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Supreme Court of Appeals
Richmond, Va.

Record No. 6195

In the
Supreme Court of Appeals of Virginia
at Richmond

MACON A. DAVENPORT
v.
GUY W. ALDRICH

FROM THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG
AND JAMES CITY COUNTY

RULE 5:12 BRIEFS

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

RECORD

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We the jury find for the plaintiff and fix his damages at \$30,000.00.

FORREST W. HAMILTON
Foreman

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INSTRUCTION NO. 6

The Court instructs the jury that if you find from a preponderance of the evidence that Macon A. Davenport is entitled to recover, you may in ascertaining the damages to which he is entitled, if proven by a preponderance of the evidence, take into consideration the following:

1. The nature and extent of injuries, if any, he sustained and the effect thereof.

2. The physical pain, discomfort, inconvenience and suffering, if any, of the plaintiff resulting from the injuries, if any, sustained in the collision in question.

3. The reasonable cost of all medical expenses incurred in an effort to be cured and relieved of the injuries, if any, sustained in the collision.

4. Any inability of the plaintiff to follow and pursue his usual and customary activities without hindrance resulting from the injuries, if any, sustained in the collision.

And you may award him such damages as may fairly and adequately compensate him, not to exceed the amount sued for.

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page 29]

VIRGINIA:

In the Circuit Court of the City of Williamsburg and County of James City, December 18, 1964.

This day came the parties by their Attorneys and the defendant entered a plea of *nil debit*, thereupon issue is joined.

Thereupon came a *jury* of 13 persons summoned the Sheriff of this City and County as directed by law and the plaintiff and the defendant each struck from the list three of said jurors leaving the following seven against whom there were no objections, to-wit: Talmadge Alphin, Daniel A. Roberts, James Fuller, Joseph M. Cottrell, David R. Wallace, *Forres* W. Hamilton, Jr., and W. H. Mann who being *ele ted* tried and sworn the truth to speak upon the *i sue joineded* and having fully heard the evidence, instruction of Court and argument of Counsel were sent to their room to consider of their verdict and after some time returned into Court having found the following verdict, to-wit: We, the jury find for the plaintiff and fix his damages at \$30,000.00 (Signed) Forrest W. Hamilton, Foreman.

The defendant by counsel moved the Court to set aside the verdict of the jury as being contrary to the law and evidence and for other reason assigned at the bar and grant a new trial, and the Court set March 20, 1965 to hear a motion of the defendant.

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Davenport v. Aldrich

Motion to Set Aside Verdict of \$30,000.00 as being excessive.

Had the verdict in this case been substantially less than \$10,000.00, the Court would have considered it inadequate and had expected a verdict between ten and fifteen thousand dollars, certainly less than \$20,000.00. There is no doubt in my mind that the verdict is too high, the question is if it is so far out of proportion to the injuries proven as to indicate that the jury misconceived or misinterpreted the facts of the case.

Offhand, a verdict for \$30,000.00 with specials of approximately \$1,100.00 seems high but it must be conceded that the case is difficult to evaluate for two reasons, first, it was tried before the plaintiff reached his maximum recovery and, secondly, there was proof diminution of earning capacity, with no evidence of what the plaintiff had earned in the past.

While the rules about excessive verdicts have not been changed, there seems to have been some change in attitude by the Court of Appeals in applying the rules since the *Kenny Co. Case* in 1932 and the *Edmiston Case* decided in April of this year. Although all of the recent cases have resulted in the

jury's award being sustained, the appellate court has reiterated the rule that each case must be decided on its own merits.

The injuries in this case do not seem to be nearly as serious as injuries sustained by the plaintiff in the *Edmiston Case* in which a \$28,500.00 verdict was set aside by the trial court and reinstated by the appellate court. The large verdict may be due to the fact that the defendant objected to evidence of the plaintiff's prior earnings and the plaintiff acquiesced in this position, leaving the jury (and also the Court) no yardstick to measure plaintiff's diminution of earning capacity. More probably, it resulted from the defendant's antagonistic attitude and his insistence on a version of the accident which was obviously untrue. Regardless of the cause, the
 page 31] Court is of the opinion that the verdict is much higher than is justified by the proof in this case and that it should be set aside.

After considering the medical testimony of the plaintiff, the Court has concluded that the plaintiff must remit the sum of \$7,500.00 or have a new trial only on the issue of damages. Defendant's counsel shall prepare the draft of the order.

1/22/65
 RTA

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ORDER

On the 18th day of December, 1964, the parties, in person and by counsel, came and thereupon came a jury who were sworn to try the issue joined, and after hearing fully the evidence, instructions of the Court and argument of counsel, retired to their room to consider their verdict, and after sometime, returned to the Court, having found a verdict in favor of the plaintiff in the amount of Thirty Thousand Dollars (\$30,000.00).

