

KRISHNA REDDY AND OTHERS

v.

MOHAMMED YUSUFF

[COURT OF APPEAL, 1968 (Hammett P., Gould J.A., Trainor J.A.
30th April, 10th, 14th, 30th May]

Civil Jurisdiction

Damages—personal injury—negligence—general damages—loss of earning capacity—damages awarded in respect thereof excessive—compulsory third party insurance—no bearing on damages—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 236—1955).

Insurance—third party risks—negligent driving—requirement of legislation as to amount of insurance does not limit damages claimable—Motor Vehicles (Third Party Insurance) Ordinance (Cap. 236—1955).

The respondent suffered injuries to the brain with serious and permanent results. Liability for damages was admitted by the appellants and in the Supreme Court general damages in the sum of £8,250 was awarded for pain and suffering, loss of amenities of life and loss of earning capacity. His earning capacity before the accident was £500 per annum and afterwards £150 per annum; his expectancy of wage earning life was about twenty years.

Held: Allowing £2,000 for pain and suffering and loss of amenities of life the balance of £6,250 in respect of the loss of earning capacity was excessive and the total general damages would be reduced from £8,250 to £6,000.

Per curiam: The requirement of the Motor Vehicles (Third Party Insurance) Ordinance whereby the driver of a motor vehicle is required to insure in respect of personal injuries to third parties in the sum of £2,000 has no bearing on and in no way limits the damages such a person may claim or be awarded.

Cases referred to: *Fletcher v. Autocar & Transporters Ltd.* [1968] 2 Q.B. 322; [1968] 1 All E.R. 726; *Singh v. Toong Fong Omnibus Co. Ltd.* [1964] 3 All E.R. 925; [1964] 1 W.L.R. 1382

Appeal against the quantum of general damages for personal injury awarded by the Supreme Court in an action for negligence.

S. M. Koya for the appellants.

A. D. Patel for the respondent.

The following judgments were read:

HAMMETT P.: [30th May, 1968]—

This is an appeal from the decision of the Supreme Court of Fiji by which the plaintiff respondent was awarded £8,765 damages for negligence.

The respondent sustained severe personal injuries whilst travelling as a fare paying passenger in a bus driven by the 1st appellant and owned by the 2nd and 3rd appellants. The finding of negligence is not challenged and this appeal is solely against the quantum of damages awarded.

There are two grounds of appeal, namely :-

"1. that the learned trial Judge acted on the wrong principles in awarding the sum of £8,250.0.0 as general damages to the Respondent/Plaintiff.

"2. that having regard to all the circumstances of the case the amount awarded for general damages is so excessive that it is either (a) *plainly unreasonable* or (b) it is an entirely erroneous estimate of the damages to which Respondent/Plaintiff was entitled."

The respondent is a married man with four dependent children. At the time of the accident he was aged 35 years and earning his living as a carpenter at a rate of 4/6d. an hour.

The principal injury he sustained was a compound fracture of the skull which has damaged the brain. According to the medical evidence, which is not challenged, the results of these injuries are both serious and permanent.

He was unconscious for some 2 weeks after the accident and his severe brain injuries have left him with double vision, severe headaches, and generalised weakness of all the muscles of the left upper and lower limbs. He walks with a limp on the left side. The medical evidence is that he will continue to suffer pain and discomfort all his life.

He will not be able to resume his pre-accident work as a carpenter but will only be able to do light physical work or work of a sedentary nature.

He was completely disabled from doing any work for a year after the accident.

The learned trial Judge assessed his earnings at £500 a year and awarded £515 special damages covering his loss of earnings for the year after the accident and his medical expenses. The appellants do not complain of this award of special damages.

On the claim for general damages he was awarded £8,250 in respect of :-

- (a) Pain and Suffering,
- (b) Loss of Amenities, and
- (c) Loss of Earning Capacity.

The appellants complain that this assessment is excessive.

In the first place it has been submitted that since £2,000 is the maximum figure against which a driver of a motor vehicle is compelled to insure in respect of personal injuries to third parties under the Motor Vehicles

(Third Party Insurance) Ordinance, in the particular circumstances of this case the total award of damages should not have exceeded £2,000. I am unable to accept this argument. The requirement of the law regarding compulsory third party insurance has no bearing on and in no way limits the amounts which a person injured in a motor accident may claim or may be awarded.

I observe that the medical evidence is that the respondent has a life expectancy of 30 years. His counsel has, however, conceded that his probable wage earning life might reasonably be estimated at 20 years. He is capable of some work and I think it fair to set against his actual earning capacity at the time of the accident, which was assessed by the Court below at £500 a year, a potential future earning capacity of something of the order of £150 a year.

In respect of pain and suffering and loss of amenities of life, I see no reason to differ from the submissions of counsel for the respondent that a figure of £2,000 should be considered.

It remains, therefore, for me to decide whether, on this basis, that part of the award in the Court below which might have been assigned to loss of earning capacity, namely £6,250, is or is not excessive.

In this the following are some of the matters and factors which must be taken into consideration :-

1. The likelihood of the respondent remaining in full employment for the rest of his potential wage earning life if he had not suffered these injuries;
2. The possibility of him not living for his full normal life expectancy;
3. His prospects of advancement;
4. That on the present basis of taxation in Fiji a married man earning less than £640 a year is not normally liable for income tax;
5. That any sum awarded now in respect of potential future income must be discounted in some respects for being paid in advance and is itself capable of earning income at least at current rates of interest.

I have given careful consideration to all these factors and to the helpful and practical observations of the Court of Appeal in the recent case of *Fletcher v. Autocar and Transporters Ltd.* [1968] 1 All E.R. 726. I have also considered the case of *Singh v. Toong Fong Omnibus Co. Ltd.* [1964] 3 All E.R. 925 and have been guided by the principles there laid down by the Privy Council.

After taking into account the whole of the circumstances of this distressing case, and all that has been urged on us by counsel for both sides, I have come to the conclusion that the total award of £8,250 in respect of general damages is too high having regard to the assessment that ought be attributed to loss of future potential earning capacity.

In the particular circumstances of this case I consider that a total award of £6,000 in respect of general damages would be appropriate.

A I would, therefore, allow the appeal to the extent that I would reduce the total award of both special and general damages to £6,515. I would not disturb the order for costs made in the Court below in favour of the respondent but I would give the appellants the taxed costs of the appeal.

GOULD J.A.:

I have had the advantage of reading the judgment of the learned President; I agree with it and have nothing to add.

B

TRAINOR J.A.

I concur.

Appeal allowed — general damages reduced.