

IN THE SUPREME COURT
OF THE TERRITORY OF
PAPUA AND NEW GUINEA)

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DANIEL PRENTICE

Plaintiff

- and -

THE ADMINISTRATION OF THE TERRITORY
OF PAPUA AND NEW GUINEA

Defendant

REASONS FOR JUDGMENT

This was a claim for damages for injuries sustained as a result of a motor accident. Liability was admitted by the Administration, and I was asked to assess damages. The special damages were agreed upon between Counsel at the sum of £1,082.4.0 and the substantial question involved is that of general damages.

Mr. McLaughlin for the Defendant invited me, in the course of argument, to express my views generally as to how claims of this nature should be assessed so that the Administration might have, for the future, some formula to assist it in assessing them. The Administration is in a peculiar position in this regard, since it owns and operates a very large proportion of the motor vehicles in the Territory, and consequently finds itself not infrequently involved in claims for damages. There are other peculiar difficulties arising in the Territory. Cases of this kind are not tried by jury, and the comparatively small number of cases litigated has produced an inadequate stock of decisions to establish any kind of Territorial standards. Decisions from elsewhere would afford a most useful guide, but the question immediately arises how to relate comparable verdicts in other places to conditions prevailing in the Territory. Many decisions of English Courts are briefly reported in publications available in the Territory, for example, in the English publication "Current Law". A noticeable factor, however, is that the earnings of injured plaintiffs generally appear to be very much lower than those of comparable individuals in the Territory whose earnings generally are more or less parallel with those prevailing in the Australian States.

However desirable it may be to achieve in practice some uniformity of decision in these matters, I think that it is quite impossible to achieve that result by a comparison with individual cases; if one case or the average of a series of cases were taken

as a standard, all the issues involved which had any bearing on the question of damage would have to be retried by the same Court that was to determine the pending claim. The quantum of damage is essentially a matter of fact, and the decision of another Court on questions of fact should not be allowed to influence another Court's decision. The question of quantum of damage tends to become one involving matters of law only when an appeal is taken against the reasonableness of an assessment, and then the question is not so much what is fair compensation, but rather does the evidence support such a finding. I think, therefore, that it is fundamentally wrong to approach an assessment of damages upon the trial of an action with any figure in mind based on decisions arrived at in other cases, for this is in fact considering evidence with a prejudiced mind. Every case must be separately assessed unless the parties can reach agreement, and the evidence in each case should suggest the convenient headings under which damages may be considered.

In solving any problem involving the application of reason, some "direction" for thought process appears to be essential. When a question is entirely at large there is no reason for saying, for example in a claim for damages, that a verdict for £1 or for £100,000 would be unreasonable. In jury cases the Courts have tried to meet this difficulty by leaving it to the jurymen to work out the problem for themselves, "according to the plain sober notions of the English people", and where a Judge is sitting alone, he must try to find some general guidance from the range of experience of juries' verdicts or the verdicts of other Courts based upon similar broad considerations. But I think that the mental process involved is not one of searching in that background of experience for the answer to the problem, but rather to suggest a broad range of figures to be used to afford direction to one's mind by giving a commencing point for consideration. For example, taking the common heading of "Pain and Suffering", it is generally found by experience that damages awarded under this heading do not generally run into many thousands or even many hundreds of pounds. I think it is therefore legitimate to use as a starting point the proposition that damages under this heading would be worth some hundred but not thousands in most cases, but then one's mind must turn to the evidence in the particular case to see whether the pain and suffering was severe, of long duration and attended or likely to be attended by any consequential factors. Recurring pain may produce reduced sensitivity, but on the other hand may lead to fear of impending pain and some degree of enhanced sensitivity or suffering and consequential effects on health generally.

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I think that by going through this kind of process in the present case, and having regard to the severe pain endured by the Plaintiff, I would assess the Plaintiff's pain and suffering up to the present time at the round figure of £500. This I regard as a rather high figure. I think that having selected such a figure without reference to decisions in other cases, except on a very broad basis of common experience, it is useful and permissible to look at other decisions individually, but not to see whether the sum fixed agrees with them as individual cases, but rather to see whether some point has been overlooked and to confirm the broader impression that one has from general experience.

I think that any other approach to this question of assessment of damages, especially in the use of other decisions, must inevitably produce in a very short time an "average verdict" which incidentally is merely the average of the verdicts which happen to be habitually consulted, and the proper basis of assessment of damages will therefore become entirely lost.

