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IN THE HIGH COURT OF AUSTRALIA

MUOIO

V.

JOHN MacGILLIVRAY as Administrator ad litem of the estate of LEANDRE MICHON CLOUTIER deceased.

REASONS FOR JUDGMENT

copy 6/-

Judgment delivered at BRISBANE

on 17TH SEPTEMBER 1963.

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

MUOIO

v.

JOHN MacGILLIVRAY AS ADMINISTRATOR AD LITEM OF THE ESTATE OF LEANDRE MICHON CLOUTIER DECEASED

ORDER

Appeal dismissed with costs.

MUOIO

v.

JOHN MacGILLIVRAY AS ADMINISTRATOR AD LITEM OF THE ESTATE OF LEANDRE MICHON CLOUTIER DECEASED

JUDGMENT

KITTO J.
TAYLOR J.
MENZIES J.
WINDEYER J.
OWEN J.

MUOIO

v.

JOHN MacGILLIVRAY AS ADMINISTRATOR AD LITEM OF THE ESTATE OF LEANDRE MICHON CLOUTIER DECEASED

The appellant was the plaintiff in an action in which he claimed damages for personal injuries sustained by him in November 1954 when a motor cycle on which he was riding and a motor truck driven by a man named Cloutier came into collision. Cloutier later died and the defendant is the administrator ad litem of his estate. Townley J. who tried the action found that the collision was caused by Cloutier's negligence and gave judgment for the plaintiff for £16,000. An appeal on the ground that the amount awarded was excessive was taken to the Full Court of the Supreme Court which took the view that the amount found by Townley J. was unreasonably high and reduced it to £8,500. The appellant now appeals to this Court on the ground that the Full Court should not have disturbed the original award or, in the alternative, that if it was right in doing so the amount of £8,500 substituted for it is inadequate.

At the date of the accident the appellant was 28 years of age. He was an Italian who had come to Australia in 1951 and up to the date of the accident had earned a living doing labouring work, the only occupation for which he was fitted. His earnings were stated to be about £13 per week but there was evidence that these might well have increased to about £15 a week. His principal injuries were to his right leg and right arm and it became necessary to amputate the leg, leaving a stump about 6 inches in length. He has permanently lost 30% of the use of his right arm, and has had to undergo a number of operations, both major and minor. Had the evidence stopped there,

it is apparent that he would have been entitled to be awarded very heavy damages. It appeared, however, and Townley J. so found, that prior to the date of the accident the appellant was suffering from Buerger's Disease and that the progress of this disease would, in any event, have necessitated the amputation of both his legs or some parts thereof about 10 or 11 years after the date of the accident. Townley J. nevertheless took the view that as a result of the accident the appellant had "lost, for practical working purposes, the years between November 1954, when he was 28, and 1965 or thereabouts when he will be 39 ..... some 10 or 11 years of what would probably have been the best working period in his life" and it was on this basis that his Honour assessed the damages. This approach to the problem took no account of the fact that the progress of the disease from which the appellant was suffering would have caused incapacity for labouring work long before the stage was reached when amputation would become necessary and it was largely this factor that led the Full Court to differ from the learned trial Judge. The evidence of one of the medical witnesses who was thought by Townley J. to be the most experienced in vascular diseases of the doctors who gave evidence pointed to the conclusion that a period of three to five years from 1954 would probably have been the extent of the appellant's working life had he not been injured in the accident, and having regard to this fact the Full Court rightly considered that the award of £16,000 was manifestly too high.

It was submitted to us, however, that the amount of £8,500 awarded by the Full Court was inadequate and that a higher figure should be substituted for it. We are unable to agree. Not only was the weight of the medical evidence that the progress of Buerger's Disease

would have seriously interfered with the appellant's capacity to work long before 1965 but the facts were that by 1961 he had already been in hospital for many months because of that disease, the progress of which had not been accelerated by the accident. In these circumstances the amount of £8,500 cannot be said to be inadequate or at any rate so inadequate as to justify the interference of a Court of Appeal according to established principles.

The appeal should therefore be dismissed with costs.