

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 498 OF 1993

BETWEEN:

**MASTER MARVIN CATO
by his mother and next friend
SHERON FRANCE**

Plaintiff

and

**RAPHAEL OLLIVER
And
GENERAL EQUIPMENT SERVICES CORPORATION**

Defendants

Appearances:

S Commissiong Esq Ms M Commissiong with him for the Plaintiff
J Delves Esq for the Defendant

1999: October 19, December 2
2000: January 31, February 7

JUDGMENT

- [1] **MITCHELL, J:** This was an assessment of damages in a running down case. The Defendants did not contest liability, and only the matter of quantum of damages was before the court. The Plaintiff's mother gave affidavit evidence on his behalf, and she was cross-examined. He was examined by 3 doctors who gave evidence by way of filed reports. They were Dr Carl Regisford FRCS, Dr AC Cyrus FRCS, Dr HA Clarke FRCS. Dr Cyrus was cross-examined by counsel for the Defendants on his findings, the other doctors were not available, Dr Regisford having died and Dr Clarke residing in Barbados.

- [2] The facts as I find them are as follows. The Plaintiff was a boy of 6 at the time of the accident. On 5 June 1992 he was struck by a Land Rover owned by the 2nd Defendant and driven by its employee the 1st Defendant. He was unconscious for 3 or 4 hours after his admission to the Kingstown General Hospital on the same day of the accident. He was discharged from the hospital after 2 days, but was kept at home for 2 weeks. There were 4 medical reports that describe Marvin's condition that were before the court. Marvin was also examined by Dr Robertson at the request of the Defendants, but Dr Robertson's report was not before the court.
- [3] Dr Carl Regisford examined Marvin on 13 June 1992 and produced the 1st Report dated 17 June 1992. At the medical examination on 13 June 1992, Dr Regisford did not see the fracture in the x-ray. Dr Regisford found that Marvin scored at the top of the Glasgow Coma Scale, and appeared fully orientated in time, place and person.
- [4] On 31 August 1992 , 28 May 1993 and 8 October 1999 Dr AC Cyrus examined Marvin. Marvin had an abrasion on his right cheek and a half inch cut to the right front of his scalp. X-ray examination revealed a comminuted, depressed fracture of the right frontal bone; that is, the bone was broken into several pieces and pushed in. It was at the examination of 31 August 1992 that Dr Cyrus diagnosed the comminuted depressed fracture of the right frontal bone. At the examination of 28 May 1993, which resulted in the 2nd Report, Dr Cyrus lists Marvin's complaints given to him by the mother. They were: affected by noise; frequent headaches; dropping back in school work; loss of memory; poor appetite; hyperactivity; unstable sleeping habits; stooling in his uniform. His clinical findings were that Marvin was gaunt, lean and sad-looking; still with a depressed area of the right frontal bone; congestion of the lower veins of both optic discs suggestive of compression inside his skull; and a lethargic manner and lack of alertness in answering questions. He concluded that Marvin had sustained a fairly severe

injury to his brain; that he may develop fits at a later stage because of the scar tissue with which the injury to his brain has healed; possible chronic subdural haematoma; permanent scar to scalp with possibility of future bone infection; likely permanent asymmetry to his face due to the depressed frontal region at the site of the fracture. On 8 October 1999 Dr Cyrus again examined Marvin. Most of the findings are in fact the complaints of his mother. These include, such matters as the glare affecting Marvin's eyes; poor sleep habits; dislike for games; lapses of memory; headaches; and apathy and listlessness. He concludes that Marvin presents the appearance of a sad little person. He says that Marvin's status both physical and mental can be attributed to the injury to his brain, and that it may be concluded that his serious and disabling symptoms are likely to be permanent. Dr Cyrus based his findings to a large extent on the reports of the mother. He comes to his conclusions concerning Marvin's prognosis mainly based on his experience as a surgeon for some 40 years. He carried out no independent scientific tests to determine the truthfulness of the mother's reports. He accepted what the mother told him. I agree with him that mothers do not generally tell lies about these things to their child's doctor. However, they may misinterpret symptoms.

