App at pp. 541/3. 49 ALJR 281.
App at p. 543. 12 ALR 551.

[HIGH COURT OF AUSTRALIA.]

COATES . . . . . APPELLANT;
PLAINTIFF,

AND

CARTER . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1951.

SYDNEY, *April* 24, 26; *June* 14.

Dixon, Williams, Webb, Fullagar and Kitto JJ.

Damages—Pecuniary loss from personal injury—Damages awarded by jury—Inadequate—Unreasonable—New trial generally.

If an appellate court arrives at the conclusion that an award of damages is so small as to be unreasonable then, prima facie, the verdict should be set aside and a new trial ordered, either of the whole action or limited to the assessment of damages.

In an action to recover damages for injuries caused by the respondent's negligence it was shown that the injuries were very serious—involving three fractures of the lower jaw, the loss of some teeth, difficulty in fitting dentures and disfigurement—and were permanent in character; that they had inflicted much pain and suffering; and that mastication disabilities would probably have a prejudicial effect upon the appellant's health. The jury correctly assessed the special damages, but awarded the sum of £310 only for general damages, actual and potential, including pain and suffering.

Held that the sum awarded as general damages was, in the circumstances, so inadequate as to entitle the appellant to a new trial.

Decision of the Supreme Court of New South Wales (Full Court) reversed.

APPEAL from the Supreme Court of New South Wales.

An action was brought in the Supreme Court of New South Wales by Richard Coates against Edward George Harcourt Carter to recover damages in the sum of £5,000 for injuries, pain and suffering sustained by the plaintiff and the loss consequent upon those injuries which he alleged arose from a collision between a

H. C. OF A. 1951. COATES v. CARTER.

motor cycle which he was riding, with a pillion rider on it, and a motor car negligently driven by the defendant.

The plaintiff proved special damages to an amount of £165 consisting of hospital, ambulance and dental expenses, damage to clothing and loss of wages.

The jury returned a verdict in favour of the plaintiff in the sum of £475.

The Full Court of the Supreme Court (*Street* C.J. and *Owen* J., *Herron* J. dissenting) dismissed an appeal by the plaintiff, and from that decision he appealed to the High Court.

Further facts appear in the judgments hereunder.

E. S. Miller K.C. (with him *S. Ross*), for the appellant. It is well established that a verdict of a jury will be set aside if, upon the evidence, it was so grossly inadequate as to show that the jury could not have properly applied their minds to the relevant issues. The sum of £310 awarded as general damages was manifestly grossly inadequate having regard to the permanent injury sustained by the appellant and the pain and suffering which must necessarily have been involved. It is conceded that if a new trial be granted it should be granted generally.

L. C. Badham K.C. (with him *C. L. D. Meares*), for the respondent. The Court should not disturb the verdict of the jury. The damages awarded by it were not unreasonable in the circumstances, nor does the evidence show, even inferentially, that there must have been a compromise between the members of the jury as to verdict and *quantum*, or that matters which should have been taken into account were disregarded by the jury (*Praed* v. *Graham* (1); *Smith* v. *Schilling* (2); *Willis* v. *David Jones Ltd.* (3)). The appellant's economic loss was approximately £165. He did not suffer any disability which affected his earning power, so that the balance of the damages awarded to him must be referable to "pain and suffering" and loss of enjoyment of life. There was evidence before the jury that prior to the accident the appellant's lower jaw was abnormal and defective. It protruded and jutted out more than did his upper jaw. The "horse-shoe" of his lower jaw was larger than it normally should have been. It was a congenital condition. The court is not entitled to substitute its own views for those of the jury. If, however, a new trial be

(1) (1889) 24 Q.B.D. 53, at p. 55.
(2) (1928) 1 K.B. 429, at pp. 433, 440.
(3) (1934) 34 S.R. (N.S.W.) 303, at p. 317; 51 W.N. 106.

granted, it should be granted generally and not limited to damages (*Rowe* v. *Edwards* (1); *Willis* v. *David Jones Ltd.* (2); *Tolley* v. *J. S. Fry & Sons Ltd.* (3)).

