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IN THE HIGH COURT OF AUSTRALIA

JURIC

V.

GRDIC

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on 27TH OCTOBER 1965

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

JURIC

v.

GRDIC

ORDER

Appeal allowed with costs.

Judgment of Supreme Court set aside. Remit action to Supreme Court for new trial limited to damages. Costs in the first trial to be costs in the new trial.

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JUDGMENT

BARWICK C.J.
KITTO J.
OWEN J.

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This is an appeal from a judgment of the Supreme Court of the Australian Capital Territory upon the sole ground that the damages awarded to the respondent were excessive. Liability was admitted by the appellant for the consequences of a motor car accident in which the respondent and her son were injured and her husband, the driver of the vehicle, killed.

The respondent, aged 29 at the time, received serious injuries. According to the findings of the trial judge, these injuries included a fractured shaft of the right humerus, a head injury, injuries to the lower front rib which in turn injured the liver, and a multiple fracture of the pelvis with involvement of the pubic bones. These injuries entailed considerable pain and suffering both at the time of their receipt and during the ensuing and protracted treatment and convalescence. It is not clear what his Honour concluded was or would be the end result of these injuries: but it is certain that he found that the respondent would have some permanent loss of flexion of her right arm and for the future have a slight limp. She would also be scarred on the head - though within the hair-line - and upon the abdomen. Evidence was given that since the accident she had been in a depressed state, having been considerably shocked at the time of the accident, that she suffered from headaches, from backache, and from a pain in the groin. Medical evidence somewhat sparsely presented to the court suggested a continuance of these aches and pain. Little examination as to the possible long

term consequences of the fracture of the pelvis or of the functioning of the liver is evident in the medical evidence. However, his Honour said in his reasons for judgment that he thought the respondent would improve in relation to these conditions and that she would be able to work.

There was, to speak mildly, a paucity of evidence as to what work the respondent, if not injured, could have obtained and performed and as to the remuneration she was likely to have received. However, his Honour found that, having regard to the fact that the respondent had a child of tender years for whom to care, she had lost £500 in wages during the two years which elapsed between the date of the accident and the trial of the action. He said that "having regard to his findings" - which remark must refer to his prognosis as to the extent of her recovery and of her capacity to work - he would award £1,000 to represent her future economic loss. These two sums, £500 and £1,000 together with an agreed amount of £390 for out of pocket expenses, "come close to £2,000". His Honour, having reached this point, then said :

> "and in addition to that I have to assess the general damages in respect to the very serious injuries which she has received and the pain and suffering which she has received and the fact that she still suffers and will probably continue to suffer and to some extent has permanent disabilities.
>
> I propose to enter judgment for the plaintiff for the sum of £9,000 with costs."

This court, it seems to me, must approach the consideration of the question whether the total amount awarded is excessive on the basis of the findings of fact expressly made or necessarily involved in his Honour's reasons for judgment. Whatever view it may take of them, there is no basis for disregarding them or for treating them as being without foundation in the evidence or against its weight. I think it necessarily follows from what his Honour said in his reasons that he thought that even if the respondent had not been injured, at best, and certainly whilst her child remained of tender years, she could not have earned a great deal of money: and that, upon his assessment of her and of the medical evidence as to her condition and her physical and psychological prospects, he did not think that such earning capacity as she would have had, had been seriously impaired by the permanent disabilities which he found she had as the result of the injuries she had received. Whether the sum of £1,000 represents a small annual sum over a long period of time or a larger annual sum over a relatively short period of time, the conclusion seems inescapable that his Honour did not regard the respondent's loss of earning capacity as very serious. The sum of £7,000 odd thus represents pain and suffering up to the date of trial, headache, backache and pain in the groin in the future during the time his Honour thought that these conditions would be improving and the non-economic significance of a limitation of flexion of the right arm and a slight limp when walking. The question for the court is whether on this footing £7,000 for the items mentioned by his Honour in the passage which I have cited from his reasons for judgment is so excessive that judgment for the whole amount awarded by his Honour should be set aside. In my opinion, the amount

of £7,000 is not merely a generous award: it is, on the footing of his Honour's other findings, out of all proportion. It is, in my opinion, so excessive as to require the whole award to be set aside.

This is not a case, in my opinion, in which the court would be justified in treating his Honour's findings, which it has had to infer from the reasons for judgment, and his Honour's assessment of the respondent's economic loss, as correct and, by adding to them a sum which this court thought adequate for the items to which I have referred, construct a total sum to be substituted for the judgment for £9,000 entered in the Supreme Court. In my opinion, the only satisfactory course in this case is to send the action for a new trial limited to the assessment of damages. The appeal should be allowed with costs. The costs of the first trial should be paid by the appellant but the case will be met by making the costs of the first trial costs in the new trial.

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JUDGMENT KITTO J.

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I am of the same opinion and have nothing to add.

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I agree with the order proposed by the Chief Justice and with his reasons for it.