IN THE COURT OF APPEAL

GRENADA

Civil Appeal No. 3 of 1969

Between:

NEWTON MITCHELL
and
VICTORIA SMITH — Appellants

v.

LUCY BATSON — Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Gordon
The Honourable Mr. Justice Glasgow (Acting)

C. Bristol and A. Taylor for the Appellants
E.A. Heyliger instructed by O. Gill for the Respondent

30th January, 1970

JUDGMENT

GORDON, J.A.

On the 4th of February, 1967, the respondent in this action, when travelling as a passenger on a bus owned by the appellants, was the victim of an accident resulting from the bus having run off the road. She suffered serious physical injuries, namely:

a wound on the scalp;
concussion
fracture of the skull;
fracture of the lower jaw;
a wound on the left ankle,

which necessitated her being hospitalised for 23 days, one week of which she was in a state of unconsciousness. According to Mr. Holgate, the Surgeon Specialist, her injuries were serious and dangerous to life.

The medical evidence further disclosed that resulting discomforts were headaches, disturbed sleep and a possible impairment of personality.

In an action brought by the respondent in the High Court liability was not denied, and on an assessment of damages by the learned trial judge, an award in the following terms was made:

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	Special damages	- 848.78
General damages	Pain and suffering	- 5,500.00
	Impairment of personality	- 4,000.00
	Loss of wages	- 1,600.00
	Aggregating	-11,948.78

-Before this Court-

Before this Court counsel for the appellants restricted his argument to the award made for general damages, urging that on the principle enunciated by Jowett,L.J. in British Transport Commission v. Gourley, (1955) All E.R.797 at p. 802, the learned judge had erred in his assessment of damages for loss of wages in that he had made no allowance by way of deduction for tax to which the respondent may have been liable. Counsel abandoned this point, however, when this Court pointed out that no tax would be payable on the basis of the assessment for loss of wages made by the learned trial judge.

Counsel for the appellants stressed that there was an overlapping in respect of the award for pain and suffering - $5,500.00, and that for impairment of personality - $4,000.00 under the head general damages. Citing Cornilliac v. St. Louis, (1964) 7 W.I.R. 491 in support, he argued that in that case the award for general damages for resulting physical disability had been made on the basis of positive medical evidence, whereas in the instant case the medical evidence relating to the resulting effect of the injuries suffered was indefinite and such as could hardly be regarded as being of the quality necessary for justifying the award which the trial judge had made.

Counsel for the respondent opposed this argument and urged that although the trial judge had itemised general damages under three sub-heads, the third sub-head, loss of wages, should strictly speaking have been classified as special damages. Consequently he submitted that the amount awarded for general damages in effect was only $9,500.00 which was conservative having regard to the circumstances.

In so far as the medical evidence in this case was concerned it was sparse, and did not assist the Court in forming a conclusion as to how long the resultant physical disability and discomfort to the respondent was likely to continue. The somewhat scanty and cursory nature of the medical evidence must have placed the trial judge in a very awkward position and rendered his task more difficult than it need have been.

In spite of the unavailability of the X-ray photographs of the fractured skull, which circumstance prevented Mr. Holgate, the surgeon, from expressing any positive

-opinion as to-

opinion as to how long and to what extent the resultant damage was likely to continue, he did say that on the 20th March, 1967, a month or so after the respondent had been discharged from hospital, she complained of dimness of vision, weakness in walking and headaches, all of which symptoms he stated, were the probable effects of the injury to the head. While he did not think they would be permanent the fact remains that he never saw her again professionally.

In their evidence two years after the accident, the respondent and her husband both deposed to the fact that the former was still suffering from ill-effects of the accident, and the learned trial judge accepted this evidence.

Dr. Clyne, another medical witness, deposed to the fact that in July, 1966, prior to the accident when he had occasion to examine the respondent during a pregnancy she was a normal, healthy woman. In August, 1967, when he again had occasion to examine her, she complained of headaches, dizziness, nervous strain and of being subject to hallucinations. These symptoms, in his opinion, were attributable to the head injury which he knew she had had. He treated her with tranquilisers. In August, 1969, he again saw the respondent. She then complained of a sore throat, gas and a chronic headache on the right side of the head. He treated her and stated that her condition was due to post concussion syndrome. On that occasion her reflexes and blood pressure appeared normal.

Apart from this, the trial judge was without assistance from the medical witnesses as to the residual effect of the accident on the general health of the respondent. He however elected to accept the evidence of the respondent, and that of her husband, as to the continuation of her discomfort which she stated dated from the accident.

