DANEK

v.

BARTNICZAK AND ANOTHER

ORDER

Appeal dismissed with costs.

28/2/1966

DANEK

v.

BARTNICZAK AND ANOTHER

JUDGMENT

BARWICK C.J.
TAYLOR J.
WINDEYER J.
OWEN J.

DANEK

v.

BARTNICZAK
AND ANOTHER

The appellant complains that the trial judge in this case took a view of her injuries and of her prospects which on the evidence he was not entitled to take and that for that reason the award of damages which he made should be set aside. The appellant also says that in any case, even upon the basis of his Honour's view of the facts, his award was so inadequate as to call for a fresh assessment to be made by this Court. The appellant's case has been forcefully and clearly placed before us and we have fully considered the transcript of evidence and his Honour's reasons for judgment.

It is clear that his Honour has taken a minimal view of the appellant's injuries and a maximum view of her prospects, both social and economic. His Honour had before him medical and lay evidence on both matters but also the advantage of seeing and hearing the appellant for a substantial period during the trial of the action. He undoubtedly made his own observation of her abilities and of her disabilities, and formed views therefrom upon them which were material to his conclusions upon the facts on which his estimate of general damages was based. In relation to the appellant's first submission, it is for the appellant to satisfy this Court that his Honour was wrong in drawing these conclusions of fact. It is a view which was open to him and we are not satisfied that his conclusions were erroneous. Accordingly, the appellant's first submission fails.

As to the second submission, the appellant's counsel realised that to use the language of Miller v. Jennings 92 C.L.R. 190 at 197, he had to show that the award was outside the limits of a sound discretionary judgment. We think that the award of

£4,500 general damages was somewhat low but, in its estimation, there were many imponderables about which individual judgments would show marked variations. None the less its amount has caused us anxious consideration. However, we are unable to conclude that, upon the view of the facts that the learned trial judge took, the amount of the award is manifestly inadequate. We are of opinion, therefore, that the appellant's second submission also fails and that the appeal must be dismissed.