Whereupon, the defendant, Guy W. Aldrich, by counsel, moved the Court to set aside the verdict as being excessive and contrary to the law and evidence and that the plaintiff be put on terms, or in the alternative, a new trial ordered as to damages only, and the Court continued said motion for hearing until January 20, 1965, at which time each party appeared by counsel and argued said motion. And the Court, after maturely considering said motion, concluded that the verdict was excessive and that the plaintiff must remit the sum of Seven

Thousand Five Hundred Dollars (\$7,500.00), or have a new trial only on the issue of damages, to which action by the Court the plaintiff, by counsel, excepted to the ac-
 page 33] tion of the Court in requiring a *remittitur* of Seven Thousand Five Hundred Dollars (\$7,500.00) for the reason that such requirement is contrary to the law and evidence and without evidence to support it, and counsel for the plaintiff, under protest and pursuant to Code Section 8-350, remitted \$7500.00 and accepted judgment for \$22,500.00, under protest.

It is, therefore, ADJUDGED and ORDERED by the Court that the plaintiff, Macon A. Davenport, recover against the defendant, Guy W. Aldrich, the sum of Twenty-two Thousand Five Hundred Dollars (\$22,500.00), with interest thereon after the rate of six per cent per annum from the 18th day of December, 1964, until paid, and his costs in this behalf expended.

The plaintiff, by counsel, indicated to the Court of an intention to apply to the Supreme Court of Appeals for a writ of error and requested that bond be set. Upon consideration of the same, bond is set at \$500.00, conditioned as required by law.

Enter
 2/2/65
 RTA Judge

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Plaintiff respectfully gives notice of appeal from the final judgment entered herein on the 2nd day of February, 1965, to the Supreme Court of Appeals of Virginia, and the Clerk is respectfully requested to prepare the record for such purposes.

Plaintiff assigns error to the said final judgment entered herein on the 2nd day of February, 1965, as follows:

1. The court erred granting the motion after verdict made by defendant, and in putting the plaintiff on terms to accept a *remittitur* of \$7,500.00 or to have a new trial on issues of damage only.
2. The court erred in embodying its ruling on said motion in

Officer Robertson

the judgment order of February 2, 1965.

3. The court erred in ruling that the verdict of the jury in favor of the plaintiff for the sum of \$30,000.00 damages was excessive and not within the scope of the evidence.

Respectfully,

MACON A. DAVENPORT
By Counsel

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Filed Mch. 26, 1965
Virginia Blanchard, Clerk

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page 9]

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OFFICER ROBERTSON,
called as a witness on behalf of the plaintiff, having been first
duly sworn, was examined and testified as follows:

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REDIRECT EXAMINATION

By Mr. Pitchford:

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A. I talked to Mr. Davenport at the scene of the accident
and then also at the hospital.

Q. How did he leave the scene of the accident?

A. In an ambulance.

Q. Did you call the ambulance?

A. We called for one, yes, sir.

Lucille Davenport

Q. What did you see and observe about him as far as injuries are concerned?

A. His kneecaps had been pushed back into his legs.

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LUCILLE DAVENPORT,
called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pitchford:

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A. I saw him about 5 o'clock that afternoon.

Q. At what place?

A. Medical College of Virginia.

Q. What did you see and observe about him then that was different from when you saw him that morning?

A. He was on a stretcher in an ambulance and his face was bandaged and bloody.

Q. Was he admitted as a patient to the hospital?

A. Yes, sir.

Q. How long was he a patient in the hospital?

A. Thirteen days.

Q. Was he well when he left the hospital?

A. No.

Q. Was he wearing any type of support when he left the hospital?

page 30] A. Yes. He was wearing a cast on his leg and splints on his finger.

Q. How far up did the cast come?

A. About midway, about midway to his thigh.

Lucille Davenport

- Q. Did he have anything to help him with his walking?
 A. He was on crutches.
- Q. How long did he wear the cast?
 A. Approximately six weeks, approximately.
- Q. Did you take him home yourself from the hospital?
 A. Yes, sir, I did.
- Q. Did he get in the automobile under his own power?
 A. No.
- Q. How did he get into the automobile?
 A. An attendant at the hospital helped him.
- Q. When you got him home, how did you get him out of the automobile?
 A. I helped him out of the car and into the house.
- Q. How has he gotten along since you got him home from the hospital?
 A. Well, he has progressed slowly. He has had the cast removed but he was still on crutches and was for a good while.
- Q. When did he discard the crutches?
 A. About the latter part of June.
- page 31] Q. Latter part of what?
 A. June.
- Q. Do you see any difference in the way he gets around and handles himself now as compared to the way he handled himself before the accident occurred?
 A. Oh, yes.
- Q. What sort of physical activities did Mr. Davenport engage in before the accident occurred?
 A. Do you mean for a living?
 Q. Anything that required physical activity?
 A. He was a very active person. He always has been.
- Q. Has he been an active person since this accident?
 A. No.
- Q. Now, have you observed any difference in Mr. Davenport insofar as his nervous or emotional condition is concerned?
 A. Yes.
- Q. Tell us about that, if you will, please?
 A. Well, he is very nervous and very irritable.
- Q. Is he taking medicine for this condition?
 A. Yes, sir, he is.
- Q. What doctors prescribed it?
 A. Doctor Watkins.
- Q. How long has he been taking medicine for this nervousness and irritability?

