[HIGH COURT OF AUSTRALIA.]

ROWE . . . . . APPELLANT;
PLAINTIFF,

AND

EDWARDS . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Aug.* 23.

Rich, Starke, Dixon, Evatt and McTiernan JJ.

*Damages — Pecuniary loss from personal injury— Damages awarded by jury— Inadequate—Unreasonable—New trial, generally or limited to question of damages.*

In an action to recover damages for injuries caused by the defendant's negligence it was shown that the injuries were very serious and were permanent in character; that they had inflicted much pain and involved deprivation of earning capacity. The jury assessed the special damages correctly, but awarded the sum of £50 only for general damages including loss of earnings, actual and prospective, and pain and suffering.

*Held*, by the whole Court, that the sum awarded as general damages was, in the circumstances, so inadequate as to entitle the appellant to a new trial; but, by *Rich*, *Evatt* and *McTiernan* JJ. (*Starke* and *Dixon* JJ. dissenting), that the new trial should be limited to the question of damages.

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 Reginald Lloyd Rowe, an infant, by his next friend, against Leslie Malcolm Edwards for damages caused to the plaintiff by a motor vehicle colliding with the motor cycle, and side-car attachment, which he was riding. The collision occurred whilst the motor

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vehicle was entering or was about to enter the goods dock of a warehouse fronting the thoroughfare along which the plaintiff was passing. The plaintiff was employed to deliver packages and parcels in the various suburbs of Sydney, and, at the time of the accident, was returning to his place of employment. There was some conflict of evidence as to the respective rates of speed at which the motor vehicle and the motor cycle were moving; as to whether the driver of the motor vehicle gave any warning of his intention to turn and cross the road; and as to whether the plaintiff was on his correct side of the road. As the result of the accident the plaintiff's leg was broken. The break, which was a serious one, caused the plaintiff to be an inmate of a hospital for nearly three months. At the end of that period he was discharged as an in-patient, wearing walking calipers on the injured leg, which, according to the medical evidence, it would be necessary for him to wear for some time to come. The medical evidence was that there was a likelihood of permanent disability which might be serious. At the hearing it was stated that at that date the plaintiff's leg exhibited no range of movement, although some improvement was bound to take place in the future. The plaintiff's suffering was shown to be great and extended over a long period. The evidence showed that the plaintiff had incurred hospital, medical and sundry expenses to the extent of £62 4s., and that, at the date of the hearing, he had lost the sum of £47 in the form of wages which, if he had not been injured, he would have received for his work. During the course of the hearing a witness was asked whether he realized that if the plaintiff was not successful in the action he would be entitled to compensation under the *Workers' Compensation Act* 1926-1929 (N.S.W.). The question was objected to and disallowed.

The jury, who, it was not disputed, had been correctly directed by the trial Judge on the subject of damages, returned a verdict for the plaintiff "for moneys out of pocket £109 4s., and an additional £50." On a motion for a new trial by the plaintiff to the Full Court of the Supreme Court the verdict was challenged on the ground that it was so manifestly inadequate that no reasonable men could have awarded the amount given by the verdict. The Full Court dismissed the motion on the grounds that there was nothing in the

quantum of £50 which indicated that the jury necessarily failed to take into consideration the various matters to which the evidence, and in particular the medical evidence, was directed, and that although it was, in all the circumstances, extremely small, the Court was not satisfied that the amount allowed by the jury was so grossly inadequate that no reasonable body of men could possibly have come to the conclusion, had they applied their minds properly to the circumstances of the case, that the amount so allowed was sufficient.

From that decision the plaintiff now, by special leave, appealed to the High Court.

*Cassidy* (with him *J. W. Bavin*), for the appellant. Having regard to the grave injuries sustained by the appellant it is manifest that when the jury considered the question of damages it was influenced by the reference to compensation suggested as being recoverable under the *Workers' Compensation Act*. On the facts the damages awarded by the jury are so grossly inadequate as to show conclusively that, in addition to being improperly influenced, the jury failed to take into consideration some of the elements of damage (*Phillips* v. *London and South Western Railway Co.* (1) ). The verdict is one which no reasonable jury could have found. A new trial should be granted.

