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IN THE HIGH COURT OF AUSTRALIA

KRUZEWICZ

v.

ROWLAND

REASONS FOR JUDGMENT

ORIGINAL

Judgment delivered at MELBOURNE

on 26th April 1965.

A. C. Brooks, Government Printer, Melbourne
C.7639/60

KRAUZOWICZ

v.

ROWLAND

ORDER

Judgment for the plaintiff for £2,656 17s. 3d., with costs.

KRAUZOWICZ

v.

ROWLAND

JUDGMENT MENZIES J.

KRAUZOWICZ

v.

ROWLAND

This action has been brought by the plaintiff, a resident of Victoria, against the defendant, a resident of New South Wales, seeking damages for injuries alleged to have been caused by the negligence of the defendant on 27th March 1960 when a collision occurred on the New England Highway approximately fourteen miles south of Warwick, in Queensland, between a motor vehicle driven by the defendant and a motor vehicle driven by the plaintiff. In opening the case Mr. Kaye, for the plaintiff, informed me as follows: "Liability in this matter is no longer in issue and it is a matter of the assessment of damages". Before the final addresses of counsel, however, I made some further enquiry about what the defendant did concede and from the discussion which then took place it appeared that no more was conceded than that the defendant had been in some degree negligent. Whether that negligence had caused the plaintiff damage was still in dispute. It will be necessary to return to this matter in determining the order to be made but, in the meantime, I will deal with the questions whether the defendant's conceded negligence contributed to the plaintiff's injury and, if so, what damages should be assessed.

I propose to set out, in the first place, the matters about which I am satisfied. These are:-

(1) That there was a collision between vehicles driven by the plaintiff and the defendant on 27th March 1960 on the New England Highway about fourteen miles south of Warwick.

(2) That this collision was due in some measure to the negligence of the defendant.

(3) That on 28th March 1960 the plaintiff collapsed at a garage at Wallangarra near the Queensland border and was taken to the Tenterfield Hospital.

(4) That a couple of days later the plaintiff travelled from Tenterfield to Brisbane and thence by air to Melbourne and rail to Geelong.

(5) That the plaintiff visited Dr. Carter at Geelong on 31st March 1960, complaining of pains in the head in the right occipital region and the right frontal region. On examination, he was found to be tender in the right occipital region.

(6) That from the date of the collision until the date of the hearing, the plaintiff has had recurrent pains in the head, of varying intensity.

(7) That the plaintiff did not take employment after the collision until towards the end of November 1964.

(8) That the plaintiff is now, and has since the collision been, suffering from some form of neurosis, a condition towards which he was predisposed. — This is the burden of the medical evidence, but so much of that evidence as is based upon the assumption that the plaintiff suffered some physical injury in the collision affords me no assistance in view of what I am now about to say. —

Having enumerated the matters of which I am satisfied, I turn now to the matters of which I am not satisfied. I am not satisfied that the plaintiff suffered any physical injury in the collision, from being struck by a door handle, a piece of angle iron, a broken rear-vision mirror - as he has variously claimed - or anything else on his own vehicle or that of the defendant, or by reason of any dislodging or jarring of his body when the vehicles collided. If, therefore, his neurosis is of traumatic origin, I am not prepared to find that it originated with the collision, but I am in no position to

find that the neurosis from which the plaintiff has been, and is now, suffering is properly to be described as post-traumatic neurosis. Further, I am not satisfied that the plaintiff has been totally incapacitated for work from the date of the collision until towards the end of 1964.

The principal difficulty I have found in deciding this case arises from the fact that, having listened carefully to the plaintiff's evidence and having observed his demeanour in the witness box, I am unable to rely upon his evidence. He has in Court, and out of Court to doctors, mis-stated what happened to him in the collision. Furthermore, I think he has exaggerated his disabilities since the collision. I am not satisfied that, before the collision, he was free from the kind of disability of which he has complained since and on this matter I attach importance to Dr. Carter's records of visits paid to him in December 1958 and to the plaintiff's unsatisfactory account of the occurrences there referred to. His employment record shows that he was not a reliable, industrious worker. I am not prepared to infer that he would have made a success of the interstate carrying venture in which he was engaged at the time of the collision. I believe he would always have been an intermittent worker of small earning capacity; that this is all he had been prior to the collision is borne out by his employment record and his income tax returns. The pre-collision picture which I was given of his lively personality, wide interests, substantial achievements and good prospects is too favourable; and the post-collision picture which I was given of his lack of interest, his incapacity for work or pleasure and his blasted prospects is too unfavourable.

In these circumstances, and particularly having regard to the absence of physical injury in the collision, I have been in some doubt whether I should find that the

plaintiff's post-collision condition should be regarded as caused, or contributed to, by the collision but, upon the whole, I think I should find that the collision did contribute to that condition. Before the collision, there was nothing strange about his way of life and he was capable of performing tiring work such as driving a semi-trailer upon long journeys. Since the collision, he has lived an abnormal life. It is true that he drove away from the place where the collision occurred without having suffered any apparent ill consequences, but he did collapse the next day and was taken to hospital. Since then he has suffered from ill health. Evidence was given by other witnesses of two occasions on which he has lost consciousness and, although I was not greatly impressed by the incident to which his wife deposed, I think I should find that during the period since the collision he has had some "blackouts". Without attributing the whole of his abnormality to the collision, I think I should find that it did cause some change for the worse in his condition and that he is entitled to an award of damages.

The amount to be awarded I find great difficulty in assessing but in making my assessment I have, of course, taken into account the matters to which I have already referred. The action was heard more than five years after the collision occurred. Why this should have happened in a case where it is probable that the plaintiff's neurosis and his lack of will to live actively has in a measure been due to the fact that he has been a plaintiff hoping to recover substantial damages is inexplicable on sound grounds. The long delay has resulted in the inclusion in the claim for special damages of an item of £5,640 - miscalculated, it seems, as being £30 per week from 27th March 1960 to 27th November 1964 - for lost wages. This claim, for the reasons already indicated, I do not think I should allow. The better course to follow here is to make a proper

allowance for reduced earning capacity resulting from the collision. The plaintiff's net earnings during the four years prior to the collision were approximately £1,800 but I am not prepared to assess damages, even at his pre-collision rate of earning, on the footing that he was totally incapacitated for work during the four-and-a-half years following the collision. On the other hand, I think I ought to take into account some small loss of earning capacity for the future. Having regard to these considerations, I fix damages for loss of earning capacity at £1,500. A total award of £3,000 plus special damages is the best estimate I can make of a fair sum to cover the plaintiff's disabilities and other loss resulting from the collision. I therefore assess damages at £3,125 14s. 5d.

This brings me to the order which I should make.

Since writing the foregoing, I have been informed by counsel that it has been agreed that, in the event of there being judgment for the plaintiff, his damages should be reduced by 15 per cent on account of his own negligence contributing to the collision.

There will, therefore, be judgment for the plaintiff for £2,656 17s. 3d.