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ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

SHIELD

V.

CONOMOS AND OTHERS

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on THURSDAY, 14th DECEMBER 1961

SHIELD

v.

CONOMOS AND OTHERS

ORDER

Appeal dismissed with costs.

SHIELD

v.

CONOMOS AND OTHERS

JUDGMENT

DIXON C.J.
McTIERNAN J.
TAYLOR J.
WINDEYER J.

SHIELD

v.

CONOMOS AND OTHERS

On the 9th June 1958 the appellant suffered injuries in a road accident whilst riding his motorcycle along Milton Road, Toowong. Subsequently, in an action against the respondents, liability was admitted and damages were assessed by Matthews J. at £11,661. 8. 5. This amount was the sum of the amounts which the learned trial judge thought proper to assess in respect of property damage, loss of earnings and other items which were admitted and £10,000 for general damages. A subsequent appeal to the Full Court of the Supreme Court on the ground that the damages were inadequate was dismissed and this appeal is brought from the order of dismissal. In this Court it is contended that the general damages awarded are manifestly disproportionate to the injuries which the appellant received and an attempt was made to show that some of the findings made by the learned trial judge were not justified by the evidence in the case.

There is no doubt that the plaintiff's injuries were serious and that they have not only occasioned him a great deal of pain and suffering but have resulted in considerable permanent disabilities. There has been a considerable loss of function of the left leg and the left hand. He has some scar tissue on the face, his left eyelid droops and the right eyelid is, to some extent, affected. The sight of the left eye has been seriously impaired and it was necessary that his remaining teeth should be extracted. It is however unnecessary for us to recite the whole catalogue

of his many injuries for this was done by Matthews J. in the course of a careful judgment in which he also discussed at some length the treatment which the appellant underwent, his resultant condition and his prospects for the future. A perusal of his Honour's judgment leaves no room for doubt that he regarded the case as one which called for a substantial award and it is no less obvious that the learned members of the Full Court shared that view. Upon consideration of the evidence in the case we take the same view but we do not assent to the proposition which was advanced by the appellant that some of the findings of the learned trial judge were without foundation or that, because of them, he tended to underestimate the severity of the appellant's injuries. If there was an error it was, therefore, because the amount of general damages awarded was inadequate to compensate the appellant for the injuries which he was found to have sustained and the consequences which, according to the learned judge, they were thought to entail.

It should be said at once that the trial judge was without doubt in a much more advantageous position than this Court could ever be, upon a mere consideration of the transcript, in attempting to assess a fair measure of compensation. He both saw and heard the appellant and, indeed, accepted an invitation to inspect the appellant's body in his chambers. Having regard to many of the appellant's injuries, this was a distinct advantage for the question of what damages should be awarded was very much a matter of impression and common sense. It may be that the award may be thought to be low; but it was substantial and it is by no means sufficient for the plaintiff merely to persuade us that if we were approaching the problem in the first instance, we would make a larger assessment. It is in such a case as

this, for the appellant to satisfy us that it was so low that it was, to use a well known phrase, "a wholly erroneous estimate of the damage". The relevant principles concerning the functions of a court of appeal in relation to the review of awards of this character were discussed in Miller v. Jennings (92 C.L.R. 190) and it is unnecessary to repeat what was then said. It is, we think, sufficient to say, in the language of that case, that the appellant has failed to show that the amount awarded for general damages was "so inadequate as to be beyond the limits of what a sound discretionary judgment could reasonably adopt". That being so the appeal should, in our opinion, be dismissed.