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ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

DOWNIE

V.

STONHAM

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Monday, 2nd May 1960

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

DOWNIE v. STONHAM

ORDER

Appeal allowed with costs. Judgment of the Supreme Court of the Australian Capital Territory varied by deleting the sum of £850 in the Judgment of that Court and substituting the sum of £1,500 in lieu thereof.

DOWNIE v. STONHAM

JUDGMENT

McTIERNAN J.
FULLAGAR J.
TAYLOR J.

DOWNIE v. STONHAM

This is an appeal from a judgment of the Supreme Court of the Australian Capital Territory by which damages in the sum of £850 were awarded to the appellant. The ground of appeal to this Court is that the amount awarded was inadequate.

The claim of the appellant against the respondent was based upon the negligence of the latter in driving a motor vehicle along the Duntroon-Queanbeyan Road on the 11th July 1956. By reason of the respondent's negligence, it was said, his vehicle came into collision with another vehicle driven by the appellant, who at the time was a motor driver in the Australian Military Forces, and as a result the appellant was injured. He suffered a compound fracture of the right patella. At the hearing in the Supreme Court negligence was admitted and the task of the trial judge was limited to the assessment of damages.

After the collision the appellant was admitted to the Canberra Community Hospital where an operation was performed to reduce the fractures and he remained in that hospital for about a week. On the 18th July he was taken to the Military Hospital at Duntroon where he remained for some five weeks. The leg was said to be in plaster from the top of the leg to the ankle. After his discharge from that hospital on the 15th September he was placed upon light duties in the Military Forces. Apparently this means that he was engaged in driving staff cars instead of heavy trucks from the transport section. He complains that in driving on long trips he suffered some pain in the knee and that it was necessary for him, after driving a hundred miles or so, to get out and exercise his leg. As a result of this disability he was, at his own request, transferred to

clerical work and he then underwent training as a typist. He seems, however, to have been unfitted for this work and he did not finish the course. As a result, in July 1956, he applied for his discharge from the Army and after examination by a Medical Board he was sent to the Concord Repatriation Hospital. There he was further examined and on the 21st February 1957 an operation was performed for the removal of his kneecap. He remained in this hospital until the 21st March 1957 and on the 25th July following he received his discharge from the Army.

Whilst in the Army his weekly pay was about £20 a fortnight but in addition he received quarters, keep and medical and dental attention free. After his discharge he went to Cessnock where he worked in his mother's shop for two or three months. His wages there were about £15 a week. Then, for a few months before the hearing of his action, he worked at a motor garage in Canberra where he earned about £22 a week. But this included overtime and he says that in order to earn this sum each week he worked about 55 to 57 hours. He has, he says, suffered a fair amount of pain though the condition of his knee has improved. He finds that he is unable to play tennis and it seems impossible either from his testimony or from the medical evidence to say whether he will ever be able to resume this activity.

According to Dr. McGlynn who was present at the operation for the removal of the kneecap there had been a number of fractures and he found some damage to the articular surface of the femur. He also found that there had been considerable wasting of the quadriceps muscle and subsequent examinations have shown that the muscle tone has not been restored as much or as readily as might have been expected. He thinks it probable that the appellant will develop an arthritic condition in the knee joint and it is possible

that at some future time it will be necessary for the appellant to undergo arthrodesis. At the present time the plaintiff has suffered a ten degree loss of flexion in the knee joint though his capacity to extend his leg is apparently normal. When questioned as to the degree of probability of an arthritic condition developing Dr. Glynn expressed the view that, "if pressed", he would say it was almost certain.

There is little doubt that the appellant, who was twenty-one years of age at the time of the hearing, has suffered a serious injury which has left him with a disability which cannot be regarded as one of minor degree. To a considerable extent he will be limited in his future activities both as regards employment and his general enjoyment of life. On the other hand, he has not incurred any medical or hospital expenses and up to the present time he has not suffered any loss of earnings. In the circumstances, the learned trial judge thought that £850 was sufficient to award as general damages. In our view, however, this sum was inadequate. The award, it seems to us, must have proceeded from a view which did not fully take into account the seriousness of the appellant's present disability. Quite apart from the pain and discomfort which he has suffered and the fact that his ordinary activities will be curtailed to an appreciable extent it is highly probable that his capacity for future employment will, to some extent at least, be circumscribed. It is, of course, very difficult to translate disabilities resulting from personal injury into terms of money and there would be no warrant for disturbing the trial judge's assessment merely because we might be inclined to disagree with his estimate of the damages awarded. But on the whole we are

of the opinion that the amount awarded was unreasonably low and that, in the circumstances, the judgment should be set aside. Bearing in mind the nature of the appellant's injury and the resultant impediment to his future activities, the extent to which it is probable that arthritis may develop and the possibility that a further operation may be necessary, we are of the opinion that judgment should be entered for the appellant in the sum of £1,500.