E. S. Miller K.C., in reply.

Cur. adv. vult.

June 14.

The following written judgments were delivered :—

DIXON, WILLIAMS, WEBB AND KITTO JJ. This is an appeal from an order of the Supreme Court of New South Wales by which an application for a new trial was dismissed. The verdict was for the plaintiff for £475. The action was for damages for personal injuries caused by the defendant's negligence. The plaintiff made the application for a new trial on the ground that the damages awarded are inadequate. The injuries of the plaintiff were sustained by him on the evening of 9th July 1948 in a collision between a motor car driven by the defendant and a motor cycle ridden by the plaintiff, who carried behind him a pillion rider. The injuries of the plaintiff were to the jaw, to which there were three fractures and a comminuted fracture. He claimed and proved special damages to an amount of £165 consisting of hospital, ambulance and dental expenses, damage to clothing and loss of wages. He lost eleven weeks' wages. As damages for pain and suffering, for the bodily injury and for the effect if any upon the plaintiff's use of his jaw in speech and mastication and for what consequences if any the condition of his mouth might be expected to produce on health, comfort and appearance the jury must be taken to have awarded him £310.

The evidence showed that the plaintiff-appellant, a young man then about 21 years of age, was removed in an unconscious condition from the scene of the accident to the Parramatta Hospital whence he was removed on the following night to the Prince Alfred Hospital. He regained consciousness during the journey from the one hospital to the other. He was there examined by an oral surgeon, who gave evidence at the trial. He said that the appellant had sustained a fracture on the left side of the jaw just below the joint, a second fracture just to the right of the middle line, a third fracture of the lower jaw just at the angle of the jaw before it turns at right angles to go back to the other joint and, in addition, a comminuted fracture of the front of the mouth, where a portion

(1) (1934) 51 C.L.R. 351, at p. 356.
(2) (1934) 34 S.R. (N.S.W.), at p. 317; 51 W.N. 106.
(3) (1930) 1 K.B. 467, at p. 477.

H. C. OF A. 1951.

COATES v. CARTER.

Dixon J. Williams J. Webb J. Kitto J.

of the bone carrying a number of teeth was moving about. On 14th July 1948 he removed this bone and did a certain amount of operative procedure, but owing to the marked swelling round the face and jaws he waited for another week before going further. On 23rd July the surgeon, according to his evidence, extracted certain teeth and at the site of the fractures wired portions of the jaw together. He prepared a method of splinting the jaw by means of a plastic splint. Both because it had been necessary to remove and abandon the segment bearing a number of teeth and because the general condition of the site of the injury was unfavourable, he could not get a perfect alignment: he preferred to seek stability rather than alignment and facial appearance. In cross examination the surgeon said that the horse-shoe of the appellant's lower jaw had been congenitally larger than that of the upper jaw, larger than it should normally be, with a greater reach of the lower than of the upper jaw putting the lower teeth ahead of the upper teeth: this accentuated any lack of ability on the surgeon's part to put things in their proper place.

The appellant himself said on this point that he had formerly a good ordinary mouth, that his teeth came together but (the lower teeth) protruded a little but not very much. He had no lower back teeth on the right side, a couple were missing from the left and in the top row two were missing in front and two at the back. He then had no artificial teeth and, notwithstanding the foregoing defects, he described his mouth as "an ordinary mouth, the same as anybody else's, in good condition". His sister described him as having jaws very like hers and as being very much like her in appearance, a description the jury might have considered to combine a becoming modesty with sisterly flattery. The appellant gave a short account of his sufferings and of his resulting condition. The splint remained in his mouth for three months. He could not chew any food during that time and was fed first with liquids and then with soft foods. He remained in hospital for seven weeks. Four or five months after the accident he was placed in the hands of a dentist in order that his mouth might be fitted with dentures. The dentist was called as a witness. He said that he had been able to give the appellant only fifteen per cent of the full natural occlusion. He had not seen the appellant before his injury, but he gave it as his opinion that the fractures had created a marked disfigurement and had made it impossible to bring the teeth into alignment for purposes of mastication; the bones could be set only in an abnormal position. He said that if in the future the appellant lost certain of his remaining teeth in

