71 of 1957

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

1957 / No 15

GRANTHAM

V.

WRIGHT

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Wednesday 2nd April 1958

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

C.7163/51

GRANTHAM

v.

WRIGHT

ORDER

Appeal allowed with costs. Discharge the judgment of the Supreme Court of South Australia and in lieu thereof order that it be adjudged that the plaintiff recover from the defendant the sum of £9794 with costs.

GRANTHAM

v.

WRIGHT

JUDGMENT

DIXON C.J.
WILLIAMS J.
WEBB J.
FULLAGAR J.
TAYLOR J.

GRANTHAM

v.

WRIGHT

This appeal relates to the quantum of damages awarded to the plaintiff in an action of damages for personal injuries. The plaintiff is the appellant and he complains that the amount of the award is inadequate. The appeal comes from a judgment of the Supreme Court of South Australia. There was of course no jury and the damages were assessed by the judge at the trial, Reed J. The action was one in which the defendant admitted liability. The injuries of which the plaintiff complained were the consequence of a collision between a motor cycle driven by the plaintiff and a utility truck driven by the defendant. The collision occurred on 18th December 1954 in Torrens Road, Woodville, near Adelaide.

The injuries received by the plaintiff were of a serious nature and they have been all the worse in their consequences because the plaintiff is a very big man. At the time of the accident he was twenty-eight years of age but he weighed eighteen stone. He was a tinsmith whose work was to solder re-inforcements on the back of stainless steel sinks, work at which he was employed at a regular wage. In the accident his right leg was very severely damaged. The femur was fractured at about the junction of its upper and middle thirds. The lower portion of the hip socket was, to use the words of the orthopaedic surgeon who took charge of his case, "stove in a little way" and the upper portion had a piece split off it. The lower portion of the thigh had a large wound, the muscle was exposed and it had to be removed because of its damaged state. The skin was destroyed. The sciatic nerve did not conduct fully and it was assumed that it had been bruised. His size and weight increased the difficulty of treating him for these injuries. He was taken to the Royal

Adelaide Hospital where he remained as an in-patient from the date of the accident, 18th December 1954, until 3rd August 1955, or 228 days. He then became an out-patient and attended as an out-patient until 14th November 1955, or 103 days. After that he was sent to the Rehabilitation Centre at Mt. Breckan, Victor Harbour, conducted by the Commonwealth Social Services Department. There he remained until 9th August 1956, a period of 272 days. On 13th August, 1956, he began work at some employment that he had accepted but the day's work and the journey there and back proved beyond him and after three days he gave it up. Reed J. in his judgment said, "His present state is such that it is hardly reasonable to expect him to attempt to undertake any employment." The plaintiff has made no further attempt to resume the earning of his living. Three months before the trial he was granted a small invalid pension, but, as Reed J. pointed out, under the provisions of the Social Services Act 1947-1956 of the Commonwealth, the award of damages may lead to the cancellation or suspension of the pension and the probability of future payments cannot therefore be taken into account in favour of the defendant in assessing the amount of the plaintiff's compensation.

The plaintiff walks with elbow crutches, a form of crutch which he adopted while at Mt. Breckan in substitution for arm pit crutches. He had also worn a caliper. His age is now thirty-one or thirty-two years and his weight has increased to 22½ stone. According to the medical evidence he requires two crutches. He has 60 degrees of movement in his knee instead of 120 degrees. He has enough muscular control to swing his leg forward when walking but not to elevate it when sitting. "When he was walking" said the orthopaedic surgeon, "he threw the leg forward and locked it

