

IN THE HIGH COURT OF AUSTRALIA

McKENZIE

V.

WHITEHEAD AND ANOTHER

REASONS FOR JUDGMENT

Judgment delivered at Adelaide
on Tuesday, 10th September, 1968.

McKENZIE

v.

WHITEHEAD AND ANOTHER

ORDER

Appeal dismissed with costs.

McKENZIE

v.

WHITEHEAD AND ANOTHER

JUDGMENT
(ORAL)

BARWICK C.J.

McKENZIE

v.

WHITEHEAD AND ANOTHER

In this appeal the appellant submits in substance two things: he says that the trial judge either misdirected himself or gave improper weight to some circumstances disclosed in the evidence; he says secondly, I think, that the award itself, looked at as a figure, is so inadequate in relation to the injuries for which it is said to compensate as to be beyond the exercise of a proper discretion in assessing the damages.

The appellant has failed to convince me of either of these points. The question for this Court is not whether this Court would have found a different figure for damages, but whether it is shown that the trial judge had fallen short of the exercise of a proper discretion in the assessment he made.

In my opinion, the trial judge did not commit any error in relation to the facts of the case, nor did he misdirect himself in any matter which related to the assessment.

So far as the amount is concerned, I am not convinced that it is an amount which is inadequate in the sense that it demonstrates an erroneous exercise of discretion. Consequently, I would dismiss the appeal.

McKENZIE

v.

WHITEHEAD AND ANOTHER

JUDGMENT
(ORAL)

MENZIES J.

McKENZIE

v.

WHITEHEAD AND ANOTHER

Mr. Burbank, in the course of an argument that put all that can be said in favour of the appellant's case, seemed to me to advance two arguments for the revision by this Court of the damages assessed by the learned trial judge.

The first is that his Honour took a too optimistic view of the plaintiff's employment prospects. His Honour did, however, have the evidence of Dr. Holmes that the appellant would be a good tradesman. It seems, moreover, that up to the date of the trial the appellant's endeavours to obtain work were probably not directed to the field in which he has the best prospects. His Honour's conclusion "I do not think he will become unemployable, but the kind of work which he will be able to do will not be as congenial, or necessarily very easy to find" seems to me to have been warranted by the evidence.

The second argument put forward by Mr. Burbank was that the learned trial judge made too much of what he described in his judgment as substantial deductions for adverse contingencies. It is true that his Honour did think the appellant's pre-accident earnings could not be accepted as a certain guide for what he would have been able to earn had there been no accident, but it is to be observed that his Honour's observations about this matter were dealing with an argument expressed as follows: "For the plaintiff, it is claimed that his earnings at the time of the accident, including the free rent of the house, free wood and electricity, and meat supplied at a cheap rate, amounted to approximately \$45 per week, and his loss of earning capacity is represented by the present value of these for the period of the remainder of his working life". This his Honour rejected.

In the circumstances and having regard to the evidence as a whole it is not possible for me to be satisfied that his Honour took into account matters that he should have avoided.

that he failed to take into account matters which he should have taken into account to the advantage of the appellant.

I agree, therefore, that this appeal should be dismissed.

McKENZIE

v.

WHITEHEAD AND ANOTHER

JUDGMENT
(ORAL)

WINDSEYER J.

McKENZIE

v.

WHITEHEAD AND ANOTHER

In my opinion, this is not a case in which this Court should set aside the judgment of the learned trial judge. I do not think that his assessment can be said to be a wholly erroneous assessment so as to require the intervention of this Court. I prefer to say no more therefore than that I agree that this appeal should be dismissed.