Lucille Davenport

A. I don't remember exactly. I would say about
page 32] three or four weeks now.

Q. Do you know whether or not Mr. Davenport
has done any work since the happening of the accident?

A. I know that he tried.

Q. Did he succeed?

A. No.

Q. How many times has he tried?

A. Twice.

Q. What kind of work was he trying to do?

Mr. White: Your Honor, I think that that more probably
should come from the plaintiff.

The Court: She may have seen him. Did you see him at-
tempt to do any work?

A. I didn't actually see him on the job. I know that he left
home and where he went.

The Court: You may state where he went and when he left
home.

By Mr. Pitchford:

Q. What kind of work did he undertake to do, Mrs. Daven-
port?

A. He undertook to sell automobiles.

Q. How recently?

A. Well, the last time was, I think—I don't remember ex-
actly. It must have been about a month ago, first time.

Q. Do you know whether or not he had previous
page 33] experience in selling automobiles?

A. Yes, sir.

Q. Where?

A. Had his own business.

Q. Where was that?

A. In Newport News.

Q. Did you see him work and sell automobiles around there?

A. Yes.

Q. Did you work at the place sometimes yourself?

A. Yes, sir.

Q. Did he have any difficulty then selling automobiles?

A. Never.

CROSS-EXAMINATION

By Mr. White:

Q. Mrs. Davenport, Mr. Davenport has been able to drive

Lucille Davenport

an automobile recently, hasn't he?

A. Yes, sir.

Q. Did he drive the automobile down here for the trial or yesterday?

A. Yes, sir. No, he didn't drive down here yesterday. I did.

Q. Today?

page 34] A. He drove this morning.

Q. I mean, he was able to drive down from Richmond today for this trial?

A. No, he didn't drive from Richmond. He drove from Newport News.

Q. All right. Can you drive?

A. Yes, sir, I have been driving.

Q. Since this accident, has Mr. Davenport been able to get out? After he removed his cast, was he able to come down and see Mr. Pitchford and drive to Newport News and talk to him about the case? Has he been able to get out and do these things?

A. He was after awhile, not immediately. It was a good while.

Q. I think you said he was six weeks in the cast and, of course, thirteen days in the hospital. My question is: After he got out of the cast and was using a crutch, was he able to drive the automobile? Was he able to come down to Newport News? Has he been driving around in his car?

A. Yes, he has been driving around in his car but not while he was on crutches. It was sometime after that.

Q. How soon after this accident was he able to drive down, we will say, to Newport News, of your own knowledge, if you know?

A. I don't remember exactly. I would say it was sometime around the middle of August.

page 35] Q. So that would be, in other words, about four months before he could get out and drive; would that be correct?

A. Well, I didn't count the time.

Q. The accident happened in April and I believe you said the middle of August. Would that be about four months?

A. Four, four one-half months.

Q. Did I understand you to say that he had become nervous and irritable within the last three or four weeks that he was taking medicine?

A. No, sir. I said he had been on medication for the last three or four weeks.

Victor Harper

Q. Medication for the last three or four weeks?

A. Yes.

Q. Was that for general nervous and irritability?

A. Yes, sir.

Mr. White: That is all.

REDIRECT EXAMINATION

By Mr. Pitchford:

Q. Mrs. Davenport, after the accident and between the time Mr. Davenport started back to driving, you drove him around?

A. Yes.

Q. You did?

page 36] A. Yes, sir, I did.

Q. Was there any extra driving on account of the injuries he received in this accident, like going to the doctors?

A. Oh, of course.

Q. Did he experience any difficulty in getting in and out of the automobile?

A. Yes, sir.

Q. Now, since he has started back driving the automobile, have you noticed which foot he uses to control the accelerator and the brake?

A. Yes. He uses the right foot to control the accelerator and the left foot to brake the car.

The Court: I am sorry. I did not understand you.

A. He uses the right foot to use the accelerator and the left foot to brake the car.

By Mr. Pitchford:

Q. Which leg is hurt?

A. His right leg is hurt.

Q. His right leg?

A. Uh-huh.

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VICTOR HARPER,

page 37] called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Victor Harper

DIRECT EXAMINATION

By Mr. Pitchford:

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page 38]

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Q. Did you know that he was involved in an automobile accident on April 3, 1964?