Another point which was mentioned by Mr. McLaughlin in argument was as to the choice of a conversion factor between British currency and Territorial currency, having regard to the higher remuneration and much higher cost of living prevailing in the Territory. If the exchange rate is simply applied to the English figure, the result, of course, is not based on any real comparison of values, nor do I think that much assistance can be gained by comparing the relative earning powers of individuals whose cases are reported. Living standards in the Territory differ enormously from place to place and from time to time, and some important items lead to expenditures altogether beyond comparison with corresponding items elsewhere. Just taking one item frequently found in these cases, the reasonable cost of medical attention which happens not to be readily available in the Territory or part of the Territory with which the case is concerned, might involve travel to Brisbane or Sydney possibly on several occasions and for substantial periods of time. The incidental costs involved are very high, and when the item of general damages includes the risk or prospect of future medical or surgical attention, it becomes virtually impossible to make any fair comparison with other cases, and the items must be allowed for on a very broad footing. Another factor is that residents in the Territory may have different intentions as to the duration of their stay in the Territory, and their intentions may again be altered or affected as a result of the accident. Their choice of future residence may in turn be substantially affected by the amount

of the verdict, since this may indicate possible economic advantages in the choice of future residence. None of these matters can be assessed on a basis of comparison, and if they affect the issue in any particular case, I think that the only remedy is to have them thrashed out in argument as matters affecting some item of damage.

In the present case the parties could not agree on a figure, and the reason for this emerged clearly enough in the course of the hearing. The Administration admitted liability and went to considerable trouble to endeavour to assess what might be fair compensation to offer the plaintiff. Some very highly qualified specialist medical officers in the Territory gave the Plaintiff's medical case history very close attention, and generally speaking, their conclusions indicated an absence of a likelihood of any substantial permanent injury, and I think that on their view of the case, an award of somewhere between £1,000 and £2,000 for general damages might be regarded fairly as a maximum, and a figure of something perhaps a little over £1,000 might represent a very fair settlement. During the trial, however, Mr. R.K. Wilson, consulting surgical specialist, called by the Plaintiff, established that there is in the Plaintiff's claim a really substantial question of permanent injuries leading to quite serious medical risks and diminution of capacity to earn income and expectation of life. Mr. Wilson's view was largely based on recent information showing that the Plaintiff's history of severe headaches had persisted far beyond the stage at which they could be attributed to temporary injuries, and he expressed the view that the plaintiff's recent history gives reliable indication that at the time of the accident he suffered from a brain injury which must be expected to be of a permanent character. When these additional facts were put to the specialists called by the Administration, these gentlemen conceded that much of this information was not available to them at the time when they investigated the Plaintiff's condition, and they had not therefore taken these factors into account. The Plaintiff was recalled to give further details of recent experiences, and upon the basis of this further information, the medical officers of the Administration revised their earlier opinions. Upon this general view of the case, one would expect that the item of general damages would be assessed at something considerably in excess of £2,000, but before arriving at a figure, the different headings suggested by the evidence must be separately considered.

In coming to a final decision on the amount of general damages, the court must take into account the fact that the plaintiff has been advised by his medical officers that he should be advised to take a course of treatment for a period of 6.5 years.

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As I have previously indicated, I think that the sum of £500 may be taken tentatively as representing the Plaintiff's pain and suffering up to the present time.

The next heading, which is clearly indicated by the evidence might be taken as including the actual loss of physical activity, restrictions in movement, and consequential limitation in the amenities of life, including, in the Plaintiff's case, such activities as gardening; which are not actually productive of income. In the Plaintiff's case, this loss, I think, is substantial but should not greatly affect his well-balanced outlook on life or his enjoyment of it. It includes loss of control of one side of the upper lip which leads to embarrassment whilst eating, and discomfort from an enlarged tear-duct which tends to cause the watering of one eye. There is also the feeling of uncertainty from inability to trust his knee joint in awkward situations, and limitation of activities due to that uncertainty. I think that as a tentative figure, £750 might be adopted under this heading.

Under the heading of loss of earnings, there is a difficult problem which defies mathematical calculation. The evidence shows that the Plaintiff, who is aged 55, is a Senior Specialist Marine Superintendent in the employ of the Commonwealth Public Service. He is the second most highly paid officer in Division 4 of the Commonwealth Service, and holds the position of Regional Marine Officer at Port Moresby. He has a wealth of experience and knowledge of small marine craft, and his duties include inspection and supervision of marine vessels and their maintenance. He is greatly hampered by limitation of movement in performing his duties, since inspection of bilges and other inaccessible parts of small craft involve kneeling, stooping and crawling, and in relation to such movements the Plaintiff is now substantially handicapped, although he still carries out these duties as well as he can, and with the assistance of another employee to extend his range of activities, I am sure that his services are still of the utmost value. Apart from this physical limitation, the evidence strongly suggests that the Plaintiff's mental activity has been considerably reduced and that he has shown a noticeable loss of memory and a tendency towards slowness in his work, particularly in relation to his paper work. He seems to lack concentration to some extent. It is impossible on the evidence to show precisely to what extent the Plaintiff's mental activities have been affected by the accident. Having regard to his age and the fact that he will be due to retire from the Public Service in about ten years time, it is possible that

what has been noticed is not entirely due to the accident, but I think that the evidence does establish that the accident has had a noticeable effect.