in a slightly over extended position so that stability was obtained by ligament rather than muscle. The knee was locked backwards. He made a prop with knee pushed beyond vertical. The disability in his knee was due to muscle and flesh loss from the thigh. The bone lesion did not communicate with the soft tissues. At this stage"(i.e. the time of his discharge from hospital) "he had a hip and knee both of which were inefficient." His hip movements were restricted, there being no flexion backward, and the rotational movement being small. There was a reduction of the normal forward flexion. The movements of the ankle were also restricted. The hip joint was painful and unstable. The witness had seen the plaintiff when he left Mt. Breckan, and again in June 1957. He said that the plaintiff's condition was basically the same. A few days before the trial the witness saw him again. There was little difference clinically in his condition except that the witness got the impression that the muscle in the lower portion of the thigh was a little better though nowhere nearly adequate. The plaintiff was still getting increasing pain in his hip and back. That was the sort of thing the witness would expect. The last observation referred to an opinion the witness had expressed that deterioration would occur in the hip joint which would manifest itself in increased pain. The surgeon called for the defendant considered that the hip should be dealt with surgically, preferably by reforming the joint and inserting a metal cap. This operation and an alternative surgical procedure of fusing the joint had been discussed with the orthopaedic surgeon in charge of the plaintiff's case but his opinion was against the performance of either at the present stage. Otherwise the opinions of the two witnesses about the plaintiff's case seem to differ but little. Reed J. gave some consideration to the question whether he should treat the

plaintiff for the purpose of assessing damages to be paid by the defendant as acting unreasonably in not seeking relief by submitting to the operation. But his Honour held that it was not unreasonable and of the correctness of that conclusion there can be no doubt.

As to the future earning capacity of the plaintiff the learned judge proceeded on the view that probably he would not be totally and permanently incapacitated for all kinds of work or completely unable to earn money, that at some stage he might engage in business on his own account and might do so before undergoing a further operation and that his Honour ought not to disregard in assessing damages the possibility that operative treatment might in the future improve the plaintiff's condition and remove some of his difficulties.

Apart from the loss of wages the special damages amounted to £477.5.0. The loss of wages from the date of the accident to the trial was £1983.2.9 but as against this his Honour considered that ten shillings a day should be deducted in respect of food during the period he had been in the Royal Adelaide Hospital. That amounted to £114. He deducted also £52 on account of the payments of invalid pension the plaintiff had actually received to the date of the trial. If this were deducted from the past loss of wages it would leave that figure at £1817.2.9. Without referring again to this item his Honour said that he assessed the general damages at £5250.

In the result judgment was entered for the plaintiff for £5811.5.0. The reconciliation of this exact figure is a matter of no importance. The challenge of the plaintiff is to the assessment of £5250 as general damages, including as of course it must the past loss of earnings. It will be seen that deducting from the £5250 the above figure

of £1817.2.9, it means in effect that for pain and suffering, present and future disability and loss of earning capacity only £3443 was awarded. This seems a very low figure indeed. For plainly the plaintiff's injuries mean a great and permanent change in him. No surgery can bring back to him the same bodily vigour, the same aptitudes and the same enjoyment of life which otherwise would have been his. He must always be a greatly handicapped man. The question, however, is whether the amount is so low that we ought to interfere with the assessment, depending as it must on a form of discretionary judgment. The learned judge's reasons do not themselves contain any statement of principle which is erroneous. An appellate court should not disturb an assessment by a primary judge of general damages for pain and suffering, the future consequences of disability and the other intangible elements forming part of the damages for personal injuries, unless it appears that there has been some error of principle or that the amount awarded is so disproportionate to the injury suffered as to make it appear an entirely erroneous estimate of the compensation to which the plaintiff is entitled. In Miller v. Jennings 1954 92 C.L.R. 190 the majority of the Court went a long way - perhaps too far - in upholding a very low estimate of general damages. But it was the result of an endeavour to apply the principles stated. Giving, however, our best consideration to the circumstances of the present case we think that the award is such that these principles would not justify our allowing it to stand. The plaintiff's injuries are very grave and his massive figure increases the seriousness of the consequences which would be serious enough in any man. Whatever may be the explanation, the amount awarded appears to be wholly inadequate. We think that in lieu of it a sum of £7500 should be assessed for general damages. When the amounts

of £1817 and £477 (as they may be called, ignoring shillings and pence) are added, the award amounts to £9794.

The appeal should be allowed with costs. The judgment appealed from should be discharged and in lieu thereof judgment in the action should be entered for £9794 with costs.