[5] The 3rd report is dated 19 August 1994 and was from Dr HA Clarke Professor of Neurosurgery. He found that Marvin was alert but not very attentive. The neurological examination was "unremarkable." A CT scan found normal ventricular size, no space occupying lesion, no evidence of extra cerebral collection, and a minor depression of the right frontal bone. The major problem with Marvin identified by Dr Clarke from the report of the mother was cognitive dysfunction. But, he could not comment on the aetiology of the learning disability. He recommended examining pre-injury school reports to see if Marvin's development was normal prior to the head injury.

[6] A bundle of school reports was in evidence through the Affidavit of the mother. The first is for the school year 1991-92; the second for 1992-93; the third for 1993-94; the fourth for 1995-96. The reports vary a great deal. The first report

coincides with the accident in the 3rd term. Marvin came 26 out of 33 in the term before the accident and 28 out of 33 in the term that included the accident. The teacher's comments on the 2nd term, before the accident, are that "Marvin is slow. He is also weak in maths and spelling. He will have to work harder next term." The mother's comments are " Marvin is very moody. I think he can do much better if he settles down." The teacher's comments at the end of the 3rd term, after the accident, are, "Needs to improve in maths and spelling. Some help at home is needed." The year following the accident the report shows Marvin's performance for two terms. In term 2, he came 25 out of 32, while in term 3 he came 16 out of 33. The teacher's comments are, "Too moody. Depends on others sometimes. Is very poor in reading and spelling." The mother's comments are, "I fully endorse your statement." In the third year, for which we have reports, Marvin did very poorly and was forced to repeat Junior 2. The teacher's comments are, "A very lazy student. Additional help is needed at home." The mother's comments are, "Marvin is given help at home but he has not been functioning properly since he sustained injury to his head. Therefore a serious drop back in school work." There is no report for the following year. The fourth report shows a remarkable transformation in Marvin's performance before and immediately after the accident. The report is only for 1 term. It indicates that in 1995 Marvin came 2nd in his class, with generally very good marks. Marvin's bad year, judging from his school reports, was the school year 1993-94.

- [7] Marvin had the good fortune to suffer this accident when he was a very young boy. He was in court during all the hearings, and appeared a normal, happy, curious, child. His problems with incontinence and poor school performance, are now all gone. Headaches and sleep problems are part of the pattern of growing. Dr Cyrus' Reports and evidence show that he feared the worst for Marvin. Happily those fears have come to nothing. The pre-injury school report shows that Marvin was slow and weak in maths and spelling before the accident. He has improved to the point where by 1995 he was coming 2nd in class. On the test

proposed by Dr Clarke, no cognitive dysfunction or learning disability can be ascribed to the injuries, and I find none.

- [8] The Defendant submits that a fair level of damages would be US\$4,000.00 which is EC\$9,400.00. The Plaintiff asks for an award in the region of \$30,000.00. Both the Plaintiff and the Defendant presented a plethora of authorities relating to injuries to children. It is very difficult to relate the injuries in the authorities to the injuries in this case. It is especially difficult to relate the value of the damages in past years in Trinidad currency to the value of our currency today. Common sense will have to do. There is no doubt that Marvin suffered a head injury resulting in loss of consciousness for some hours. A bone in his skull was crushed, minor though it was. He was cut, requiring stitches. He suffered concussion, pain, shock, and loss of consciousness. Serious though those injuries were, they cannot be classified as a major head injury. The temporary incontinence, school problems, headaches, lack of attention, moodiness, memory loss, and related matters described by his mother and opined by Dr Cyrus as consequent upon the accident were temporary, and which may have been caused or contributed to by the accident, have now passed. The fact that the Plaintiff was a primary school child at the time of the loss of amenity should not negative a claim for compensation. A child is entitled as an adult is to be preserved from pain and suffering and loss of amenities suitable to his age. A fair award would include the special damages proved of \$3,190.00, general damages for pain and suffering of \$10,000.00, and for loss of amenity of another \$5,000.00.

- [9] There will be judgment accordingly for the Plaintiff with costs to be taxed if not agreed.



I D MITCHELL, QC
High Court Judge