IN THE HIGH COURT OF AUSTRALIA

NAUMANN

V.

R. JACKSON PTY. LIMITED

8/6

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Tuesday, 16th August 1960

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

NAUMANN

v.

R. JACKSON PTY. LIMITED

ORDER

Appeal allowed with costs. Order that the judgment of Mack J. be varied by the substitution of the sum of £3,898.3s.10d. for the sum of £3,363.8s.6d.

HAUMANN

v.

R. JACKSON PTY. LIMITED

JUDGMENT

DIXON C.J.
McTIERNAN J.
WILLIAMS J.

NAUMANN

v.

R. JACKSON PTY. LIMITED

This is an appeal by the plaintiff, who is dissatisfied with the amount of damages awarded by Mack J. for personal injuries received in a motor collision, which was admittedly caused by the defendant's negligence.

The accident happened on 14th July 1956, and the trial took place some three years later in May 1959. Part of the plaintiff's claim was for £1,534.15s.4d. loss of wages between the date of the accident and 29th October 1958, when she started to work again. This was claimed as special damages, notwithstanding that the writ had been issued on 27th September 1956, but nothing turns on that in this case. Counsel for the defendant invited the learned trial judge to discount this claim, and this his Honour did, allowing £1,000 only but not explaining how he arrived at this reduced amount; possibly his Honour's view was that the plaintiff chose not to work when she was capable of doing so. The claim made was for loss of wages for one hundred and nineteen weeks (i.e. until October 1958); the sum of £1,000 would cover wages for seventy nine weeks (i.e. until January 1958). At this time the plaintiff was attending the Kingsholme Rehabilitation Centre run by the Commonwealth (pursuant to s. 135 of the Social Services Act 1947-1955 (Cth), as amended) for the purpose that its name indicates. The plaintiff was treated there from August 1957 until May 1958 and thereafter, between May and October 1958, she did a typing and bookkeeping course at a business college. This she did at the suggestion of those caring for her at the Rehabilitation Centre, where she had started typing as an exercise to improve the movement of her fingers, and the later course was in some measure a continuation of remedial treatment.

It seems that the plaintiff was not fitted for office work, and she has not been able to obtain clerical employment. Her first job after the accident was handling packets of a foodstuff called "Vita Brits", which she says was beyond her strength, and after a few days she returned to work for her pre-accident employer, United Milk Vendors, putting empty cases on a moving conveyor belt; her earlier job of packing milk bottles into crates was beyond her. She remained with United Milk Vendors until 29th April 1959 when she left, so she says, because the work given to her was too heavy, and her evidence was that since then, she has not been able to find light employment. The learned trial judge was not prepared to accept the plaintiff's evidence without reservation and he found that she magnified her complaints and disabilities, and it may be that this occurred in relation to her capacity for work. Nevertheless, we cannot see any justification for fixing a date in the middle of her rehabilitation course as the proper termination of a reasonable period for loss of wages. Upon the whole, we are satisfied that the claim for £1,534.15s.4d. loss of wages should not have been reduced as it was.

It was, however, further contended that his Honour's award of £2,250 for general damages was inadequate, in that the plaintiff, who was twenty-three years of age when she was seriously injured in the head and left arm, requiring operative and hospital treatment, has been disfigured by facial and body scars, that she has suffered permanent and serious loss both of strength and of movement in her left arm, that she is depressed and worried and has lost a good deal of the joy of life, and that her chances of marriage have been adversely affected. Medical evidence was given that plastic surgery would remove any facial disfigurement that there is, and that the plaintiff's mental condition would probably respond to the attention of a psychiatrist.

We think that the assessment of damages for injuries of the sort that the plaintiff suffered, including the pain and

suffering, the disfigurement and the loss of marriage prospects of which she complains, are things about which the trial judge who saw and heard her had such great advantage over a court of appeal that only if it is clear that an error has been made should there be interference with a careful assessment such as his Honour made here.

It is apparent that in fixing damages at what may seem a low figure, the learned trial judge was influenced by his conclusion that the plaintiff exaggerated her ills, and in reaching this conclusion it is quite likely that his Honour attached some importance to the fact that while she claimed that she was incapable of working, without strength in her arm and hand, and was depressed and worried and in considerable pain, she bought a new motor car and in the eighteen months' period between the end of 1957 and the middle of 1959, she drove it herself nine thousand miles. His Honour's conclusion that the plaintiff was not a wholly reliable witness is something that an appeal court cannot review, nor can it determine with any accuracy the part that conclusion played in the trial judge's assessment of her claims. This, therefore, is not a case where it is possible upon appeal to examine the sum awarded by way of general damages as compensation for clearly established disabilities. In a case where the facts are clearly ascertained, an award of general damages involves a discretionary judgment with which an appeal court will interfere only if an error of law appears or the sum awarded is above or below what could be awarded in the exercise of a soundly based discretion; but in a case such as this where the sum awarded obviously depends so much upon the trial judge's estimate of the reliability of the plaintiff's own evidence of her disabilities and his estimate of their permanence, it would have to be an extreme case to warrant a re-assessment upon appeal on the ground that the amount of the award itself manifested error. In this case, as we have already said, a careful assessment was made and this, we should assume, took into account the plaintiff's

present condition, the prospects of the improvement of her appearance by plastic surgery, the recovery of her mental composure and the discomfort and expense of the surgical and medical treatment that she needs and the interference with work that the treatment will entail. Having regard, therefore, to the unreliability of the plaintiff's evidence, to his Honour's estimate that the permanent effects of the accident will not be serious, to the fact that a large sum is being awarded by way of special damages for loss of wages, and to the careful consideration which his Honour gave to the case, we have reached the conclusion that we should not interfere with the award of general damages.

In consequence, the only alteration that we think should be made to the damages awarded is to increase them by £534.15s.4d. on account of wages lost up to October 1959. To this extent the appeal must be allowed.