

251

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

1960 No. W.S.34 (P)

BETWEEN

GRAHAM MICHAEL FROST
(an infant) by his next
friend CHARLES FREDERICK
FROST.

Plaintiff.

-and-

THE COMMONWEALTH OF AUSTRALIA
Defendant.

REASONS FOR DECISION

HANN C.J. : I am asked to assess the damages in relation to the claim of the abovenamed infant against the Commonwealth of Australia in respect of personal injuries suffered when his face was severely burned by acid negligently left in a dangerous position by an employee of the Commonwealth. Liability upon the claim has been admitted and the parties have endeavoured to reach agreement as to the proper amount of damages. There is not much dispute in the matter but since the infant is very young and has a good deal of essential surgical treatment before him, it is necessary for the damages to be assessed having regard to some uncertainty as to the extent to which his injuries will lead to permanent disfiguration^{ment}.

Specialist medical opinions have been submitted to the Court, and it appears that on account of the age of the Plaintiff, plastic surgery is likely to reduce the present unsightly and disfiguring scar, to a thin line which under favourable conditions is likely to be scarcely noticeable. The reduction of the present scar is also likely to avoid discomfort and distortion of the face.

It is quite clear that the operation is one calling for the highest surgical skill which will be available to the Plaintiff in Sydney. Since the operation is one involving special difficulties, and likely to involve decisions as to the modus operandi being made and varied during the operation itself, it is quite probable that a second operation will be needed at a later stage to clear up any residual imperfections

remaining after the first attempt.

Nobody can say at the present time, whether the second operation will be necessary, or whether if the results of the first operation have reduced the residual scars to about the border-line of tolerance, the Plaintiff is likely to want to undergo the second operation, or put up with the residual scarring.

On the opinions expressed, I think that allowance should be made for the second operation, for it appears to me that it would be a remarkably skilful and successful operation if near perfect results could be achieved from a single operation. The surgeon's responsibility covers so many difficult aspects, that it would be remarkable if no further treatment of any kind were required after the first operation.

If the operations are performed in Sydney whilst the Plaintiff and his parents are living in the Territory, it will be necessary for him to undertake the journey, and on account of his age and the distance involved, I think it would be a reasonable and proper expenditure for his mother to accompany him. The parents have two small children, and the father has work to do and cannot reasonably look after the other small child in his wife's absence, therefore I think that it would be reasonable for the other child to accompany the mother. If expenses of this kind are incurred, the cost will be nearly £200 per trip with living expenses for a period of about two weeks. On the other hand it may be unnecessary for any of this expense to be incurred. The Plaintiff's father has asked for a transfer to Australia and he is likely to be posted to Melbourne, but has no means of knowing what his movements will be. Whilst he is living in the Territory, he is entitled to leave with fares paid for himself and his family every two years. He is due for leave in September of this year, and it would fit in quite well with the Plaintiff's needs as to operations, if these were to be performed during the next two visits of the family to Australia for leave. If the Plaintiff's father is living in Melbourne at the time when either of the operations is performed, it might be reasonable for the Plaintiff with or without his mother and sister, to travel to Sydney for the purpose, or it may be that adequate surgical skill being available in Melbourne, it would be fully in the interests of the Plaintiff for the operation to be performed there.

It is true that the Plaintiff has no right to require his parents to devote their leave entitlement

to his surgical treatment so as to save expense which would legitimately fall on the Defendant, but in the present case both sides have approached this whole question very sensibly and reasonably and I think that the uncertainties involved must be approached on a basis of broad allowance for probably contingencies.

I think that the parents if given a fixed sum for the cost of the operations, would be sensible enough to make the ~~programme~~ ^{operations} fit in as well as they could with their leave programme so as to save inconvenience to themselves and to their children and to save expense all round. ~~whenever~~ ^{wherever} the family is living at the time and wherever the operation may be performed, some small out of pocket expenses will be involved in travelling and incidental items, and I think that the position can be met by including a quite nominal sum in the general damages. I must now assess the damages once and for all on the basis of what will most probably be spent, and I think that as far as I can assess the present risk, it is unlikely that any substantial sum will be spent in fares and incidental expenses.

The remaining items of general damages cover pain and suffering, which ~~has~~ ^{have} been quite severe for a short period, and the inconvenience which has been perhaps of more consequence and will continue until the operations are successfully concluded. There is a possibility that the operation will involve further pain and suffering for a short period and again this is difficult to ~~precise~~ ^{predict}, for a lot will depend on the precise nature of the skin graft that will prove to be necessary, in the course of the operations. At the moment the future prospect of the Plaintiff in regard to additional pain and suffering is quite favourable.

The next item is for the residual permanent injuries which he must necessarily suffer. It is expected that the surgery performed with the skill which is available, should reduce the scarring to a very thin line and restore the mechanical functioning of the face to a normal state. On account of the age of the Plaintiff, it is not possible to say whether the remaining scar might have any effect on the future earning capacity of the Plaintiff in any vocation which he may decide to follow. The scar is not likely to reduce his prospects of marriage, for he should not be permanently disfigured in any real sense. He may be conscious under various conditions of differences in skin colour on his face

and there may be quite small side effects which would cause some inconvenience, but there is no reason to suppose that by the time the Plaintiff reaches adult age that the residual scar should have any noticeable effect on his enjoyment of life. There is no reason to suppose that he will develop into anything but a normal healthy man able to enjoy life to the full.

I must therefore assess damages for permanent injuries upon the footing that the scar, although situated in a particularly conspicuous and unfavourable area and although quite extensive at the present time, ought to be reduced to a thin line running from the side of the nose to the jaw, with a few small and relatively insignificant blemishes.

ASSESSMENT

The special damages already incurred for medical treatment and other incidentals, have been incurred by Mr. Frost Senior, the father of the Plaintiff and Counsel have agreed that other arrangements having been made to cover those items, they should not be included in the damages awarded to the infant Plaintiff. I therefore make no allowances as to Special Damages.

The cost of operations yet to be performed, fall under the heading of General Damages and are not precisely ascertainable. Nevertheless the greatest probability is that two operations will be necessary and so I will allow £200 as a fund out of which these expenses can be met.

Under the remaining heads of General Damage, I assess the amount at £950, including a small nominal allowance for the prospect of some travelling expenses having to be incurred.

The order pronounced is to be settled by the Registrar and is to be to the following ^{general} effect:-

The sum of £1150 is to be paid into Court on behalf of the infant Plaintiff and invested by the Registrar in authorized trustee investments until the infant Plaintiff reaches the age of twenty-one years, whereupon the whole of the monies then remaining in Court and interest thereon, are to be paid to the Plaintiff.

As to the sum of £200, being part of the damages awarded, the Registrar is to be at liberty, without further direction from the Court, to pay to the Solicitors for the Plaintiff from time to time, his necessary expenses which may be incurred with the authority of the Plaintiff's

next friend, in surgical, hospital and anaesthetist's fees. Such payments out are to be made upon presentation of appropriate vouchers to the Registrar, verified by Affidavit.

Should application be made for any further or other funds to be paid out of Court for the benefit of the infant Plaintiff, such application is to be made to the Court or a Judge to sanction the same.

As to the whole of the sum to be paid into Court, the Registrar instead of personally investing the money in securities, is to be at liberty to invite the Treasurer and Director of Finance, to undertake the investment of such monies on behalf of the Court and in terms of this order and of any further or other order which may be pronounced in relation thereto and in terms of my direction to the Registrar as to the investment of monies dated the 9th July 1962.

Court.