*Owen* (with him *Vincent*), for the respondent. Although it may be that the Court below should exercise some control over the jury, this Court should not interfere with the jury's verdict.

[McTIERNAN J. referred to *Phillips* v. *London and South Western Railway Co.* (2).

[*Cassidy* referred to *Middleton* v. *Melbourne Tramway and Omnibus Co.* (3).]

The Court below applied the correct principle to the facts; therefore it is not a case in which this Court should have exercised its discretion by granting special leave to appeal, and the leave should be rescinded. The form of the jury's finding shows that allowance

(1) (1879) 4 Q.B.D. 406; 5 Q.B.D. 78. (2) (1879) 5 Q.B.D., at p. 85.
(3) (1913) 16 C.L.R. 572.

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was made for everything up to the date of the hearing, and that an additional amount was awarded for possible future suffering and loss. Admittedly the amount is small, but at what figure is interference by the Court of appeal justified ? Where is the line to be drawn ? A Court of appeal is not entitled to substitute its own opinion for that of the jury. *Phillips* v. *London and South Western Railway Co.* (1) is distinguishable because there the damage sustained was the loss of definite earnings during a definite period and of an ascertained amount incurred as medical expenses. The evidence shows that the appellant was not free from blame. If a new trial is granted it should be in respect to all the issues, because the inference is that the jury compromised.

*Cassidy*, in reply. The new trial should be limited to the question of damages.

The following judgments were delivered :—

RICH J. In this case I think that the appeal should be allowed. The evidence shows that the appellant suffered very serious injuries, and the uncontradicted medical opinion is that the appellant will carry permanent disability. The verdict returned by the jury was very trivial having regard to such injuries. In their judgment dismissing the appeal to them, the Full Court of the Supreme Court appear to declare that the Court was not able to control the verdict for such a trivial sum for such serious injury. Special leave was granted because it seemed that the Supreme Court had not properly applied the principle in such a case. That principle has been stated in several cases, one of which I referred to during the argument, *Smith* v. *Schilling* (2). In the circumstances the verdict cannot stand. The damages are so small as to lead me to the conclusion that the jury took into account matters which they ought not to have taken into account.

The appeal, therefore, should be allowed, and on the whole I am inclined to think that the new trial should be limited to the question of damages.

(1) (1879) 4 Q.B.D. 406 ; 5 Q.B.D. 78. (2) (1928) 1 K.B. 429, at p. 440.

STARKE J. I am surprised that the Supreme Court did not interfere in this case. The verdict is unreasonable. But I doubt the wisdom of this Court granting special leave to appeal in these small and trivial cases. I should prefer that the case went down for a new trial generally. It seems to me an absolute denial of justice to tie the hands of the defendant on the main issue of negligence. The impression I have is that the verdict of £50 was probably the result of a compromise on the question of negligence.

DIXON J. In my opinion there should be a new trial in this case. The principle determining the question when the Court should interfere with a jury's verdict on the ground of inadequacy of damages awarded for personal injuries is difficult in its application rather than its statement. In this particular case, the injuries were very serious and of a lasting nature and inflicted much pain and involved deprivation of earning capacity. The jury assessed the damages correctly so far as they were special and awarded the sum of £50 only for general damages, including loss of earnings, actual and prospective, and pain and suffering. That sum appears to me so small as to be entirely out of proportion to the injury to be compensated. The rule was formulated in the Supreme Court in a manner which cannot be said to be incorrect, but which, nevertheless, emphasizes the need for considering how the jury have misapplied their minds and does not make it clear that it is enough if the conclusion at which they arrived, however it is to be accounted for, is unreasonable. The matter has been dealt with recently in the case referred to by *Rich* J., *Smith* v. *Schilling* (1), where *Phillips* v. *London and South Western Railway Co.* (2) was cited. *Greer* L.J. states the rule thus (at p. 440): "The verdict may be set aside if the Court of Appeal upon all the circumstances comes to the conclusion that the damages awarded are so small or so large that twelve sensible jurors could not reasonably have awarded them; or if the Court is satisfied that the jury have taken into account matters which they ought not to have taken into account or have disregarded matters which they ought to have taken into account." That decision does appear to me to show that the ultimate question

