscles of both sides of the neck.

MANIPULATION was the procedure of choice and this was carried out on the following days, and after, the patient was treated with oral and injectable analgesics/antispasmodics. Five sessions of manipulations proved beneficial.

## Dates of visits:

98-12-22 99-02-03 99-02-20 99-03-14 99-06-12  
99-01-23 99-02-06 99-02-27 99-03-20 99-07-24  
99-01-30 99-02-13 99-03-07 99-05-04 99-09-18

## PROGNOSIS

As late as 99-09-18 Miss Bowen was still complaining of spontaneous neck and back pain. In particular, she talked about the inappropriate times that her symptoms would return.

Sgd. Euston C. Maynard  
M.Sc., M.D., Dip. ONC., (U.A.G.)

[17] This medical report is particularly instructive in what it does contain and what it does not contain.

[18] First it sets out the history on the date of the examination (98-12-22) as given to Dr. Maynard by Bowen. Next, it lists the major complaints made by Bowen during the multiple visits to Dr. Maynard. Next, it deals specifically with each of the ... complaints under separate headings "Neck", "Lower Back Pain"; and "Right Knee". Next, it deals with "Further Complaints – Physiotherapy Referral." Next, it sets out the dates of the fifteen visits including five sessions of manipulations made by Bowen to Dr. Maynard. Lastly, in the medical report Dr. Maynard provided a prognosis.

[19] Now, what does this medical report not contain?

First, no mention is made in the report of Bowen sustaining a cut to her right ankle in the accident. Second, no mention is made in the report that Dr. Maynard treated Bowen in any manner or at any time for any cut to her ankle during the many visits she made to him between 22 December 1998 and 18 September 1999. Third, there is no mention in medical report that Bowen is a diabetic dependent on daily injections of insulin.

[20] Bowen further testified in chief that there came a time in 1999 when she no longer went to Dr. Maynard but went to the Randall Phillips Polyclinic ("RPPC"). However, before going to the RPPC her ankle was swollen and very painful and Dr. Maynard and her mother dressed her feet. She stated that she went to the RPPC because her ankle was not getting any better, she had pain with it and couldn't sleep at night.

[21] There was also produced and admitted into evidence by Mr. Rawlins as "Exhibit AB2" a medical report dated 13 April 2004 by Andrew Leroy Forde, clinical medical officer of the RPPC. This medical report is also instructive. For the very first time, almost eleven months after the date of the accident, there is some mention of Bowen having "sustained an abrasion to the right leg by a ZR van".

[22] Further, according to Dr. Forde, Bowen was complaining of pain, swelling and redness of the right ankle. On examination he found "a 2 1/2 x 2 1/2 cm necrotic ulcer of the medial malleolar associated with cellulitis of the right lower leg".

[23] Dr. Forde made a diagnosis of an infected abrasion with cellulitis and referred Bowen to the Queen Elizabeth Hospital for specialist surgical care as she was an insulin dependent diabetic.

[24] I pause briefly to comment that one of the regrettable features of this case, which posed considerable difficulty for the court, is the paucity of evidence on critical issues. To illustrate, there is no medical report from the Accident and Emergency Department of the Queen Elizabeth Hospital relating to the admission of Bowen on the day of the accident. Such a report might have detailed the injuries reported by Bowen immediately following the accident. It was left to the defendant to produce the medical notes of Bowen maintained in the records of the Queen Elizabeth Hospital. Even these notes did not fill that omission.

[25] The medical report dated 26 February 2002 by Mr. Jerome Walcott of the Queen Elizabeth Hospital admitted into evidence as "Exhibit AB3" is of little assistance in this regard. This relates primarily to Bowen's admission on 2 January 2000 following her referral to the Queen Elizabeth Hospital from the Randall Phillips Polyclinic in November 1999 and the subsequent management of the ulcers on her right leg until the eventual amputation.

[26] Under cross-examination by Mr. Mottley, Bowen rejected Counsel's suggestion that she did not tell either the police officer at Worthing Police station to whom she gave a statement on 29th December some eight days after the accident or the doctor who treated her at the Queen Elizabeth Hospital following the accident, or Dr. Maynard, that she had sustained a cut on her ankle in the accident, insisting that she did.

[27] As regards the statement given by her to the police officer I quote from her testimony under cross-examination:

"I went to Worthing Police Station. I told the police what happened. I think the officer wrote down what I was saying. [emphasis added]. I think I signed a statement." [emphasis added]

[28] However, when shown the statement and asked whether she could identify her signature on that statement, Bowen said "I can't see my signature because my eyes are cloudy". Indeed she was very reluctant even to look at the statement in the first place.

