

ORIGINAL
IN THE HIGH COURT OF AUSTRALIA

GREEN

V.

BRUYN

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney
on Friday, 9th May 1958

GREEN

v.

BRUYN

ORDER

Appeal dismissed with costs.

GREEN

v.

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JUDGMENT

DIXON C.J.
FULLAGAR J.
TAYLOR J.

GREEN

v.

BRUYN

John William Green the defendant having died since the institution of the appeal and his executor and executrix George Thomas Green and Minnie Stella Green by their counsel consenting to be substituted as appellants there will be an order that they be substituted as the appellants and that the appeal be treated as carried on by them.

We proceed to deal with the appeal.

The defendant respondent on 2nd November 1949 suffered serious personal injuries while riding a motor cycle in Canberra. Almost six years afterwards he commenced an action against the defendant in the Supreme Court of the Australian Capital Territory for the recovery of damages in respect of the injuries alleging that they were sustained through the defendant's negligence. The action was tried on 1st and 2nd August 1957 before Simpson J. without a jury. Judgment was given for the plaintiff in the sum of £11,421.9.0 with costs. The defendant appealed to this Court against the judgment but not on the issue of liability. That was not further contested. His appeal was restricted to the assessment of damages which was challenged as excessive and as based on an erroneous mode of computation and estimation.

We agree in the view that the mode of computation and estimation is open to criticism but we do not think that the amount awarded is excessive.

The defendant's main injury was a badly crushed pelvis. The pelvic girdle was fractured and there was a gross displacement of the fragments. The femur was not fractured but the fracture of the pelvis went right through the acetabulum or upper bearing surface of the hip joint.

There were lacerations and abrasions of his face, legs and indeed of most parts of his body, but these did not leave lasting effects. He was then twenty-nine years of age, a big man six feet six inches in height and fifteen stone in weight. There would have been enough difficulty in treating his grave injuries in any case, but his bulk increased it considerably. It is unnecessary to recount his sufferings or the course of surgical treatment he underwent. It is apparent that he suffered much. At the end of three months he was discharged from hospital and two months later he resumed work. His trade was that of a carpenter and at the time of the accident he was in regular employment. When he returned to work he encountered certain difficulties as a result of his injuries but for a long time he seems to have overcome them in no small degree. He worked mostly for wages but for a time under contract with the Housing Commission, the Railways Commission and one other person. There was put in evidence a list of his earnings between 22nd March 1956 when he resumed work and 7th October 1956 when he found it no longer possible to continue. His total earnings seem to be about £3089. It may be taken for granted that but for the accident he would throughout this period be constantly earning, perhaps as a wage earner, perhaps as a contractor. Clearly he was a man of energy and enterprise and he was much handicapped by his injuries. Under the New South Wales State Construction Awards carpenters' wages rates were £9.16.8 a week in November 1949 and £18.18.4 a week in May 1957. The rise between these dates was almost continuous but at different periods the rate at which the wages rose varied. In November 1951 the weekly wage was £14.18.0: a year later £16.11.8: for two years it remained at £16.18.4, then in November 1955 it rose to £18.16.8. It is not easy to say what amount of gross earnings should be assumed as the amount

which the plaintiff respondent would have obtained if he had not been injured in the accident as he was. But it may reasonably be supposed that his earnings would have aggregated between £6000 and £7000 in the period from the date of his injury to the date of the trial.

He found it impossible to continue in his regular employment because as a result of his injury the condition of the right hip joint had gravely deteriorated. The head of the femur had become enlarged or deformed; the weight-bearing surface was irregular and there was a marked degree of osteoarthritis. To relieve the weight a caliper was prescribed for the leg and this he habitually wore.

To some degree this alleviated the pain arising from the arthritic joint. Except by orthoplastic surgery or by the fusion of the bones of the hip joint there appears to be no prospect of relief for the plaintiff respondent.

In these circumstances an assessment of damages must take into consideration loss of earnings, the very great difficulty of the plaintiff's pursuing his vocation, and his permanent diminution of earning capacity. There must of course be taken into account too the very serious change in his physical condition which will go on through his life and, unless he undergoes a serious surgical process of uncertain success, will undeniably worsen.

It is unnecessary to discuss the elements of the situation in which the plaintiff respondent has been placed. The case is unusual in the fact that so many years have elapsed since the accident and perhaps in the further fact that during those years the plaintiff has shewn a resolve to disregard his disabilities so far as possible and follow his former trade. His present condition cannot be regarded as anything but that of a seriously handicapped man and the outlook for his improvement is by no means a good one. He is entitled to a considerable amount for past pain and

suffering which, subject to the relief he may possibly obtain by one or other of the surgical processes mentioned, he must endure in the future. His reduction in earning capacity is clearly very great. He has suffered a great impairment of his natural enjoyment of life. There is moreover evidence of a change of temperament which should not be disregarded. When all these matters are considered together and to them are added the special damages including past loss of earnings, we think that an award of damages is fully justified which equals the sum assessed by Simpson J., viz. £11,4 21.7.0. We think therefore that the appeal should be dismissed with costs.