A. Yes, sir

Q. When did you first learn about it?

A. The day of the accident. It must have been shortly thereafter.

Q. How soon after that did you see him?

A. Around the middle of June, first of June.

Q. Could you see and observe any difference in Mr. Davenport?

A. Well, at that time he had a cast on and he was also on crutches.

Q. Was he engaged in any kind of activity at all?

A. He was confined to the apartment almost permanently when he returned. I never saw him leave until about a month afterwards.

Q. As time went on, did he get rid of the cast?

A. Yes, sir.

Q. And how about the crutches?

page 39] A. He kept the crutches, I would say, around the middle of August, first of September, some time in there.

Q. During that period of time, did you have occasion to ride with him in an automobile?

A. Yes, sir.

Q. Who drove the automobile?

A. Mr. Davenport.

Q. Tell us the manner in which he controlled the car?

A. Well, he controlled the car quite well. But he had to drive left footed. He had very little use of his right leg insofar as operating the gas pedal and the brake pedal.

Q. Do you see Mr. Davenport occasionally now?

A. Yes, sir, I do.

Victor Harper

Q. Tell us the manner in which you observe him walking and getting about?

A. Well, he walks with a definite limp and he appears to be in quite a strain when he is moving on his leg. I guess the best way to sum it up—he has difficulty getting around.

CROSS-EXAMINATION

By Mr. White:

Q. Mr. Harper, you were not subpoenaed were you?

A. Yes, sir.

Q. You were?

A. Yes, sir.

page 40] Q. Now, did I understand you to say that he did not leave the apartment for a month; is that what you said?

A. It was several weeks that he was confined there.

Q. After he came back from the hospital and you noticed that he didn't leave the apartment for several weeks, I think you said, something like a month?

A. I was hospitalized in May myself.

Q. Did you say that before this accident you would see him around the apartment two or three times a day?

A. Yes, sir.

Q. He wasn't doing any work then, was he, if he was around the apartment two or three times a day in the middle of the week?

A. That I don't know. I would see him in the morning when I leave and go to work myself and come back and then I would see him during the night.

Q. Whenever you would be at the apartment, you would see him there, is that the story, before the accident?

A. I can't say I saw him during the daytime that much, because I was very seldom there in the daytime.

Q. Didn't you just tell us that you saw this gentleman two or three times a day?

A. I usually saw him in the morning, and I usually saw him in the evening a couple of times.

Q. Now, did Mr. Davenport start driving the car about a month after he came out of the hospital, some-
page 41] thing like that?

A. I would say somewhere in the middle of August, somewhere like that.

Doctor Baxter I. Bell, Jr.

DOCTOR BAXTER I. BELL, JR.,
called as a witness on behalf of the plaintiff, having been first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pitchford:

Q. Will you state your name, please.

A. Baxter I. Bell, Jr.

Q. You are a medical doctor?

A. Yes, sir.

Q. Doctor, where did you receive your medical training?

A. Medical College of Virginia.

Mr. Pitchford: Would you stipulate that he is
page 42] a qualified physician?

Mr. White: Yes, sir.

Mr. Pitchford: It is stipulated that he is qualified.

By Mr. Pitchford:

Q. Are you connected with the Bell Hospital or the Wil-
liamsburg Community Hospital?

A. Yes, sir. I am on the staff of both.

Q. In connection with your practice as a physician, did you
have occasion to see the plaintiff, Mr. Macon Davenport, on
April 3, 1964?

A. Yes, sir, I did.

Q. What was the occasion for your seeing him?

A. I saw him in the Community Hospital emergency room
following an automobile accident and rendered first aid and
had some X-rays taken and then saw that he was transferred
to Richmond.

Q. Can you tell us what injuries you saw and observed in
your examination, including the X-rays?

A. He had a laceration of his brow and forehead, cuts. He
had a fracture or broken right patella of the kneecap. He had
contusions, bruises, of his chest wall.

Q. How soon was he sent to Richmond?

A. He was sent right directly from the emergency room,
as soon as we finished sewing him up and taking X-rays.

Q. How was he sent to Richmond?

page 43] A. I believe he was sent by ambulance.

Q. To what hospital was he sent in Richmond;
do you recollect?

Earl Horner

A. I assume — I don't recall — he was sent to Medical College of Virginia.

Q. Is that a large medical center?

A. Yes, sir.

Q. Do they have specialists there to take care of such injuries as he had?

A. Yes, sir.

Mr. White: He is leading.

The Court: All right. I don't think any great harm has been done.

Mr. Pitchford: Do you want me to do it through the normal way?

The Court: No, sir.

Mr. White: No, sir.

By Mr. Pitchford:

Q. Doctor, did you sew him up?

A. Yes, sir.

Q. How many stitches did you have to take?

A. I had 15 down here in the emergency room.

Q. Fifteen?

A. Yes, sir.

page 44] Q. That was about what part of his body?
A. On his brow and his forehead.

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EARL HORNER,

called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pitchford:

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A. A day or so after that I was in Richmond and I went in to see Macon at the hospital.