(1) (1928) 1 K.B. 429.

(2) (1879) 4 Q.B.D. 406; 5 Q.B.D. 78.

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to which the Court should address its mind is the unreasonable character of the conclusion. The learned Chief Justice felt himself unable to find in the quantum of £50 anything which indicated that the jury had not taken into consideration the various matters proved, and in particular the medical evidence, or had not directed their minds to the seriousness of the injuries. Whether it is possible or not to say that they failed to take any particular matter or matters into account, it appears to me to be quite clear that the sum of money arrived at is so grossly inadequate as to be such that no reasonable man with a proper understanding of the matter could have arrived at. In such a case, although it may be true that the formulation of the general rule does not admit of much difference of opinion, I think it is proper for this Court to intervene and express its view of what may or may not be done in the particular case. It is the application of general rules which elucidates their significance and determines their effect. The control of the Court over the verdict of a jury is an important matter. It arises with frequency and is attended with difficulty. In the present case, I cannot account for the jury's verdict. Two views have been suggested. One is that they were distracted from the performance of their task by a reference to the right of the plaintiff to workers' compensation which was made by counsel. The other view is that they may have been unable to agree and made a compromise. I do not feel that either of these explanations has anything to support it but conjecture. Each is possible, but on the whole I think there is such a chance of the jury having completely failed to deal with the whole case, that the action should be sent down for re-trial generally and not as to damages only.

EVATT J. I agree that the appeal should be allowed.

The award by the jury of £50 compensation to the plaintiff is utterly unreasonable, having regard to the uncontradicted evidence as to the serious character of his injuries. Such an award amounts to a miscarriage of justice, and, where such a miscarriage occurs, the Full Court has the right, as it also has the duty, of intervening and setting aside the unreasonable finding.

It has been contended that we should order a new trial generally. I see no reason to justify such a course. I am inclined to the view that the award of £50 is to be explained by the intrusion into the case by the defendant of the reference to the plaintiff's right of obtaining compensation under the *Workers' Compensation Act* in respect of the same injuries. Such a reference may operate just as unfairly to a plaintiff as a reference to insurance may operate against a defendant—all such references have therefore to be suppressed. The jury's statement that the £50 was to be " additional " suggests the possibility that they were misled into thinking that the plaintiff would, in addition to the £50, receive certain workers' compensation payments.

In this case, there is no ground for concluding that the jury's finding as to negligence should be regarded as vitiated by their unreasonable finding as to damages (see the observations of *Isaacs* and *Gavan Duffy* JJ. in *Ryan* v. *Ross* (1), which were adopted and applied by the Court in the recent case of *Coroneo* v. *Kurri Kurri and South Maitland Amusement Co. Ltd.* (2) ).

The new trial should therefore be limited to the assessment of damages.

McTIERNAN J. I agree that the appeal should be allowed and that there should be a new trial limited to damages. I have nothing to add to the reasons which have been given for the proposed order to that effect.

*Appeal allowed with costs. Judgment of Supreme Court discharged. New trial to be limited to the question of damages. Respondent to pay the costs of the appeal to the Full Court. Costs of first trial to be costs in the cause.*

Solicitors for the appellant, *Hunt & Hunt.*
Solicitor for the respondent, *H. R. Currie.*

J. B.

(1) (1916) 22 C.L.R. 1, at pp. 33, 34. (2) *Ante*, p. 328.