

IN THE HIGH COURT OF AUSTRALIA

COMAN

V.

MAYHEW

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on THURSDAY, 27th JULY 1961

PHILLIP COMAN

v.

ROBERT H. MAYHEW

JUDGMENT

TAYLOR J.

PHILLIP COMAN

v.

ROBERT H. MAYHEW

In these proceedings the plaintiff, a resident of the State of Victoria, claims damages for personal injuries which are said to have been caused by the negligence of the defendant who is a resident of the State of New South Wales. The defendant did not appear in the proceedings and an interlocutory judgment by default was entered on the 15th May 1961. The matter now comes before me for the assessment of damages pursuant to an order of the Chief Justice made on the 22nd May 1961.

The plaintiff was a passenger in a motor vehicle which overturned whilst travelling along the Hume Highway on the 13th February 1960. At the time of the accident he was unmarried and was twenty-seven years of age. He was a public servant of the State of Victoria employed in the Companies Registration Branch in Melbourne. As a result of the overturning of the vehicle in which he was travelling he received a number of injuries, the more serious of which were facial lacerations and an injury to the left eye. The lacerations have left him with multiple scars on the face, the forehead, the chin and the right lower lip. Of these the scarring to the forehead is the most extensive although that on the right lower lip is also noticeable and has occasioned him no little concern. The injury to the eye caused a large haemorrhage into the vitreous body and has left him with a corneal scar which has resulted in a degree of astigmatism. In addition to these injuries the plaintiff suffered a heavy blow on the back of the head and either this or the eye injury, or a combination of both, has resulted in frequent and severe headaches. Additionally, he received bruises and extensive laceration to the shin. Following his injuries the plaintiff

was taken to the Gundagai Hospital where he received preliminary medical attention and then he was taken by ambulance to the Wagga Wagga Base Hospital where his injuries were attended to and where he remained for about a month. Thereafter he was in bed at home for about a month and he appears to have resumed work on or about the 27th July 1960.

As will be seen he was absent from work from the 13th February 1960 to about 27th July in the same year. During part of this time he was on sick leave with pay and, pursuant to his sick leave entitlement, he received the sum of £144. 12. 4. If, however, he had been able to perform his duties during this period his salary would have amounted to £522. 13. 8. He had been in the same employment for about four years prior to the accident and his sick leave entitlement had accumulated annually at the rate of eight days on full pay and eight days on half pay and the amount which he actually received was said to be the equivalent of thirteen days on full pay and thirty-nine days on half pay. Apparently, prior to the accident, he had had occasion to be absent on sick leave for some short period or periods. Additionally, it was estimated that if he had not been disabled he would, during the period for which he was actually absent from work, have received an amount by way of overtime totalling £93. 8. 9. Other amounts were claimed in respect of moneys expended on conveyance by ambulance and medical hospital and incidental expenses. In all, these items amounted to £220. 7. 6.

The question as to what amount should be awarded in respect of the plaintiff's injuries has caused me some concern. The scars on the plaintiff's forehead have now reached their permanent stage and it is said that it is unlikely that their appearance could be improved by any further surgical attention. They are extensive but,

whilst noticeable and somewhat unsightly, are in no way offensive. Nevertheless, I am sure that the plaintiff is conscious of them and that to some extent they have affected his outlook on life. How long he will be so affected is, of course, a matter of speculation. It appears, however, that the scars on the lower lip can be greatly reduced by surgery and the medical evidence was to the effect that an operation should be performed for this purpose. Such an operation and hospitalization, it is said, will cost about fifty guineas and will necessitate an absence from work for a few days. The injury to the eye will mean that in future the plaintiff will have to wear spectacles to correct his vision. The haemorrhage into the back of the eye, it is said, will be absorbed in a reasonably short time but the astigmatism caused by the corneal scar is permanent and will necessitate the permanent wearing of spectacles. I have no doubt that he has experienced considerable discomfort from this injury though it seems likely that with the wearing of spectacles his general condition will improve. There was, however, a suggestion that there is some risk of detachment of the retina though this, I think, is regarded by his medical advisers as a more or less remote possibility.

These are, in my view, the more serious of the plaintiff's injuries though it was suggested that his headaches may have resulted from some not readily discernible brain injury. But the suggestion of some such injury was no more than tentative and the injuries which he, in fact, suffered are more than sufficient to account for his history of headaches and irritability and the unusual lack of interest which it is said he has exhibited since the accident. I think it likely that these sequelae are transient and that, as Dr. Donald suggested, the plaintiff's condition in these respects will improve rapidly when the worry of this case is

removed.

The plaintiff also complains of frequent backache in association with his headaches and it has been found upon examination that one of his legs is slightly shorter than the other and this causes a slight tilt of the body to one side. This abnormality did not occasion the plaintiff any pain prior to the accident but, according to the evidence, it was inevitable that it would do so at some future time. In the result, it is said, the accident has hastened the progress of the plaintiff's condition to the stage where it causes him pain and inconvenience though by how much it has been hastened it is difficult to say.

The defendant did not appear at the hearing and consequently the witnesses were not cross-examined concerning the plaintiff's condition. Nevertheless, I am satisfied that, although he did not minimize any of his complaints, the plaintiff has undergone a very trying and distressing experience and though most of the after effects are transitory, he will be left with extensive scarring to the forehead and with a degree of imperfection in his left eye. To some extent the scarring of his face has affected his outlook on life but I feel sure that when he finds that this will not disadvantage him in the kind of occupation which he proposes to follow or in the everyday affairs of life he will adjust himself to his somewhat changed condition. Again I am satisfied that it is likely that the occurrence of headaches will become less frequent and eventually cease and that, with the aid of spectacles, he will be able to undertake, after some little delay, the studies which he says he intended to commence in February 1960. His back, no doubt, will continue at times to trouble him but the whole of this disability cannot be laid at the door of the defendant.

In all the circumstances I think a fair sum

to be awarded for general damages is £1,750 and to this sum there should be added a number of other items. First of all the plaintiff claimed the sum of £522. 13. 8 in respect of wages lost up to the time of the trial. In fact, he received £144. 12. 4 of this sum and at the trial I thought it proper that the difference ^{between} these two amounts should be allowed together with a sum sufficient to compensate the plaintiff for the extinguishment of his sick leave entitlement. But before the trial the plaintiff was absent from work on sick leave for about twelve days as the result of an illness unconnected with the accident and, since his sick leave entitlement was exhausted, his absence was at his own expense. Further the plaintiff will require some little time off for the operation which it is proposed that he should have for the purpose of reducing the scar to his lower lip. Taking these matters into consideration and adding to them the possibility that he may require some further little time off on account of sickness before his sick leave entitlement assumes any significant proportions, I think I should disregard the fact that he received sick leave on pay for part of the time after the accident. In the result the sum of £522. 13. 8 should, in my opinion, be added to the general damages. In addition to this there should also be added the sum of £220. 7. 6 for ambulance, hospital, medical and incidental expenses already incurred; ^{approximately} / £52. 10. 0 for the cost of an operation to his lower lip; £20 for medical consultation in relation to his eye and the provision of spectacles and £93. 8. 9 in respect of overtime which he would have earned if he had been able to work during the period for which he was disabled. The total of all these items of damage is £2658. 19. 11 but since it is possible the plaintiff will need some further medical attention and other spectacles from time to time I assess his damages at £2,700. Judgment may therefore be entered for the plaintiff for this amount with costs.