Having regard to the fact that the Plaintiff is in the Civil Service as a permanent officer, he has a high degree of security and protection in his employment. However, the number of Marine Bases maintained by the Commonwealth has been very substantially reduced year by year since the second war, and at the present time the future of the Marine Base at Port Moresby is open to grave doubt. There is apparently no immediate question of closing down altogether, but the activities have been reduced, and depending on the future operations of oil companies in the Territory, there is considerable risk of the Base either closing down or being so reduced in status that the Plaintiff's present position will be lost. In this event, the Plaintiff's chances of posting to another Marine Base would be slender. This would lead, in the normal course, to the Plaintiff having to reclassify, and since he is not eligible to retain seniority in other branches of the Civil Service and would not be qualified to take on work far removed from his present employment, his best prospect would appear to be to reclassify as a storeman handling marine stores and equipment, of which he has a great knowledge. This kind of reclassification may be forced upon the Plaintiff in any event if his disabilities become any greater or if he finds himself unable to cope with his present work. It must be expected that any such reclassification would involve some loss of salary, and depending entirely on what positions may become available to him, that loss of salary may be quite substantial. There may be, incidentally, other losses which cannot be predicted at the moment.

It appears, therefore, that the Plaintiff's injuries have not directly caused any loss of earnings yet but that they may do so in the future. There is also the further risk that if he loses his present job for reasons unrelated to his injuries, his capacity for alternative employment will be seriously restricted by his injuries. This involves a double contingency.

I think that a broad pattern emerges indicating that the Plaintiff will probably not suffer any financial loss immediately and should be fairly safe from substantial loss for a period of something like five years, but that as he gets closer to retiring age, his risk of loss will increase. I must have regard to the fact that with reasonably good fortune, the Plaintiff might not in fact lost anything under this heading. The item represents a

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risk rather than an actual loss, and it must be assessed now once and for all. I must allow for the fact that in awarding damages under this heading to the Plaintiff today, he is getting the advantage of pre-payment over what will probably be a substantial period of time, and I think that a fair estimate of the risks involved would be the sum of £1,250.

Outside the specific headings that I have so far considered, there are a number of uncertainties which in this case become very vague, and I think that because of their vagueness they should be all lumped together and some allowance made for them. For example, it is clear from the medical evidence that the Plaintiff would be very wise to undergo a further operation to have his left knee-cap removed. This will involve substantial expense, inconvenience and discomfort if he has the operation performed, but if he does not have the operation performed, he will have to face the prospect of increased pain and difficulty with his left knee arising from fragmentation of the knee-cap, and almost certain development of serious arthritis. There are other medical implications which cannot be resolved with any degree of accuracy just now. They include the prospect of future pain and suffering, possible future operations or medical treatment to alleviate the damage done to the facial nerves, and possibly some kind of surgical or medical treatment designed to relieve the persistent headaches from which the Plaintiff is still suffering and is likely to suffer in the future. These things can only be regarded as risks at the present time, and the extent to which medical assistance may become necessary or beneficial will largely depend on the Plaintiff's progress from time to time.

Another entirely uncertain item is the question of loss of expectation of life, which Mr. Wilson estimates as amounting to ten years, and which Dr. Tusa is unable to estimate but thinks might amount to something like two years.

Another similar item is the risk of illness arising from greater susceptibility to the invasion of germs. The evidence indicates a risk that infection may gain access through the fractured bones of the skull, or that eye infections may arise from the damaged tear-duct.

I think that for all these uncertain items that I have last mentioned, an allowance of £750 would be fair.

Taking all these figures which I have mentioned, they may be set out as follows:-

Pain and suffering	£500
Loss of activity, etc.	£750
Earning capacity	£1,250
Various uncertainties	£750
	<u>£3,250</u>

The above process suggests a tentative figure of £3,250 which appears to me to be a reasonable sum. Perusal of the English cases referred to by Mr. McLaughlin leaves me with no impression that this figure is out of proportion, and I therefore adopt it as a proper sum to award as general damages. Special damages agreed upon amount to £1,082.4.0 and I therefore give judgment for the Plaintiff in the sum of £4,332.4.0.

CHIEF JUSTICE

24/12/58.