[29] Still under cross-examination she admitted that she told the officer that she was in a ZR van; that another ZR van was trying to pass it collided with it and as a result she got her neck hurt. She could not however remember telling him that she got her right side hurt and denied that she told the officer "I hurt my right knee as it struck the seat in front of me".

[30] She also admitted that she told the officer that due to the impact her right foot was stuck in the seat in front of her when she sustained a cut on her right ankle; that she was aware that Dr. Maynard gave her lawyer a medical report but stated that she did not know that in that medical report Dr. Maynard did not mention having treated her for a cut to her right ankle.

[31] When asked by Mr. Mottley whether she was treated by the doctor at the Queen Elizabeth Hospital on 21 December 1998 for a cut on her ankle, Bowen took a very long time to answer that question, at first saying she did not understand the question. It was on the intervention of the court that she admitted that she had not been so treated.

[32] Still under cross-examination Bowen testified that between 21 December 1998 and 8 May 2002 Dr. Maynard treated the cut on her right

ankle; that he cleaned it and put ointment and dressing and bandage on it and that she did not tell Dr. Maynard that she struck her right knee in the accident.

[33] In re-examination by Mr. Rawlins, Bowen testified that from 21 December 1998 to date her right knee was not treated at any time either by Dr. Maynard or at the RPPC or at the Queen Elizabeth Hospital.

[34] No witnesses were called on behalf of Bowen.

[35] The first defendant, Nurse, called one witness Dr. Ramesh Jonnalgabba, a registered medical practitioner employed at the Queen Elizabeth Hospital for the past 22 years during which time he was also a lecturer in surgery at the University of the West Indies and a consultant surgeon at the Queen Elizabeth Hospital for the past nine years.

[36] Mr. Rawlins, having no objection, Dr. Jonnalgabba on the application of Mr. Mottley, was treated as an expert witness by the court.

[37] He testified that he had with him the complete medical and surgical notes of Bowen and that the first record in the notes was for 20 January 1999 in the orthopedic department where Bowen was seen by Consultant Orthopedic Surgeon, Mr. Jerome Jones.

[38] This note related to Bowen's accident in a ZR van on 21 December 1998 and read as follows:

"Two vans collided. No loss of consciousness. Complaints of neck pain, right knee, right buttocks area – referred to Queen Elizabeth Hospital (emphasis added)

X-Rays – no fractures – Full range of movement in right hip and knee – tender all over – no swelling.

Doctor's impression: Contusions and neck and upper back, thigh and knee strain (emphasis added).

Treatment: Physiotherapy. To be seen again in a month's time. Given anti-inflammatories".

The notes for 31 March 1999 read:

"Seen again on 31/3/99 – No new complaints – getting physiotherapy and continued management."

The notes for 26 May 1999 read:

Seen again on 26/5/99. Asked to return within 8 weeks."

[39] It was the testimony of Dr. Jonnalgabba that there was no reference to any cut on the ankle of Bowen in any of the medical notes made on 20 January, 31 March or 26 May 1999.

[40] Dr. Jonnalgabba then referred to the notes of the surgical department from which the report of Mr. Jerome Walcott, previously mentioned, is culled and which relates to Bowen's admission to the Queen Elizabeth Hospital on 2 January 2000.

[41] These notes for 2 January 2000 are significant as they have some bearing on the testimony of Bowen that Dr. Maynard treated and dressed her feet before she went to the RPPC on 16 November 1999 and the absence from Dr. Maynard's report of any mention of any such treatment. I quote in full these notes as read by Dr. Jonnalgabba:

"Date of note: 2/1/00

History from patient: Complaint – traumatic ulcer right leg (emphasis added) seven weeks prior to date of being seen; ulcer on right foot three weeks.

History of presenting complaint:

39 year old insulin dependent diabetic mellitus. On insulin. Was relatively well until seven weeks ago when while dismounting ZR van she sustained an injury to her right leg. Was seen by Dr. Maynard who was dressing the foot with white powder and other fluids.

Ulcer spread over leg and 3 weeks ago patient sustained abrasion on the front of the right foot.

Dressing being done by Dr. Maynard 3 times per week and patient's mother at home. Patient also noted a small area on the foot with a hole which was there for three weeks. Started to drain watery material. No pain felt in foot. Patient says foot started to smell bad from 4 days ago and that the discharge from the foot was creamy so she came to the Accident & Emergency. Given antibiotics by Dr. Maynard for one week. She was admitted to hospital"

[42] This history was given by Bowen in January 2000 fully one year after the accident at a time when amputation was not being considered and approximately one year and 4 months before this action was commenced. So it would appear that Bowen would have no compelling reason at that time to distort the facts.

