IN THE HIGH COURT OF AUSTRALIA

TURNER

V.

REIBEL

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Tuesday, 16th August 1960

W. M. Houston, Govt. Print., Melb.

TURNER

v.

REIBEL

ORDER

Appeal dismissed with costs.

TURNER

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JUDGMENT

DIXON C.J.
MENZIES J.
WINDEYER J.

TURNER

v.

REIBEL

The appellant, who was plaintiff in an action heard by Mansfield C.J. in which £7,348.18s.6d. damages were awarded, has appealed to this Court on the ground that these damages are inadequate.

The appellant was injured in a motor car collision on 21st September 1955. The action was tried in December 1959. In respect of loss of wages for the intervening period, the learned Chief Justice allowed a sum of £3,188.1s.6d. calculated by discounting £3,363.11s.8d., the sum which the appellant would have earned had he worked during this period without any break, by ten per cent. to allow for ordinary contingencies that might have interfered with his continuous employment. This £3,188.1s.6d., together with some admitted items of loss, totalled £3,348.18s.6d., at which special damages were assessed. General damages were assessed at £4,000, and it is this amount that the appellant complains is too little.

The appellant has, since the accident, been in a bad state both physically and mentally, and is still totally unemployable. Had the general damages to be regarded as compensation for all the ills from which he now suffers, it would be plainly inadequate. The difficulty about the case, however - and it is one that was present in the mind of the learned Chief Justice - is that the appellant was far from a normal, healthy man when the accident materially added to his misfortunes, and the problem is to determine how much worse off he is by reason of the injuries that he received in the collision.

The appellant was born on 15th January 1911. In 1941, when he was an electrical mechanic in the Royal Australian Air Force, he was injured by a fall, and after a long history of

physical disability and nervous instability, he was discharged as medically unfit in February 1952. At this time an x-ray examination of the lumbo-sacral spine showed osteoarthritic changes in the lumbo-sacral region, with early changes in the lumbar spine. In the years 1952 and 1953 records from the Repatriation Department showed that he was under treatment for his injured back, and that in the months of August and September 1954 he was in the Repatriation Department General Hospital, Greenslopes, for treatment for recurrent lumbo-sacral strain. Before the accident he was in receipt of a military pension calculated upon seventy per cent. disability. His condition then was that he suffered from an injury to his spine, he wore a brace, there was some osteoarthritis in the left knee, he had hypertension and suffered from an anxiety state.

On 14th December 1953, nearly a year after his discharge from the Royal Australian Air Force, he obtained employment with Truth & Sportsman Limited as an electrical mechanic and the only break in his employment due to ill health was for the month in 1954 when he was in the Greenslopes Hospital. At the time of the accident he was earning £15.12s.0d. a week, gross. Since the accident he has not worked, and he is, as his Honour found, not employable at present. Notwithstanding his serious disabilities, his Honour refused to find that he will be permanently unemployable for the rest of his life. This negative finding was criticized and it was contended that the appellant is permanently incapacitated for all work, but the medical evidence did not, we think, require such a finding, although there is no doubt that he will never be fit for strenuous work and his capacity for any work is so gravely impaired that employment in the future is possible rather than probable.

The injuries which the appellant suffered as a result of the collision were described by his Honour as follows:

"(a) Lacerated scalp and head injury short of a fracture of the skull but causing an indentation of the temporal region, with some injury to the brain;

(b) Fractured dislocation of the pelvis, with separation of the symphysis pubis with injury to the bladder, which became infected;

(c) Fractured neck of the fourth metatarsal in the right foot, and dislocation of the fifth toe, resulting in a 15 to 20 per cent. disability of the right foot;

(d) Laceration of the right ear;

(e) Broken nose resulting in a slight deformity;

(f) Severe shock;

(g) Injury to the muscles of the eye causing multiple vision;

(h) Supraspinatus tendon injury to the right shoulder causing permanent 20 per cent. loss of efficiency;

(i) Aggravation of a previous derangement of the lumbar spine."

Although it was contended that this enumeration omitted a fracture of the acetabulum, it seems to us more likely that this particular injury was covered by the description of the injury to the pelvis set out in (b) above. By reason of these injuries the plaintiff was required to spend nineteen weeks in hospital. He must for the rest of his life submit to having sounds passed through the urethra to break down strictures caused by his bladder infection. He has been caused grievous pain and suffering.

After the accident, the appellant's military pension was increased to one based upon one hundred per cent. disability, but this increase was something that his Honour did not take into account in assessing damages.

Little evidence was given about the appellant's mode of life before the accident or his family circumstances, and apart from the evidence upon his capacity to work, it is not possible to determine with any particularity the extent to which the accident has changed his mode of living. That it did so seriously is not open to doubt, and in his judgment his Honour makes particular reference to his physical disabilities, to the discomfort of the treatment he must undergo for the rest of his life, to the

persistence of headaches, to pains in the groin, and to his troubled mental state.

The difficult problem, therefore, for the Chief Justice was to express in terms of money the difference for the worse in the condition and circumstances of the appellant due to the accident. It seems to us that the contention that in assessing damages his Honour did not take into account everything that was material, fails. Likewise we cannot accept the submission that the assessment was wrong because it should have been found affirmatively that the appellant is totally and permanently incapacitated for work. His Honour, we think, correctly apprehended the evidence that capacity for work in the future will depend upon improvement in the appellant's mental condition and that this may possibly occur.

It remains to consider the contention that the damages awarded fell below the lower limit of what a sound discretionary judgment could reasonably adopt. In considering this, we think it proper to take into account not only the sum of £4,000 awarded as general damages, but the £3,188.1s.6d. awarded for loss of wages up to the date of the trial, because the appellant's state of health before the accident was not such that it could safely be assumed that he would have continued in his employment for four years without a serious breakdown. His Honour properly recognized the bearing of his assessment of special damages upon his assessment of general damages. A not unimportant consideration in his Honour's view was that the injury done in the accident formed only an aggravation of the appellant's mental condition. Nevertheless, having regard to the appellant's serious injuries, to the pain and suffering that those injuries and their treatment have caused and will continue to cause, to the long period during which he has

been unable to work and to his poor prospects of being able to do any worth-while work in the future, we think higher damages might have been awarded, notwithstanding the appellant's bad condition and poor prospects before he was injured further in the collision. However, an appellate court if guided by the principles laid down by judicial decision must not interfere with an assessment of unliquidated damages for personal injury, a matter involving what after all is a discretionary estimation of an amount to be awarded, unless the appellate court is satisfied that the assessment cannot be supported or otherwise does not conform with the conclusion which a proper application of the law to the facts requires. We have reached the conclusion that although the award was low, it was not so low as to justify the conclusion that it was erroneously reached so as to warrant our interference. His Honour's judgment shows that in a difficult case he arrived at an assessment after taking into careful consideration all relevant matters. The fact that we are disposed to think that the award should have been higher is not sufficient reason for disturbing it.

For the foregoing reasons this appeal must be dismissed.