Doctor Franklin B. Watkins

Q. What hospital was he in?

A. Medical College of Virginia.

Q. What did you then see and observe about Macon?

A. Well, he was in bed and his leg was in a cast and his head and face was all bandaged up. I assume it was cut. And he complained of pains in his body.

Q. Did you visit him more than once in the hospital?

A. No, sir.

Q. Have you visited him in his home or apartment since he got out of the hospital?

A. No, sir.

Q. Has he visited you in your home or place of business when he got out of the hospital?

A. Yes, sir.

Q. Could you discern any difference in his physical activities when you saw him after the accident?

A. Oh, yes.

Q. What could you discern?

A. He walked with a limp, and his leg seemed to be bothering him considerably. And he didn't seem like himself. He seemed nervous and told me that his head bothered him an awful lot.

page 48] Q. Did he appear to be a nervous person before the happening of the accident?

A. No.

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DOCTOR FRANKLIN B. WATKINS,
called as a witness on behalf of the plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pitchford:

page 49] Q. What is your name?

A. Franklin B. Watkins.

Q. What is your occupation or profession?

A. Orthopedic surgeon.

Q. Doctor, what is an orthopedic surgeon?

A. We treat diseases and injuries of the muscular-skeletal system,—bones and joints, primarily.

Q. What training have you had to engage in your specialty?

Doctor Franklin B. Watkins

A. College, medical school and residency in orthopedic surgery.

Mr. White: We would concede that the doctor is qualified.

The Court: All right.

By Mr. Pitchford:

Q. Are you on the staff of any of the hospitals in Richmond?

A. Yes, sir.

Q. What hospitals?

A. Medical College of Virginia, St. Lukes, Richmond Memorial, Crippled Children.

Q. Do you act as a consultant in any capacity—military installation?

A. No, sir.

Q. Now, Doctor, in the course of your practice, have you had occasion to see and treat Mr. Macon A. Davenport? page 50]

A. That is correct.

Q. When did you first see Mr. Davenport?

A. The day he was admitted and I first saw him on 4-3-64, April 3rd.

Q. Where did you see him?

A. Medical College of Virginia.

Q. Did you take from him a case history?

A. Right.

Q. What is the case history?

A. He was involved in an automobile accident in Williamsburg and sustained injuries primarily to his knee and chest.

Q. All right. Did you examine him?

A. I examined him.

Q. What did you find in his examination?

A. Evidence, clinical evidence, of fracture about his knee and X-rays revealed that he did have a fracture of his kneecap.

Q. Was that within your specialty?

A. Yes, sir.

Q. Was the fracture in his knee?

A. It was a severe fracture to the kneecap in that the bone was broken in several fragments.

Q. What was indicated medicalwise by way of treatment?

A. Well, in order to reattach the muscles which hook onto the kneecap and straighten your knee, it was necessary to operate on his knee. page 51]

Q. That operation consisted of what?

Doctor Franklin B. Watkins

A. Consisted of removing the portion of the bone that was badly broken and reattaching the tendons to the main fragment that was still intact.

Q. Now, after you performed this operation, did you put him in a cast?

A. He was in a cast from his groin to above his ankle.

Q. For how long?

A. About six weeks.

Q. During that period of time, was he hospitalized or permitted to get around?

A. He was hospitalized for the first couple of weeks and then he was discharged on crutches.

Q. Did you thereafter follow him?

A. Yes, sir.

Q. Tell us about his progress?

A. He had a considerable amount of discomfort about his knee, swelling, occasionally drawing fluid out of his knee.

Q. Is that a painful procedure?

A. A little discomfort associated with it.

Q. All right.

A. And he has had a moderate amount of discomfort up until the present time.

Q. Is the knee structure itself disturbed in any way?

A. Yes, the mechanics of his knee is what is altered.

Q. Does that affect the use of the knee?

A. Yes.

Q. In what manner?

A. In range of motion. In other words, he cannot bend his knee as far as normal. He bends it just beyond to 90 degrees.

Q. Would you indicate what you mean by 90 degrees?

A. Ninety degrees would be to a right angle. His would go to this degree. Whereas, his other one would come back on the thigh itself.

Q. Would that affect a person getting around and about?

A. Yes, sir.

Q. Now, during the course of treatment have you found it necessary to make injections?

A. We have injected him from time to time with medication.

Q. Have you gotten any good results from that?

A. It seems to be helping him somewhat.

Q. Doctor, has he reached his full medical recovery?

A. No. I believe he will improve further.

Doctor Franklin B. Watkins

Q. When will he reach his further medical recovery?

A. Six to eight months probably.

Q. Will he ever recover completely from this injury?

A. No. I believe he will have some permanent disability.

Q. That permanent disability will affect him in
page 53] what manner?

A. It will cause him to have some discomfort from time to time in his knee on prolonged activity or walking steps, climbing an incline, which puts a strain on your knee more so than walking on flat surface.