[43] Nonetheless, even if I were prepared to accept that Dr. Maynard did treat Bowen for the ulcer of the medial malleolar which Dr. Forde found to be necrotic on his examination of Bowen on 16 November 1999, that does not assist Bowen in discharging the burden on a balance of probability that she in fact sustained a cut on her right ankle in the accident.

[44] The stubborn fact is that the first time any mention is made of an abrasion to the right leg of Bowen having been sustained in the accident is on the 16 November 1999 when she is seen by Dr. Forde some eleven months after the accident.

[45] I have no doubt that Bowen sustained a cut or abrasion on her right ankle. I also have no doubt, given the testimony of Dr. Jonnalgabba, that where a diabetic sustains a cut, if that cut is not aggressively treated an amputation could result.

[46] But the real issue is did Bowen sustain that cut in the accident on 21 December 1998.

[47] After careful review of the evidence some perplexing questions remain:

1. Why is there no mention in either the medical report of Dr. Maynard or the medical notes Mr. Jerome Jones of a cut to Bowen's ankle?

2. Why is there mention in both the report of Dr. Maynard and the medical notes of Mr. Jerome Jones of complaints by Bowen about her right knee?

3. Is the lack of mention of the cut on the one hand and the mention of the right knee on the other hand attributable to mere coincidence?

Or is it attributable to collaboration on the part of both Dr. Maynard and Mr. Jones to exclude information given to both of them by Bowen of the cut but to include information not given to either of them by Bowen about her right knee? Or simply to the fact that both doctors recorded information as given to them by Bowen?

[48] I find it difficult to accept that the explanation lies in mere coincidence particularly given the contradiction in Bowen's case relating to whether or not she sustained injury to her right knee in the accident. [see para [50]]

[49] There is no evidence before the court that either of these doctors was unavailable to give evidence. And in the absence of any evidence to suggest that either doctor acted unprofessionally I prefer to accept the simple explanation that Bowen did not give this information to either of the doctors.

[50] On the totality of the evidence and having regard to the hesitant and reluctant manner in which Bowen gave evidence, I find that she was less than a candid and truthful witness. In this regard her evidence that she did not injure her knee in the accident and was never treated by anyone for that injury is in direct contradiction with the amended statement of claim in which one of the "Particulars of Injury to the Plaintiff" is given as "painful swollen right knee."

[51] I therefore find that the cut on her ankle was not sustained in the accident of 21st December 1998. Accordingly there is no nexus between that accident and the amputation suffered by Bowen.

[52] It must therefore follow that Nurse and Lovell are not liable to compensate Bowen for that amputation and I so find.

[53] For the sake of completeness, I will deal with the issue of the necessity for the amputation and the question of compensation for this amputation in the event that I am wrong in my findings above.

–Necessity for Amputation

[54] The medical report of Dr. Andrew Forde of the RPPC is significant in this regard. And I quote:

"At the time (16th November, 1999) I expected a full recovery even though I have learnt that she subsequently had a right below knee amputation. The rationale for this would be contained in the medical report from her hospital doctor."

[55] So it is quite clear that in November 1999 Dr. Forde did not anticipate anything other than a full recovery of the said 21/2 x 21/2 cm necrotic ulcer he then saw and certainly not an amputation.

[56] Turning to the medical report of Mr. Jerome Walcott already mentioned it reveals first of all that on 2 January 2000 Bowen not only had two additional ulcers on her right foot and leg in varying sizes but also that the 21/2 x 21/2 cm ulcer seen by Dr. Forde in November 1999 had now increased to 12 x 7 cm; that from January 2000 to February 2001 she was admitted to the Queen Elizabeth Hospital on no less than six occasions where she was treated and underwent surgical operations for debridement of the right foot and skin grafts. It appears that on each discharge the foot became re-infected in one way or another requiring her re-admission.

[57] She was admitted to the Queen Elizabeth Hospital on 28 February 2001 and, according to the medical report of Mr. Walcott, on 6 March 2001, she requested that her right leg be amputated because of the recurrent problems with it which required her several admissions. Obviously her request was granted.

[58] The report of Mr. Jerome Walcott is set out in full:  
"THE QUEEN ELIZABETH HOSPITAL  
MARTINDALES ROAD, ST. MICHAEL, BARBADOS

Tel. P.A.B.X. (246) 436-6450  
Fax: (246) 429-5374

Date: February 26, 2002

MEDICAL REPORT

ON

ALLYSON BOWEN

DOB: 1960-06-23  
Church Gap, Hillaby  
St. Andrew

This lady was admitted to the Queen Elizabeth Hospital on January 2, 2000, with a history that she had been relatively well until approximately seven weeks prior to admission when she allegedly sustained an injury to her leg while dismounting from a van.

