IN THE HIGH COURT OF AUSTRALIA

JACKSON AND ANOTHER

V.

JACKSON

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY

on THURSDAY 8th APRIL 1971

JACKSON AND ANOTHER

v.

JACKSON

ORDER

Appeal dismissed with costs.

JACKSON AND ANOTHER

v.

JACKSON

JUDGMENT BARWICK C.J.

JACKSON AND ANOTHER

v.

JACKSON

The Court of Appeal Division of the Supreme Court was of opinion in this matter that the amount of the damages awarded by the trial judge did not in itself manifest error because excessive in the relevant sense. However, the court thought the trial judge had erred in principle in two respects in his approach to the assessment of damages. Regarding itself as free because of these errors to re-assess the damages, the court did so, assessing them at $94,000 or $6,000 less than the amount of the trial judge's assessment. The appellant seeks to have that assessment set aside as manifestly excessive. There is no cross appeal by the respondent so I have no need to consider whether or not what the Court of Appeal thought were errors of principle, were such rather than mere attitudes to questions of fact.

My own inclination is to think that both the trial judge's assessment and that of the Court of Appeal Division were so much too high as to warrant a re-assessment. I feel that on the evidence, as distinct from what may possibly have been the actual fact, the element of economic loss in the assessment bulked far too largely in the ultimate figure at which both trial judge and Court of Appeal arrived. However, in a matter

in which so much must turn on personal judgment, I am not prepared in the particular circumstances of this case to dissent from the course which all of my brothers involved in the case, whose reasons for judgment I have read, propose to take.

JACKSON AND ANOTHER

v.

JACKSON

JUDGMENT McTIERNAN J.

JACKSON AND ANOTHER

v.

JACKSON

In my opinion the appeal should be dismissed. I agree with the reasons of Menzies J.

JACKSON AND ANOTHER

v.

JACKSON

JUDGMENT MENZIES J.

JACKSON AND ANOTHER

v.

JACKSON

This is an appeal from a judgment of the Court of Appeal of the Supreme Court of New South Wales reducing damages assessed by Isaacs J., who, in an action by the respondent (whom I shall call the plaintiff) for damages for injuries suffered in a motor car accident, awarded her $100,000. Of this sum approximately $86,000 was for general damages. The Court of Appeal (Sugerman P. and Manning J.A., Jacobs J.A. dissenting) reduced this figure by $6,000, assessing general damages at $80,000 approximately. The appellants here contend that the damages as reassessed are still too high and seek a further reduction from this Court.

The plaintiff when she was injured was a girl of about 16½ years of age. The accident changed her from a girl who could hope to do almost anything into a girl who, without great fortitude, could be expected to do almost nothing. The sum of $80,000 for general damages covers pain and suffering, loss of the prospects of fullness of life including marriage, and economic loss arising from destroyed earning capacity and marriage prospects.

The plaintiff was a good-looking girl of exceptional physical and intellectual abilities and attainments with the

whole world in front of her. She is a paraplegic with complications affecting her bowels and bladder, whose expectation of life has been reduced to death at 40. During the whole of the years that remain to her she must live an extremely limited life, mainly in bed or in a wheelchair, although she can and does get into and out of and drive a specially fitted motor car into which she can put her wheelchair. Her life will be a constant struggle with physical impairment and pain and the frustration of increasing incapacity. Towards the end there will be some years of utter helplessness stemming from the progress of chronic infection of the urinary tract.

For such injury and loss I am not satisfied that $80,000 was such a high figure that a second court of appeal should set it aside and reassess damages for itself. It is not for me to make an assessment of my own unless and until I am satisfied that the assessment made by the Court of Appeal should be set aside as inordinately high. I recognize, however, the near impossibility of a completely convincing assessment in such a case as this, even upon proofs much more satisfactory than those upon which the learned trial judge and the Court of Appeal have had to proceed.

The most weighty attack upon the assessment under challenge is that it must have included a too generous allowance for loss of earning capacity, because at the trial the case seems to have been conducted upon the footing that, had the plaintiff not been injured, she would have become a pharmacist

earning $40 a week; and that she wants now to be a child psychologist, working preferably with aboriginal children. It seems to have been assumed that in such an occupation she would be as well paid as a pharmacist. On this footing it has been argued that any damages for loss of earning capacity should be but nominal. I agree with Sugerman P. that to assess damages on this basis would be completely unrealistic. The figures mentioned invite incredulity and there was just no evidence to afford any foundation for the conclusion that the plaintiff's strength will be sufficient for her to realize her laudable ambition. Such realization lies in the sphere of hope rather than expectation; if she succeeds it will be against the probabilities to which the law commands attention.

I consider that the probabilities are that she will be able to earn but little. On the other hand the learned trial judge decided, and I think that it was open to him to do so, that had she not been injured it is probable that she would have become a successful professional woman whose professional life and earnings would not have ceased with her likely marriage. I cannot but conclude, on the scanty evidence available, that a high earning capacity has been almost destroyed.

In these circumstances it is my opinion that the appeal should be dismissed.

JACKSON AND ANOTHER

v.

JACKSON

JUDGMENT

WINDEYER J.

JACKSON AND ANOTHER

v.

JACKSON

The essential facts of this case are set out in the judgment of my brother Menzies. I agree in his conclusion and reasoning. I find it impossible to say, in the always imprecise area of general damages for personal injuries, and having regard to the speculative and uncertain future of the injured young woman in this case, that this Court must disturb the decision of the Court of Appeal. Their Honours thought that the assessment of damages by the learned trial judge should stand, subject to a relatively minor alteration. They did not think that, apart from the alteration they made, it was a manifestly erroneous assessment. That means that in their view it was not a verdict that a reasonable man, properly directing his mind to the facts of the case, could not have made. I can find nothing at all to suggest that, in so concluding, their Honours' decision was vitiated by any error of law or was not one reasonably open on the facts.

I would dismiss the appeal.

JACKSON AND ANOTHER

v.

JACKSON

JUDGMENT OWEN J.

JACKSON AND ANOTHER

v.

JACKSON

The case is one in which the plaintiff who suffered very severe injuries in a motor car accident and as a result became a paraplegic, was awarded damages amounting to $100,000 by the learned trial judge. The defendant appealed to the Court of Appeal on the ground that the amount awarded was excessive. In that Court their Honours were of opinion that in certain respects the trial judge had gone wrong in principle and accordingly they proceeded to assess the amount which should be awarded. They arrived at the sum of $94,000 and the defendant now appeals to this Court on the ground that that amount is excessive. It appears that of the $94,000 an amount of $80,000 was awarded by way of general damages. The evidence as to the plaintiff's injuries, the effects they will have upon her life and her capacity for work are set out in detail by the trial judge and in the judgments of the Supreme Court and they have been summarized in the judgment of my brother Menzies, which I have had the opportunity of reading. I am unable to say that the assessment made by the Court of Appeal was beyond the bounds of reason. In particular I cannot agree with the contention which was put to us that an unduly high amount must have been assessed for loss of earning capacity. The fact is, as Sugerman P. pointed out in the Supreme Court, the plaintiff, because of her disabilities, "requires special conditions for her employment. There must be adequate parking

space . . . There must be no steps. There must be suitable toilet facilities and ready access to them, not involving the negotiation of steps or waiting for a lift. This combination of conditions may not be easy to find, if it can be found at all".

I would dismiss the appeal.