the lower jaw it would become almost impossible for him to wear a denture. The witness also expressed pessimistic opinions about the probable effect in the future upon the appellant's health which his disabilities in mastication would have. Similar opinions were given by a physician called to give general medical evidence in the abstract about the consequences of such inefficiency in mastication as the condition ascribed to the appellant's mouth would involve. In reference to that condition the appellant himself gave evidence that he had not regained his former power of chewing, that he could only chew light food and that he could not bite with his front teeth because of the gap where he had lost part of his lower mandible. He also said his speech had been affected: friends told him he spoke loud and " was a bit noisy in his speech ". The oral surgeon examined the appellant again on 10th March 1950. He said that the reduction in his ability to chew and his inability to bite with his front teeth, of which he complained, were to be expected from the injury he had sustained and were confirmed at once by an examination of his jaws. The witness said that he had achieved the best stability he could get in the circumstances, but it had meant some loss of alignment and a difficulty in chewing food and some loss of facial appearance.

No doubt it was open to the jury to discount the opinions which were expressed about the appellant's disabilities and the prognostications of the future ill-consequences that might be apprehended. They might think also that before the accident he possessed a mouth that was by no means good and was not very efficient in mastication. But, conceding to the jury the fullest right to place a construction upon the evidence as favourable to the defendant as it would bear, it would be quite unreasonable on their part to fail to regard the appellant's injuries as very serious indeed and his sufferings as commensurate with such injuries. Even if they took an unfavourable view of the former condition of the appellant's mouth it was necessary for them to remember that what they had to consider was the present condition of the appellant's mouth in so far as it was caused by the accident and the accident would be no less a cause of the condition of his mouth because the injury inflicted might not have been so great or so serious, had the appellant possessed a perfect or a better mouth. It would indeed be unreasonable for the jury to treat the appellant as having suffered no important permanent prejudice.

The assessment of damages for physical injuries is peculiarly within the province of the jury. There is no definite standard by which they may be estimated and the considerations which

H. C. OF A. 1951. COATES v. CARTER. Dixon J. Williams J. Webb J. Kitto J.

govern the assessment are little else than guides for the reasonable exercise of a discretionary judgment founded upon experience of daily life and ordinary affairs. Courts, therefore, do not readily interfere with verdicts on the ground that damages awarded for physical injuries are inadequate or that they are excessive. Indeed it was only slowly and by a late use that the power to order new trials was applied simply to remedy the injustice done by an inadequate award of damages in an action of tort: see the cases cited by counsel in *Armytage* v. *Haley* (1) and compare the decision in that case with *Howard* v. *Barnard* (2); and *Phillips* v. *South Western Railway Co.* (3). But upon every matter in issue or in question the verdict of a jury is subject to the general rule that the finding must be one that could reasonably be adopted upon the evidence and that otherwise the verdict or finding is liable to be set aside by the court. The finding upon damages is subject to the same rule and it is well settled that if the court arrives at the conclusion that an award of damages for physical injuries is so small as to be unreasonable, then prima facie the verdict should be set aside and a new trial ordered, either of the whole action or a new trial limited to the assessment of damages.