She was subsequently seen by a Dr. Maynard, and received dressings to the leg, but the ulcer became progressively worse and spread to involve her right foot. In addition, it was noted that she was a diabetic who took insulin daily.

On examination then her right leg was noted to be markedly swollen with several ulcers about her right foot and leg, these varied in size.

- I. Approximately 12 x 7 cm superior to the right medial malleolar region.
- II. Approximately 0.5 cm x 0.5 cm over right first metatarsal region, dorsum of foot.
- III. Approximately 12 x 9 cm ulcer extending over lateral aspect of (R) foot.

She was immediately commenced on antibiotics, insulin, analgesia and the relevant investigations were performed. Surgical debridement of the right foot and leg were performed later that evening, this was repeated on January 4, 2000; she was subsequently referred to my service, and I performed an extensive debridement of the limb on January 8, 2000.

Postoperatively, her ulcers began to show signs of healing.

She was placed on appropriate antibiotic cover and her diabetes was relatively well controlled, during this period blood transfusions were required to assist the healing and recuperation.

Split skin grafts were performed on March 2 and April 20, 2000, and she was discharged on April 25, 2000; her grafts having taken, she was instructed to return for alternative daily dressings.

On June 12, 2000 she was admitted with an infected ulcer in the region of the skin graft on the right foot. This was treated with antibiotics and dressings, no surgical intervention was necessary and she was discharged on July 3, 2000.

This unfortunate lady was again admitted to the Queen Elizabeth Hospital on October 29, 2000 with an abscess of her right foot and an associated cellulitis. The abscess was incised and drained, meanwhile, X-rays of the right foot revealed osteomyelitis of some of the bones of her foot. Her condition of some of the bones of her foot. Her condition gradually improved and she was discharged on November 20, 2000.

On December 12 2000, this lady was admitted again with cellulitis of her right leg, she was treated and discharged six days later.

Ms. Bowen was again admitted to the Queen Elizabeth Hospital on February 28, 2001 with an infected ulcer of her right foot, she was started on antibiotics and surgical debridement was performed.

On March 6, 2001 this lady requested that her right leg be amputated, because of the recurrent problems with it, which required her several admissions; she was transfused and had a right below-knee amputation on March 15 2001.

Her condition remained stable postoperatively, her stump healed without complication and she was discharged on March 28, 2001.

Ms. Bowen was reviewed in the Surgical Outpatients Department on April 10, 2001 with her stump fully healed.

Signed: Jerome Walcott, MBBS, FRCS  
JW:nj

[59] It seems to me that Bowen's request was born understandably out of frustration, the associated pain, discomfort and disruption in her life caused by the recurrent problems with her foot.

[60] Indeed, Mr. Jerome Walcott refers to her as "this unfortunate lady" and given her medical history as set out in Mr. Walcott's report, I do believe she was truly unfortunate.

[61] However, there was no medical evidence advanced before the court which would allow the court to make a determination that that amputation was medically necessary. I am therefore not satisfied that this amputation was necessary and find accordingly.

Quantum of Compensation – Amputation

[62] No cases were cited to the court by Counsel on either side on the question of compensation for a below-knee amputation, both Counsel referring the court to the publication by the Judicial Studies Board "Assessment of General Damages in Personal Injury Cases" 5th edition where the range, converted into Barbados currency, for such a computation is from a minimum of \$172,000 to a maximum of \$245,000.

[63] The note accompanying that guideline states that a straightforward case of a below-knee amputation with no complications would justify an award at the bottom of this bracket whilst at or towards the top of the range would come the traumatic amputation which occurs in a devastating accident, where the injured person remained fully conscious or cases where attempts to save the leg led to numerous unsuccessful operations so that amputation occurs years after the event.

[64] In this case the amputation took place some 2 years and 3 months after the accident. In my view it does not fall within the guidelines justifying an award at or towards the top of the range. It was not a traumatic amputation in the sense described in the note or an amputation occurring after numerous unsuccessful attempts to save the leg.

[65] I consider that it would more readily fall at the bottom or towards the middle of the range. I would therefore award a sum of \$195,000 as general damages for amputation. There is a dearth of local authorities for injuries of this type and those available are of little assistance having been decided in the 1970's.

