IN THE HIGH COURT OF AUSTRALIA

GALLOWAY

V.

ROBINSON

REASONS FOR JUDGMENT

5/-.

Judgment delivered at SYDNEY

on FRIDAY, 20th JULY, 1962

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

DAVID JOHN GALLOWAY (by his Guardian ad litem DONALD JOHN GALLOWAY

v.

ROBINSON

ORDER

Appeal allowed with costs. Order of Supreme Court varied by substituting £10,000 for £2,900.

DAVID JOHN GALLOWAY
(by his Guardian ad Litem DONALD JOHN GALLOWAY)

v.

ROBINSON

JUDGMENT

KITTO J.
MENZIES J.
OWEN J.

DAVID JOHN GALLOWAY
(by his Guardian ad Litem DONALD JOHN GALLOWAY)

v.

ROBINSON

This is an appeal from a judgment of the Supreme Court of Western Australia (Virtue J.) in an action in which the appellant, an infant, sued by his guardian ad litem as provided by Order 16, Rule 20 of the Supreme Court Rules, for damages for personal injuries suffered in an accident which was caused by the negligence of the respondent and which occurred in January 1961. The learned trial judge awarded the guardian ad litem, who is the appellant's father, the sum of £364.5.3. to cover medical and hospital expenses incurred or to be incurred by him in the treatment of the plaintiff and no question arises on the appeal as to this amount. His Honour assessed the infant appellant's damages at £2,900 and the appeal is brought to this Court on the ground that this amount was inadequate.

At the date of the accident the plaintiff was nearly three years old. His principal injury was a depressed fracture of the skull with resultant damage to the brain and for some days his life was in danger. The injury to the brain has had very serious results. Between the date of the accident and the trial in April 1962 the plaintiff had had five major and a number of minor epileptic fits, the latter sometimes occurring as often as twice a week. There was evidence that before the accident he had had a mild convulsion associated with an acute attack of tonsilitis accompanied by a high temperature but the medical opinion was that, while this might indicate some predisposition to epilepsy, this tendency would normally disappear by the time the boy was six or seven years of age, and his Honour was satisfied that "the injury had triggered off the true epilepsy from which he now suffers". As to the future, he found that with the help of drugs the epileptic fits were

likely to occur more rarely than had been the case in the past but that a complete cure was most unlikely and that the plaintiff would be obliged for many years, and perhaps permanently, to take heavy daily doses of drugs which, while having no permanent adverse effect on his constitution, would cause drowsiness and lack of concentration and thus reduce his efficiency both at school and in later life. His Honour considered also that the plaintiff's condition would, throughout his life, restrict to a substantial extent his activities in both work and play. For example, he might never be able to walk or run as well as if he had not been injured and should never play football, swim, drive a motor-car or undertake any activity in which danger to himself or others might arise if he should lose consciousness. Although there is no reason to suppose that epilepsy is hereditary, his Honour recognized that there is a widespread impression to the contrary and that this "as well as the unpleasant and frightening symptoms associated with the actual fits themselves, would be likely to affect the prospects of marriage and of social relations with the opposite sex of a man who is suffering from this particular condition". The evidence was that throughout his life the plaintiff would require regular medical attention to ensure the prescription of the drugs necessary to control his condition and this would necessarily involve him in expense when he reached an age at which he would be called upon to support himself.

When regard is had to the serious results of the injuries and to the extent to which the plaintiff's life will be affected, we think, with all respect to the learned trial judge, that an award of £2,900 cannot be regarded as reasonably adequate and that a verdict for £10,000 should be substituted for it. The appeal should therefore be upheld and the order of the Supreme Court varied by substituting the sum of £10,000 for the sum of £2,900 awarded to the infant plaintiff. The respondent should pay the costs of the appeal.