

IN THE HIGH COURT OF AUSTRALIA

FENYVESI

V.

JEFFREY

REASONS FOR JUDGMENT

Final Judgment delivered at Sydney
on Wednesday 20th August 1969

FENYVESI

v.

JEFFREY

ORDER

Appeal dismissed.

FENYVESI

v.

JEFFREY

JUDGMENT

(ORAL)

BARWICK C.J.
McTIERNAN J.
KITTO J.
MENZIES J.
WINDEYER J.

FENYVESI

v.

JEFFREY

In this matter the appellant has lodged an appeal as of right from a judgment of the Supreme Court of the Australian Capital Territory by which the sum of \$4046.70 was ordered to be paid as damages for injuries sustained in a road accident.

The appellant claims that this sum is inadequate as outside the range of a proper exercise of a judicial discretion in the awarding of damages.

No objection to the competence of this appeal was lodged by the respondent in conformity with the rules and no point was taken on the hearing of the appeal here by the respondent counsel as to such competence. However, the matter of competence was raised from the Bench and upon that question argument has taken place on the part of the appellant. Indeed, the greater part of the time taken in this matter has been in discussion of that question.

As part of that discussion the appellant's counsel has sought to show the court from the judgment and the evidence, that the claim which the appellant made originally could fairly be expected to bring her a verdict of more than \$7000 and he has also sought to make out what is substantially the same thing, that from that evidence and the judgment it sufficiently appears that the plaintiff has a sound claim to more than \$3000 more than the amount awarded her.

The Court having had the advantage of counsel's analysis of the evidence and of his argument thereon, is of

opinion that the award of the trial judge is not outside the range of a proper exercise of judicial discretion in the award of damages. The Court would not in any event be prepared to disturb the verdict on the basis that it was inadequate. Therefore, whether the appeal is competent or incompetent, the appellant would not succeed.

The Court in those circumstance feels that it is not necessary to decide whether the amount of the judgment is definitive of the right of appeal or whether the value of the initial claim to damages as a civil right is so definitive, or whether the expectation of recovery in the appeal of an amount of damages at least greater by \$3000 than the amount of the judgment is the matter which will determine whether or not the appeal is competent.

The Court proposes to dismiss the appeal and a majority of the Court is of the view, subject to what you might wish to say to us, Mr. Shannon, that there should be no order for costs.

After hearing Mr. Shannon, the Court ordered that the appeal be dismissed.