There are cases in which it can be seen that the award of damages has been influenced by some misdirection or non-direction on the part of the judge or some misconduct, misconception or miscalculation on the part of the jury. But even where this cannot be seen something of the sort may be deduced from the unreasonable disparity of an inadequate award of damages with the injury sustained. In *Phillips* v. *South Western Railway Co.* (4) *Cockburn* C.J. said "... we think that a jury cannot be said to take a reasonable view of the case unless they consider and take into account all the heads of damage in respect of which a plaintiff complaining of a personal injury is entitled to compensation. These are the bodily injury sustained; the pain undergone; the effect on the health of the sufferer, according to its degree and its probable duration as likely to be temporary or permanent; the expenses incidental to attempts to effect a cure, or to lessen the amount of injury; the pecuniary loss sustained through inability to attend to a profession or business as to which, again, the injury may be of a temporary character, or may be such as to incapacitate the party for the remainder of his life." His Lordship then went on to say that, looking at the figures in the case, the jury must

(1) (1843) 4 Q.B. 917 [114 E.R. 1143].
(2) (1851) 11 C.B. 653 [138 E.R. 631].
(3) (1879) 4 Q.B.D. 406, at pp. 408, 409.
(4) (1879) 4 Q.B.D., at pp. 407, 408.

have omitted to take into account some of the heads of damage properly involved in the plaintiff's claim. In the Court of Appeal the same view was adopted. But *James* L.J. propounded the general formula of unreasonableness as the test. "We agree", his Lordship said, "that judges have no right to overrule the verdict of a jury as to the amount of damages, merely because they take a different view, and think that if they had been the jury they would have given more or would have given less, still the verdicts of juries as to the amount of damages are subject, and must, for the sake of justice, be subject, to the supervision of a Court of first instance, and if necessary of a Court of Appeal in this way, that is to say, if in the judgment of the Court the damages are unreasonably large or unreasonably small then the Court is bound to send the matter for reconsideration by another jury": *Phillips* v. *London and South Western Railway Co.* (1). In *Smith* v. *Schilling* (2) importance was attached to its appearing that the jury had miscarried by erroneously disregarding some consideration or erroneously taking some other consideration into account. But it was made clear by *Greer* L.J. that, though it is enough if that has happened, it is also enough "if the Court of Appeal upon all the circumstances come to the conclusion that the damages awarded are so small or so large that twelve sensible jurors could not reasonably have awarded them" (3). In other words, if the damages are so small that upon the evidence the award is unreasonable, it is unnecessary to look for an explanation or, if you like, you may infer by way of explanation that some material consideration must have been omitted by the jury or in some other way they have gone astray in the attempted performance of their duty. The point of *Rowe* v. *Edwards* (4) was, perhaps, that too much emphasis on the need for considering how the jury have misapplied their minds is likely to obscure the truth; that it is enough if the conclusion at which they arrived, however it is to be accounted for, is unreasonable (cf. *Rowe* v. *Edwards* (5)).

In the present case the sum awarded is not insubstantial, but a close consideration of the inescapable facts of the case makes it clear that it bears no reasonable proportion to the very serious injuries sustained. The amount of the special damages must of course be deducted and the remaining £310 is all that the jury have assessed to cover grievous injuries, a long period of pain, suffering and discomfort, permanent disabilities, an inconvenience

(1) (1879) 5 Q.B.D. 78, at pp. 85, 86.
(2) (1928) 1 K.B. 429.
(3) (1928) 1 K.B., at p. 440.
(4) (1934) 51 C.L.R. 351.
(5) (1934) 51 C.L.R., at p. 355.

H. C. OF A. 1951. COATES v. CARTER. Dixon J. Williams J. Webb J. Kitto J.

in eating lasting throughout his life, some facial disfigurement and the chances that he may suffer further prejudice in the remoter future either owing to his mouth worsening from loss of teeth or to a rebellion of his digestive organs, justifying the gloomy prophecies of his medical and dental witnesses. In comparison with the detriment he has sustained the sum of £310 is an entirely inadequate compensation. The amount is unreasonably small. The appellant was disposed to explain the verdict as the result of a compromise and, for that reason no doubt, his counsel informed the Court that he conceded that the new trial should go to the whole action and ought not to be limited to damages.

