IN THE HIGH COURT OF AUSTRALIA

ANSLOW

V.

PORTER

REASONS FOR JUDGMENT

ORAL

Judgment delivered at Sydney

on Thursday, 22nd April, 1954

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

C.7163/51

ANSLOW

V.

PORTER

JUDGMENT (ORAL)

DIXON C.J.
McTIERNAN J.
WEBB J.
KITTO J.
TAYLOR J.

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We are all of opinion that this appeal should be dismissed. It is an appeal from a decision of the Supreme Court of New South Wales by a majority refusing to order a new trial on the ground that the damages are excessive. In the action, which was one for personal injuries sustained by the plaintiff, injuries which were very severe, the jury awarded the sum of £12,000. There were no special damages in the ordinary sense, but the £12,000 evidently included compensation for the loss of earnings which he might have expected to receive in his occupation.

The plaintiff was a Warrant Officer in the Australian Army and at the time of the accident he was 53 years of age. The accident occurred five years ago yesterday and the litigation has slowly reached this Court. The writ was issued on 8th September 1950; the trial took place on the 3rd, 4th and 5th November 1952, and the Full Court heard the new trial application on 6th August 1953. The notice of appeal to this Court was given three weeks later and now to-day this appeal is to be decided.

There appears to have been a question of liability in dispute which the jury finally disposed of. The litigation has otherwise been concerned only with the question of quantum of damages. The law relating to that

somewhat difficult question has been laid down by this Court on more than one occasion and we do not propose to attempt to add anything to the statements of principle that have been made. Those principles are concerned with the province of the jury in assessing damages and with the control the Courts have exercised over verdicts. In the end the question for the Court comes down to the inquiry, simply formulated, whether the assessment of damages made by the jury is, in all the circumstances, such as no reasonable man could reach. It is from that point of view that we have examined the facts of the present case.

The injuries which the plaintiff suffered were indeed very severe. They resulted in his remaining in hospital for 18 months; they incapacitated him both in his locomotion and, we are afraid, in his general capacity and in respect to his personality. Mr. Meares has gone carefully through the details of his injuries and has given us references in the transcript which show exactly what is the medical opinion with reference to their character and the future expectation which the plaintiff may have. It is enough to say that he seems to be incapacitated from future work; that he was retired from the Army in 1951, as a result of his injuries; that he has not found any occupation; that his ability to move is very greatly handicapped; that he has undergone a number of surgical processes; that he must have suffered a great deal of pain, and that, according to a good deal of the evidence, his temperament and enjoyment of life have been gravely changed. In all those circumstances we think that it was within the province of the jury to assess the damages at the amount which they awarded namely £12,000.

As we have said, the award must include a figure, not specified by the jury, for his future loss of earnings. That subject was put to the jury in a manner

which possibly was less favourable to him than it might have been. That involves a question of law upon which we do not propose to embark. We put aside the element that possibly a more favourable view of his actual loss might have been submitted to the jury, and we place our decision solely on the ground that, as the case was in fact submitted to the jury, the result which the jury reached, although very high, was not such as a reasonable man might not have adopted. It is an estimate which is perhaps more than paralleled by other verdicts which have stood and we think this verdict ought to be allowed to stand. We therefore dismiss the appeal with costs.