Q. Will that be a permanent condition?

A. Probably; yes, sir. I think he will have some degree of permanency.

Q. Doctor, I have a bill from your office dated November 25th for \$278 and another bill dated December 14, 1964, for \$26, and ask you if that represents charges made by you for your professional services?

A. Yes, sir.

Mr. Pitchford: I offer them in evidence as Plaintiff Exhibits.

The Court: This will be 4 and 5, I believe.

By Mr. Pitchford:

Q. Doctor, is there any further surgery indicated on the part of Mr. Davenport?

A. If Mr. Davenport's symptoms do not improve it may be necessary to remove this remaining fragment of his kneecap.

Q. Will that result in any further disability?

A. I don't think he would have as good a range of motion as he has now if we remove his entire kneecap, but his pain would be improved.

page 54] Q. About the symptoms and pains which you speak, existed for how long?

A. Since probably May of '64 when he removed his cast.

Q. Now, this injury about which you spoke, did you undertake to treat him for that or did you refer him to another specialty?

A. I referred him to another specialty for that.

Q. What specialty does that come under?

A. Chest surgery.

Doctor Franklin B. Watkins

Q. Chest surgery?

A. Yes, sir.

Mr. Pitchford: All right.

CROSS EXAMINATION

By Mr. White:

Q. Doctor, I have just one question here. From what you may term a functional ability standpoint, will Mr. Davenport be able to carry out his work as a salesman and get up and down from the chair and drive an automobile and those things?

A. I would think so.

Mr. White: That is all.

Mr. Pitchford: May I ask him one more question, which I overlooked.

page 55 } REDIRECT EXAMINATION

By Mr. Pitchford:

Q. During the course of your treatment, Doctor, has a nervous condition developed in Mr. Davenport?

A. Seems quite nervous at times, yes, sir.

Q. Have you prescribed any medication for that?

A. Yes, sir.

Q. What is the medication?

A. Tranquilizers.

Q. Is that helping him any?

A. Seems to be helping him.

Q. How long has this nervous condition persisted?

A. He seemed more nervous the last few months than immediately following the accident, I would think.

Mr. Pitchford: All right. Thank you, sir.

RECROSS-EXAMINATION

By Mr. White:

Q. Doctor, that happens occasionally as trial approaches, doesn't it?

A. That may have some bearing on it. I hesitate to say.

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page 56]

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DOCTOR JAMES BROOKS,
called as a witness on behalf of the plaintiff, having been first
duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pitchford:

Q. What is your name?

A. Doctor James Brooks.

Q. Are you a medical doctor?

A. A surgical doctor.

Q. Do you have a specialty?

A. Thoracic surgery, chest surgery.

Q. What training have you had to engage in your specialty?

A. Training in general surgery for board qualification and
two extra years for qualification in thoracic surgery.

Q. Are you certified in thoracic surgery?

A. Yes, sir.

Q. In order to become certified, what do you have
page 57] to do?

A. I have to complete five years in general sur-
gery and two years in thoracic surgery.

Q. Are you attached to the staff of any of the Richmond hos-
pitals?

A. I am a permanent member of the Medical College, full
time.

Q. Do you teach in the college?

A. I do.

Q. What do you teach?

A. Thoracic surgery.

Q. Now, in the course of your practice at the Medical Col-
lege, have you had occasion to see Mr. Macon A. Davenport?

A. Yes, sir.

Q. When did you see Mr. Davenport?

A. On April 3, 1964.

Q. And your purpose of seeing him was what?

A. Doctor Watkins wanted me to see him because of his com-
plaints of pain in the chest following the accident that he was
involved in.

Q. Did you examine him?

A. Yes, sir.

Doctor James Brooks

Q. What did you find?

A. He had generalized discomfort over his chest, specifically pain in the region of the fourth and fifth ribs and anteriorly on the front part of the chest on the right side, but the whole chest was uncomfortable.

Q. Were there any visible bruises?

A. There were not.

Q. Did you X-ray him?

A. Yes, sir.

Q. Did it show any broken ribs?

A. It did not.

Q. By your examination did you determine whether or not there had been any damage to the cartilage structure in the chest?

A. There was some question of either the fourth or fifth ribs during the examination because of the point sensation. You cannot prove this by X-ray.

Q. During his stay in the hospital, did you see him from time to time?

A. Yes, sir.

Q. Did this chest condition improve?

A. It did.

Q. Did many of the symptoms subside?

A. Most of the symptoms subsided over the next few days in the hospital, but the point over the fourth and fifth cartilage remained but was less intense as the days went on.

Q. This cartilage heal?

A. It should, yes, sir.

page 59] Q. Will there be any residual?

A. I would not expect any.

Q. How much is your bill for your services, do you know?

A. I don't have the remotest idea. I didn't look it up before I came. Twenty dollars or twenty-five dollars, I am not sure.