The appeal should be allowed with costs. The order of the Supreme Court should be discharged and in lieu thereof it should be ordered that there should be a new trial and that the costs of the first trial abide the event and that the defendant respondent pay the costs of the appeal to the Full Court of the Supreme Court.

FULLAGAR J. I agree that this appeal must be allowed and a new trial ordered, although I think that it is not far from the border-line and that it is not surprising that there have been differences of opinion.

It is, of course, essential to remember that questions and inferences of fact relevant to the assessment of damages are just as much within the exclusive province of the jury as questions and inferences of fact relevant to the determination of liability. In this case the evidence relevant to damages was very far from clear. The issue necessarily involved a comparison between the condition of the plaintiff's lower jaw before the accident and its ultimate condition after injury and treatment. Not only was there evidence on which the jury could find, but it is difficult to avoid the conclusion, that the plaintiff's lower jaw before the accident was abnormal and defective in more than one respect, and in particular in that its periphery was substantially greater than that of his upper jaw, which it overlapped to a serious extent. This was obviously a most material consideration in connection with the most emphasized disability for which the plaintiff claimed damages—the impossibility of obtaining a proper closure between upper and lower teeth. Now, it is, of course, perfectly true to say that an injury to a part of a person's anatomy which was already congenitally defective may be more serious than an injury to the same part of a person's anatomy which was previously normal and healthy. But a plaintiff must establish the relation of cause

and effect between the wrongful act of the defendant and the disability for which he seeks compensation. And in this case it was, in my opinion, clearly open to the jury to take the view that the major permanent disability of which the plaintiff complained was neither created nor seriously exaggerated by the accident. Reading the evidence, I think it very likely that they did take that view, and I think it quite a reasonable view to take. The jury could also, I think, quite properly discount, or even reject, the somewhat gloomy gastric prognosis of the doctor who gave evidence.

Having regard to the absence of clarity in the evidence, and to the other considerations which I have mentioned, the jury could, in my opinion, quite reasonably think that the case was by no means one which called for heavy damages. But, even when full allowance is made for all these matters, I think that the challenge to the verdict must succeed. I do not think that the verdict would have needed to be very much larger to escape attack. But there were certain facts which were never in dispute. The plaintiff proved special damages to the amount of £165. The verdict was for £475. This means that the jury assessed general damages at only £310. The plaintiff's jaw was fractured in three places. He was incapacitated for eleven weeks, in the course of which he received surgical and dental treatment. It is obvious that he must have undergone great pain and discomfort during that quite considerable period, and, even if at the end of it he were to be regarded as labouring under no actual or potential disability resulting from the accident, the amount of £310 would seem, at best, to be in the vicinity of the minimum that could stand. But, however much the jury may have been entitled to discount the evidence as to disability, it was not open to them, in my opinion, to say that there was *no* actual or potential disability. To say nothing of anything else, a small triangular piece in the front of the lower jawbone had to be removed with three teeth which it contained, and this must, one would think, involve some permanent disadvantage which cannot be regarded as merely trivial. And a reasonable verdict must, I think, on the evidence, add something, even if not a large sum, for added difficulty in fitting dentures as a result of the fractures and the removal of the piece of bone. These considerations are enough, to my mind, to show that the verdict does fall short of awarding a reasonable sum as damages. The verdict can barely be regarded as giving fair compensation for pain and suffering, and a verdict which adds nothing, or practically

H. C. OF A. 1951.

COATES v. CARTER.

nothing, for other general damages is not, in my opinion, a reasonable verdict in this case.

Appeal allowed with costs. Order of Supreme Court discharged and in lieu thereof order that there be a new trial of the action and that the costs of the first trial abide the event of the action and that the defendant respondent pay the costs of the appeal to the Full Court of the Supreme Court.

Solicitors for the appellant, *Harold Munro & Serio.*
Solicitors for the respondent, *Abram Landa & Co.*

J. B.