

SMITHERS, J.  
PT. MORESBY  
21/2/1964

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

ERIC FRANCIS THOMAS

Plaintiff

WALTER HENRY COX

Defendant.

REASONS FOR JUDGMENT.

On the 23rd day of December, 1962, the plaintiff was a healthy man of fifty six years of age. On that date he was a passenger in a motor car, driven negligently by the defendant, head on into another vehicle. The plaintiff had time to appreciate the impending disaster but his next recollection is of being lifted in or out of an ambulance with a terrific pain in his side. He next remembers awakening in hospital where he was under treatment for multiple injuries. His observable injuries were lack of consciousness, lacerations to the right elbow, a laceration to the upper left arm and shoulder, abrasions of the chest and both shoulders and both knees, a tender swelling over the right buttock with the right hip rigid in flexion. Later it was discovered that he had a posterior dislocation of the right hip with a fracture of the roof of the acetabulum.

The lacerations were sutured and Mr. Smyth reduced the dislocation. The next day the plaintiff was put in a plaster jacket which extended from about the lower part of the ribs right down the right leg and almost to the knee of the left leg. The plaintiff remained in this jacket for seven weeks lying on his back unable to move. To make matters worse his shoulders had suffered injuries from which he suffered great pain, when, for essential purposes, he was moved by the nurses frequently each day.

As a result of his immobilisation, the fracture of the acetabulum and the other injuries in the hip structure were so repaired that complete painless movement of that joint has now been achieved. Unfortunately, however, as a side effect of the treatment, a large internal blood vessel in the calf of the leg suffered a thrombosis and is now completely and permanently blocked. Although a subsidiary circulation has established itself, it is not fully satisfactory and the foot and lower leg of the plaintiff is in a permanently swollen condition. Full vascular circulation has not been, and never will be, achieved and the result of this is heaviness in the leg, increased fatigue and recurring aching. At this stage

the plaintiff does not suffer from neurosis and he appears to have adjusted himself psychologically to his various disabilities. Nevertheless in the earlier stages of his immobilisation he suffered a severe anxiety neurosis. This was hardly to be wondered at as he awoke in hospital to an awareness of pain in the hip, various abrasions, complete immobilisation and, above all, a kind of paralysis in the arms which he could not understand. This was due to injury to both right and left bronchial plexus. These are nerves coming from the spine and serving the arms and hands. At first his arms were seriously affected but, by now, the nerves have regenerated considerably. However, due to this nerve damage, the fourth and fifth fingers in each hand are still the subject of anaesthesia and all these fingers have suffered a loss of efficiency. In addition, they are subject to pain if compressed as in a too hearty handshake. The evidence is that there will be no further improvement in the condition of these fingers.

In addition, the left shoulder muscles are in a condition in respect of which the evidence shows that they will suffer recurrent painful spasms three or four times a year and which, according to the doctor, will incapacitate him for a week or so while his arm rests in a sling and he is treated by some form of physiotherapy.

Finally, the injury to the acetabulum was such that notwithstanding the absence of symptoms at this stage it will cause or accelerate the onset of arthritic changes of unpredictable importance. His admitted special damages are £329.15s.6d. but an amount of £50.0.0d. in respect of fees for working as a clerk in connection with starting price betting is in dispute and was also lost by him as a result of his being laid up.

The plaintiff was an active man for his age, living a full business life as Manager of the Burns Philp Hotel and he was interested, but not an active participant, in sport.

Apart from the special damages the plaintiff is entitled to a just and fair compensation in money for the injuries he has suffered as a consequence of the wrong. This includes a reasonable estimate of future money loss and expenditure, a sum forming a reasonable recompense for the pain and suffering the plaintiff has undergone and for any further pain and suffering he may be expected to undergo and an amount to compensate him for the permanent injury he has sustained and the changed circumstances of life it entails. These items of compensation cannot be calculated and can only be measured according to the standards which generally prevail and a reasonable conception of what is adequate to the occasion. Pamment -v- Pawelski, 79 C.L.R. 411.

It has been pointed out by Mr. Kirke that the plaintiff is not a young man and that he will bear such disabilities he has for a limited period and that the activities of life of which he will be deprived are themselves limited due to his having arrived at the

later stage of life. He points out that the hip movements are full and free and that it may well be that there will be no significant arthritic changes due to the injuries suffered in the accident. He urges that the plaintiff, although active in a general sense, was on the whole a man of sedentary habits. He says that the period of great pain was short, that there has been in a general sense a good recovery. He submits further that, generally, I should keep in mind a proper counsel of moderation.

Mr. White, on the other hand, submits that the plaintiff is not so very old, only fifty seven, and may be expected to bear his disabilities for many years and that the question is not how much the plaintiff has recovered but how much below par his condition is and will be by reason of the injuries caused by the defendant. He points out that the plaintiff suffered initial pain of very great severity, hospital treatment of a most painful and exhausting kind, involving personal indignities and much mental suffering, that the permanent injuries to the lower foot are not minor and in this climate assume an important detrimental influence on the plaintiff's physical endurance and general happiness and are permanent. He points out that the plaintiff's capacity to lift anything with the left arm is considerably reduced and controlled by pain, that four of his fingers, albeit the least important, are materially reduced in efficiency and that he will be subject to recurring painful attacks involving pain and which, at the very least, will put his left arm out of action for a week or so and may involve medical expense. He urges that the plaintiff has been "slowed down" at a stage in life when such a development constitutes a considerable disability, and that there is a risk that the injury to the acetabulum will have most important and distressing effects.

Mr. White's summing up is, in my opinion, a fair one and Mr. Kirke's comments are also fair and must be kept in mind. I take into account what each has urged. What I am doing is attempting to calculate a reasonable recompense in money for all this suffering and disability, past and future, including the risk of deterioration of the hip condition. I think the plaintiff suffered greatly in the early stages of his injuries and that he is still, and always will be, seriously handicapped by the multiple injuries he has suffered. Apart from the continuing disabilities due to his heavy foot, his disabled fingers, he will yet undergo recurring bouts of pain in connection with the injury suffered by his left arm. These will occur during the latter and final stages of his life and give him much suffering and unhappiness. He appears to have borne his disabilities with fortitude but the physical injuries will require him to exercise his fortitude to the full from now onwards and that the period involved may well be for many years. I believe that in being reasonable one is entitled to have full regard to the importance to every human being of all those physical capacities with which he was blessed and of which he has been deprived, or in the use of which he will be impeded. It is reasonable to recognise that in the latter years of life disabilities imposed by one citizen upon another in addition to those bound to be imposed by nature, assume a special importance.

I think I must treat the risk of serious arthritic onset due to the injury as slight rather than serious but it is not to be ignored. Doing the best I can to make a reasonable assessment of the compensation to be awarded I award the plaintiff £2,500 general damages.

It appears that the operations of the plaintiff as clerk to the bookmaker were not illegal. The special damages are therefore £379.15s.6d.

Judgment for £2,879.15s.6d.

- - - - -