Q. You just didn't bring the bill with you?

A. I am sorry.

Mr. Pitchford: I am sorry. We don't have one either.

Mr. White: We can stipulate.

Mr. Pitchford: Do you have one?

Mr. White: No.

Macon Davenport

CROSS-EXAMINATION

By Mr. White:

Q. Doctor, you don't expect any permanent effect from the injury, do you?

A. I do not, no, sir.

Q. And, Doctor, your examination and the X-rays revealed that this gentleman has a chronic pulmonary disease?

A. He has evidence on X-ray of scarring in the lung with increased lucidity between the scars, which medically would suggest emphysema.

Q. That is unrelated to the accident, of course?

page 60] A. Yes, sir, it is unrelated.

Q. You didn't actually prescribe any specific treatment for this patient, did you?

A. I did not.

Q. And the symptoms you are finding have rapidly subsided, I believe you said?

A. Yes, sir.

Q. And your final diagnosis, as I understand it, would be a bruise and contusion of —?

A. Chest contusion and possible fracture of the fourth and fifth cartilage.

★ ★ ★ ★ ★

page 61] MACON DAVENPORT,
the plaintiff, called on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pitchford:

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Page 68]

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Q. Now, did you sustain any personal injuries in the impact?

A. Yes, sir. My knee, laceration of my face, broken finger, hurt my chest, my back and that is about what I can remember about it.

Macon Davenport

Q. Were you taken from the scene of the accident to the local hospital in an ambulance?

A. Yes, sir.

Q. Did you receive first aid at the local hospital?

A. Yes, sir.

Q. After you received first aid, were you sent to a Richmond hospital?

A. Yes, sir.

Q. Were you given any pain killing drugs before you left Williamsburg?

A. Yes, I remember one.

Q. How did you—

page 69] Mr. White: [Interposing] I have to object to the manner of the question.

The Court: A little bit leading.

Mr. Pitchford: All right.

By Mr. Pitchford:

Q. How long did it take to make the trip to Richmond?

A. I don't remember.

Q. Do you remember getting to Richmond?

A. Slightly.

Q. I didn't hear you?

A. Slightly. I merely remember seeing my wife when I got there.

Q. Do you remember being admitted as a patient to the Medical College of Virginia?

A. Faintly.

Q. When do you next recall something clearly?

A. Probably the next day, the best I can remember.

Q. When you recalled something clearly, where were you?

A. I was in bed in the hospital.

Q. Had they put any bandages or cast on you?

A. I had a cast on my right leg.

Q. How long did you stay in the hospital?

A. I was there about thirteen—I believe it was thirteen days.

page 70] Q. Now, I hand you this, Mr. Davenport, and ask you if this is a bill for \$512.15, showing that you were admitted to the College of Virginia Hospital on April 3, 1964, and ask you if that was in connection with your injuries?

A. Yes, sir.

Macon Davenport

Mr. Pitchford: I offer this in evidence as Plaintiff's Exhibit No. 6.

The Court: Plaintiff's Exhibit No. 6.

[The said bill was marked and filed as Plaintiff's Exhibit No. 6]

By Mr. Pitchford:

Q. While you were in the hospital, did you have anesthesia?

A. Yes, sir.

Q. I have a bill here from Doctor McAllister for giving you anesthesia in the amount of \$35 and ask you if that is an expense incurred in connection with the injuries that you received?

A. Yes, sir.

The Court: Plaintiff's Exhibit No. 7.

[The said bill was marked and filed as Plaintiff's Exhibit No. 7.]

By Mr. Pitchford:

Q. Now, for your treatment in Williamsburg, I have a bill for \$25 and ask you if that is an expense that you incurred in connection with injuries that you received?

A. Yes, sir.

Mr. Pitchford: I offer it in evidence.

The Court: This will be Plaintiff's Exhibit No. 8.

[The said bill was marked and filed as Plaintiff's Exhibit No. 8.]

By Mr. Pitchford:

Q. I have a bill from Williamsburg Community Hospital for \$32.50 and ask you if that is an expense that you incurred in connection with your injuries?

A. Yes, sir.

The Court: This will be Plaintiff's Exhibit No. 9.

[The said bill was marked and filed as Plaintiff's Exhibit No. 9.]

By Mr. Pitchford:

Q. Now, Mr. Davenport, tell us what you remember about your stay in the hospital in Richmond?

Macon Davenport

A. Well, as I said, the first I remember, I was in bed. I had a cast on my leg and very much discomfort. And I stayed that way for—of course, they were giving me for pain what, I don't know, for several days. And then they removed the cast and operated on my leg and put another cast on it and kept ice packs on it, tried to keep ice packs on it. And, of course, giving me shots ever so often. What the shots were, I don't know. Of course, they were constantly checking on me, both
 page 72] the doctors—the chest doctor and the surgeon also. That is about all that I remember about it.