Damages for Soft Tissue Injuries

[66] Counsel for the defendants has conceded liability for the soft tissue injuries, neck, back and knee (notwithstanding Bowen's denial of any injury to her knee) and the damages will be computed to include compensation for the injury to the knee.

[67] The medical report of Dr. Maynard mentions these injuries and notes that Bowen was fitted with a cervical collar. This report does not categorize the seriousness of these injuries indicating only that as late as 18 September, 1999 Bowen was still complaining of spontaneous neck and back pain.

[68] In her evidence she stated that as recently as January, 2005 she attended the Queen Elizabeth Hospital complaining of her back. However, no medical report was adduced to support this nor was there an updated medical report assessing the extent, if any, of residual disability from these injuries.

[69] Again neither Counsel cited any authorities to the court, Mr. Mottley suggesting an award of \$15,000 and Mr. Rawlins an award of \$20,000.

[70] Doing the best I can on the minimal medical and other evidence before the court, I find the soft tissue injuries suffered by Bowen moderate having regard to the numerous visits made both to Dr. Maynard and the Queen Elizabeth Hospital.

[71] Taking guidance from Judicial Studies Board "Assessment of General Damages in Personal Injury Cases" to which I was earlier referred by Counsel, I consider that the injuries fall in the middle of the range under heading "6. Orthopedic Injuries at p.26 paragraph (b) (ii) where there is a range of awards between £3750 and £7000 for moderate whiplash injuries where the period of recovery has been fairly protracted ...."

[72] In my judgment taking all the circumstances into consideration, a sum of \$20,000 would be appropriate to be awarded to this almost middle-aged lady for pain and suffering for the soft tissue injuries taking into account the soft tissue injury to the back and knee and this sum is hereby awarded.

Claim for Special Damages

[73] Bowen has claimed medical expenses in the sum of \$4,545.66 and transportation expenses in the sum of \$4,760.00 and these have been agreed by Counsel for the Defendants.

[74] Nurse has denied that Bowen suffered any loss of earnings as a result of the accident.

[75] Indeed, Mr. Mottley in cross-examination of Bowen suggested to her that she was unemployed at the date of the accident and so informed the officer at Worthing Police Station to whom Bowen gave a statement eight 8 days after the accident.

[76] Bowen denied this and her evidence in chief is that she was employed at Rental Equipment Prior Park, St. James as a maid for 3 ½ days at \$69.00 per week.

[77] However, there is no evidence to support this aspect of the claim. It is trite law that a plaintiff must not only plead but must also strictly prove a claim for special damages. In the words of Lord Goddard in *Bonham-Carter v Hyde Park Hotel* (1948) 64 T.L.R 177 at 178

"Plaintiffs must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down particulars, and, so to speak, throw them at the head of the court, saying:

"This is what I have lost, I ask you to give me these damages! They have to prove it."

[78] The claim for the loss of earnings is substantial yet there is not a shred of evidence in support – not even a letter from the alleged employer or evidence of medical certificate submitted to the employer or National Insurance.

[79] I therefore disallow the claim for loss of earnings and award special damages in the total sum of \$9,305.66.

Claim for Future Expenses

[80] There is no evidence before the court to indicate whether the claim for loss of future earnings, loss of earning capacity and future medical expenses arises from the amputation or from the soft tissue injuries.

[81] In his medical report of 13 April 2004 Dr. Forde stated that it was unlikely that Bowen would be able to resume work as a maid, that her disability was permanent and she would require a prostheses permanently.

[82] It seems to me that the claim for future loss of earnings, loss of earning capacity and future medical expenses was predicated on the basis that the amputation resulted in the inability of Bowen to work and had its genesis in Dr. Forde's report.

[83] I have found that there was no nexus between the accident and the amputation. If based on the amputation this claim must fail. But, if the basis of the claim is that Bowen's inability to work arises from the soft tissue injuries it must also fail as there is no medical evidence before me to support such a claim. Accordingly, the claim for damages under this head is also disallowed.

Disposal of Action

1. The Defendants are not liable to Bowen for the amputation suffered by her.

2. The claim of Bowen for loss of earnings, future loss of earnings, loss of earning capacity and future medical expenses is disallowed.

3. Judgment is given for Bowen against Nurse and Lovell in the sum of \$20,000.00 general damages and in the sum of \$9,305.66 special damages together with interest on the general damages at the rate of 8% per annum from today's date until payment and interest on the special damages at the rate of 4% per annum from the date of the accident until today's date and at the rate of 8% per annum from today's date of the accident until today's date until payment.

4. Costs to Bowen to be agreed or taxed.

**Elneth Kentish**  
**Judge of the High Court.**