OF 1953 1953 No 3

IN THE HIGH COURT OF AUSTRALIA

HILL

V.

FERGUSON AND OTHERS

REASONS FOR JUDGMENT

Judgment delivered at Melbourne.

on Monday the 22nd June, 1953.

J. J Gourley, Govt. Print., Melb.

C.7163/51

HILL

v.

FERGUSON & OTHERS.

ORDER

Appeal allowed with costs. Judgment below set aside. In lieu thereof judgment for plaintiff for £1,700 with costs. Liberty to apply to the Supreme Court for payment out of the moneys paid into court.

HILL

v.

FERGUSON & OTHERS.

JUDGMENT.

WILLIAMS J.
FULLAGAR J.
KITTO J.

HILL

v.

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JUDGMENT.

WILLIAMS J.
FULLAGAR J.
KITTO J.

This appeal is brought from a judgment given by Abbott J. upon the trial of an action in the Supreme Court of South Australia.

The appellant was the plaintiff in the action, and the damages she sought were for negligence on the part of the defendants in relation to an explosion of fireworks at an entertainment which she attended as a spectator, the negligence having resulted in a small piece of brass from the explosion piercing her right eye. No defence to the action was filed. Out-of-pocket expenses were agreed at £200, so that the only question for decision was as to the amount to be awarded for general damages. The learned judge awarded £800 under this head, and accordingly gave judgment for the plaintiff for £1,000 in all.

The principles to be applied in the determination of an appeal against the quantum of damages assessed by a judge sitting without a jury have been stated in the cases of Lee Transport Co. Ltd. v. Watson, (1940) 64 C.L.R. 1, and Pamment v. Pawelski, (1949) 79 C.L.R. 406. The appellant being a plaintiff who complains that the amount awarded is inadequate, we have to ask ourselves whether that amount is so very small as to be, in our judgment, an entirely erroneous estimate of the damages to which the plaintiff is entitled. We must, of course, give great weight to the opinion of the trial judge, but we are

justified in increasing his assessment if there is a great disparity between the amount he has awarded and the amount which, in our judgment, should have been fixed.

The plaintiff was a married woman of forty years of age at the time of her injury. She appears to have divided her time between performing the domestic duties of the home in which she lived with her husband and fifteen years old son and keeping the books of her husband's business which is that of a carting contractor. As a result of the accident she has lost the sight of the injured eye, but her ability to keep her husband's books is apparently unimpaired. She professes, and perhaps rightly, to be able to drive a motor car as well since she lost the sight of the eye as before. But although it may be right in view of these facts to conclude that once she is recouped her out-of-pocket expenses she is unlikely to be substantially worse off financially in consequence of her injury, there remains a great deal for which she is entitled to recover. She underwent two operations in seven weeks for the removal of the piece of brass from her eye, and both were unsuccessful. She suffered intense pain, the memory of which the learned judge believed to be still vivid. The injured eye is now reduced in size, and as a result her appearance is somewhat affected and - what is probably more important - she has become self-conscious under the real or imagined scrutiny of people whom she meets. Because of her loss of stereoscopic vision, she has difficulty in fixing the position of some things, such as a cup into which she wishes to pour tea or a needle which she wishes to thread. What she has suffered in regard to her appearance and the exact location of objects the learned judge tended to minimise, for the reason that such matters as these may be expected to be of decreasing importance as the plaintiff becomes accustomed to her altered condition. It would indeed be a mistake to make too much of them, but it would also be wrong to forget that they are very real while they last, and that their psychological effects may well outlive them.

But the outstanding fact is not that the plaintiff has suffered physically and mentally, but that she has lost the sight of an eye. No amount of critical comment upon her own descriptions of her sufferings and her disabilities, however justified the comment may be, can be allowed to obscure the magnitude of that loss. There is no need, and indeed it is not possible, to describe the numberless ways in which the plaintiff will be handicapped for the rest of her life, whatever her capacity for adjustment may be. And she is only in her early middle age. The assessment of her damages must allow for all the possibilities which her injury opens up, for what she receives now must remain her only compensation. Amongst these possibilities there looms large the loss or diminution of the sight of her other eye at any time in the future. Even a temporary affection of that eye may spell total blindness for a time.

In our opinion an award of less than £1,500 for general damages would be inadequate in the circumstances of this case. The disparity between this amount and that which the learned trial judge allowed is so substantial as to justify and indeed to require the conclusion that his Honour's judgment should be varied by substituting £1,700 for £1,000 as the full amount of the damages to be paid by the defendants to the plaintiff.

For these reasons we must allow the appeal with costs.