Q. Now, when you went home from the hospital, who took you?

A. My wife took me.

Q. How did you get into the car?

A. An assistant at the hospital helped me in the car.

Q. Did you have anything to help you walk along?

A. He rolled me to the car in the wheel chair and then helped me in the car and, of course, I had a pair of crutches.

Q. Did you have on a cast?

A. Oh, yes, I still had the cast on.

Q. When you got home, what did you do?

A. My wife helped me out of the car and finally got me in the house. She put me to bed.

Q. How long did you stay in the house?

A. In the house?

Q. Yes.

A. It seems to me three months.

Q. How long did you stay in the cast?

A. About six weeks.

Q. During the time that you stayed in the house, did you get out once in awhile to go see anybody, to go to the doctor for any reason?

A. Not until—I don't remember. But it seems to me, when
 page 73] the cast was removed, then my wife started taking me out and I was so tense and bored and everything else that she tried to help me by taking me out. And of course, I had to take pillows in the car to lay my leg on. I couldn't bend it or couldn't put any weight on it at all. And she drove me around thirty minutes or so and take me back home and just to get me out.

Q. How soon after the accident happened did you come back to Williamsburg and Newport News?

A. Well, the first time, when the trial was. I don't remember when that was.

Macon Davenport

Q. Do you drive the car?

A. No, sir.

Q. Why didn't you drive?

A. I couldn't drive.

Q. How soon after the accident did you start driving?

A. The latter part.

Q. I didn't hear you?

A. I guess August.

Q. In driving, what leg or foot do you use to control the brake and accelerator?

A. My left foot for the brake and I can use my right foot for the accelerator.

Q. Before this accident, what foot did you use?

A. I used my left.

Q. Same foot?

page 74]

A. My right foot for the whole thing.

Q. Why don't you use your right foot now for the whole thing?

A. I can't bend it up there quick. I can't bend it to fit it up there quick enough.

Q. Do you have trouble bending?

A. Yes.

Q. Is it slow in moving?

A. Yes, sir.

Q. Have you tried to walk around and get about on that leg?

A. I constantly bathed and exercised with weights on my foot, just like the doctors prescribed.

Q. Mr. Davenport, can you indicate to the jury how far you can bend that knee?

A. Yes, sir (indicating).

Q. You can't pull it back further than that?

A. No, sir, that is right there.

Q. Show them the other leg, how far you can get that one back?

A. (Indicating)

Q. You don't have any trouble with that?

A. No, sir.

Q. Did that hurt when you pulled it back that way?

page 75] A. Yes, it hurts when I do it like that and it hurts when I straighten it back out.

Q. Now, have you got any scars on your leg where the doctor operated on you?

Macon Davenport

A. Yes, I still have a wire in there (indicating), from here to here.

Q. Can you feel the wire there with your fingers?

A. You can see the wire. There it is right there (indicating). The wire and the skin laying on top of the wire.

Q. You described your other injuries to us, like your chest and finger and other things?

A. Yes.

Q. Is the finger cleared up?

A. I can use it. It is still sore but I can use that.

Q. How about your chest?

A. My chest seems to have gotten all right.

Q. How about your back?

A. I still have trouble with my back.

Q. What part of your back?

A. Between my shoulders. Seems to, I guess, travel up. It gives me headaches, pretty regular headaches.

Q. Did you have headaches before the happening of the accident?

A. No, sir.

Q. Mr. Davenport, have you worked or attempted to work since the happening of this accident?

page 76]

A. Yes, sir.

Q. Tell us about that, if you will?

A. I got a job with Murray Oldsmobile in Richmond. It lasted about a week and one-half. I couldn't get around. I just assume the man just wouldn't put up with me and let me go.

Q. Did you try another time?

A. I tried with the Volkswagen dealer. He was very nice but I just couldn't get around. In fact, I fell on the lot and so they let me go also.

Q. What were you doing? What were you undertaking to do for both of those employers?

A. Selling.

Q. A car salesman, what is required of him to sell a car?

A. Of course, he has to do quite a bit of walking, getting in and out of cars, demonstrating cars. That is the main thing.

Q. Did you try to do those things?

A. I did.

Q. Can you do those things?

A. No, I couldn't do them properly.

Macon Davenport

CROSS-EXAMINATION

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page 87]

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Q. You were not thrown from the car by the impact?

A. No, sir.

Q. And you were not knocked unconscious, I believe?

A. Not totally, no, sir.

Q. Have you been able to drive since the accident? How many times for example, have you been down to Newport News since this accident happened, since April?

A. Since April?

page 88] Q. Yes, sir.

A. That I drove personally?

Q. Yes, sir.

A. I have been a dozen times. But I haven't driven myself. My wife's driven most of the time ever since then.

★ ★ ★ ★ ★

A Copy—Teste:

H. G. TURNER, Clerk.

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