

ROYAL COURT  
(Samedi Division)

210.

12th October, 1994

Before: The Deputy Bailiff, Single Judge.

Between:

Eugenia de Matos

Plaintiff

And:

David Oswald Moon,  
Peter de Carteret Mourant,  
Keith Sherwood Baker,  
Richard Francis Valpy Jeune,  
Conrad Edwin Coutanche,  
Ian Clive James,  
Alan Richard Binnington,  
James David Philippe Crill,  
Timothy John Herbert,  
Jacqueline Ann Richomme,  
exercising the professions  
of advocates, solicitors and  
notaries public under the  
name and style of  
Mourant du Feu & Jeune

Defendant

Judgment on level of costs to be awarded against Defendants,  
following withdrawal by them of preliminary issue (causation).

Advocate N.M.C. Santos Costa for the Plaintiff.  
Advocate P.S. Landick for the Defendants.

JUDGMENT

THE DEPUTY BAILIFF: My decision is that I award taxed costs to the Plaintiff and not full indemnity costs.

5 The Law is really quite clear and it is set out in the  
decision of the Court in Jones -v- Jones (No. 2), (1985-86) JLR  
40, where the learned Bailiff expressed the view that the  
principles applied by this Court were the same principles as were  
applied in the English Court. He cited from a Judgment of the  
English Court in Preston v. Preston (1981) 3 WLR 619 and found  
10 that that there should be some special or unusual feature in the

case to justify the court in exercising its discretion to award full indemnity costs.

5 Mr. Costa for the Plaintiff appeared to base his argument that there were special or unusual features in this case upon two grounds. The first was, he said, that the accident had taken place in December, 1987, and that nearly seven years had therefore elapsed since the time of the accident. It was - and both counsel agreed - an appalling accident in which the Plaintiff, who was walking along a pavement, was struck by a car which had mounted the pavement and carried her along for some 40 ft. Her injuries were extremely serious and as a result she has suffered great disability. She has as yet received virtually no compensation.

15 The second ground was that the Plaintiff had been led to believe by the Defendants that liability had been admitted by the Insurers and that even after the Defendants had conceded that they had failed to bring proceedings within the requisite three year time delay that she would obtain damages either from the Insurers of the driver or from the Defendants' own Insurers.

20 The Plaintiff was therefore shocked to discover, after proceedings had been instituted against the Defendants, that there was a plea that the driver had suffered a black-out and that there was thus going to be a denial of liability. It was said by Mr. Costa that that plea was without any substance and that at the time when the pleading containing the allegation was filed there was no evidence to support it. It was put that the pleading was in some measure a ploy designed to put pressure on the Plaintiff to settle the proceedings rather than proceed to trial.

25 Mr. Landick, in response to these criticisms, said that the request for indemnity costs stemmed only from 18th November, 1993, the date when a summary judgment was conceded by the Defendants before the Judicial Greffier. He conceded that seven years was a lengthy delay, but submitted that some delay was inevitable in the context of a case of this kind where there had been admitted professional negligence and a period of three years had therefore elapsed before the cause of action against the Defendants even arose.

30 The further difficulty about the argument based upon delay is that, as at 18th November, 1993, the Plaintiff had sought and obtained only taxed costs. At that stage it was not considered that the delay was so exceptional as to justify seeking indemnity costs.

35 So far as concerns the propriety of the plea that the driver had suffered a black-out, I am not satisfied - as it appears to me that I have to be - that this was not a proper argument to be brought by the Defendants. It appears to me that the burden is upon the Plaintiff to show that there are special or unusual

features in the case and in my judgment the burden has not been satisfied. I therefore award taxed costs.

Authorities

Jones -v- Jones (No. 2) (1985-86) JLR 40.

Preston -v- Preston (1981) 3 WLR 619.

Kawasaki -v- Troy Associates & Ors. (5th April, 1994) Jersey  
Unreported.