In the course of her evidence, the respondent testified to a loss of any desire for marital relations, and in this regard she was supported by the evidence of her husband. Counsel for the appellant queried the award in this connection, urging that there was no evidence that such a complaint had been made to any of the doctors who gave evidence at the trial, and that in the circumstances the award under this head was unjustified. He cited the case of Simon v. Nurse, 12 W.I.R. 106, which he urged

-as authority for-

as authority for the proposition that such a complaint should have been made to the medical practitioners who examined her from time to time after the accident. The circumstances in the case of Simon v. Nurse supra are distinguishable from those of the instant case. In Simon v. Nurse the Court, in rejecting the evidence of the appellant on that point because it had not been proved, commented that the appellant's wife had not been called as a witness. In this case the husband of the respondent supported her evidence in this regard, and Mr. Holgate in his evidence gave it as his opinion that such a loss of desire for marital relations could be a possible result of a head injury such as the respondent had suffered. There was consequently evidence before the trial judge on which he could have founded, with justification, an award for impairment of personality.

In the case of Davies & another v. Powell Duffryn Associated Collieries Ltd., (1942) 1 All E.R. 657, Lord Wright at p. 664 set out the circumstances in which an Appeal Court would interfere with damages awarded by a trial judge thus:-

> "No doubt an appellate court is always reluctant to interfere with a finding of the trial judge on any question of fact, but it is particularly reluctant to interfere with a finding on damages. Such a finding differs from an ordinary finding of fact in that it is generally much more a matter of speculation and estimate. No doubt this statement is truer in respect of some cases than of others.
> .....
> Where, however, the award is that of the judge alone, the appeal is by way of rehearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the appellate court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer, L.J., in Flint v. Lovell (1935) 1 K.B. 354, at p. 360. In effect, the court, before it interferes with an award of damages, should be satisfied that the judge has acted upon a wrong principle of law, or has misapprehended the facts, or has for these or other reasons made a wholly erroneous estimate of the damage suffered."

This principle was followed in Ramkisoon & Kissman v. Austin (1961) W.I.R. 540 and again in Boochoon & Ramsingh v. Gokool (1967) W.I.R. 359 when it was held that "in order to justify interference with a judge's assessment of damages, an appellant must show that the award was inordinately high

-or to be a-

or to be a wholly erroneous estimate of the damage suffered."

In the instant case the learned trial judge accepted the evidence of the husband that for the year following the accident his wife spent most of her time in bed because she was unwell. At the time she gave her evidence, 2 years after the accident, she still complained of headaches, and was still unable to pursue her normal work. As a result of the accident she was a victim of hallucinations, and even now is prone to wake up from sleep crying, and unable to appreciate her exact whereabouts. Since the accident she is no longer the hale and hearty woman that she was, and in effect is only a shadow of her former self.

Bearing these circumstances in mind, particularly the pain and suffering to which she must have been subjected, coupled with her loss of personality, I incline to the view that the award of the learned trial judge of $9,500 for general damages was justified. The arguments advanced by counsel for the appellants have not convinced me that the award made by the learned trial judge was so inordinately high as to be wholly erroneous. In the circumstances I would dismiss this appeal with costs.

(K. L. Gordon)
Justice of Appeal.

LEWIS, C.J.

I agree with the judgment which has just been delivered by Mr. Justice Gordon.

I must say that I myself have not felt completely happy about the amount awarded for pain and suffering which does seem to be rather high. The evidence on this aspect of the case is rather scanty. There is no doubt that the respondent received serious injury to the head which affected her to the extent of making her unconscious for about a week, and it is regrettable that the surgeon who treated her and attended to her at the time was not able to give more positive evidence as to the extent of her injury, because really all the effects which have been alleged by her depend upon the extent to which that injury has affected her brain and her personality.

-There is evidence-

There is evidence from the medical witnesses that within the first few months after this injury she was suffering from headaches and dizziness. Dr. Clyne said that he examined her on the 7th of November, 1967, and that she complained of hearing voices in her head; but he did not see her again until August, 1969; she then complained of headaches and dizziness. Mr. Holgate was the surgeon. He said that he examined her in March, 1967, after she had left the Hospital and came back as an out-patient, and she complained of dimness of vision and weakness in walking and headaches. He said these would probably be the effects of the injury which she suffered on the 4th February.

Curiously enough no questions were asked of Mr. Holgate as to the extent of pain that she might have suffered after she regained consciousness. There is no evidence as to exactly what treatment she received for her injuries, and the extent to which that treatment itself might have inflicted necessary pain upon her.

Her husband said - and this is borne out by the evidence - that when he saw her at the hospital after the accident her head was bandaged and her jaw and left foot were bandaged, something was pushed down her nose dripping water slowly and she had bruises over her face. The respondent said that she felt pains in her head and her jaw, and her false teeth were mashed up and her jaw used to feel stiff and was hurting her. Really the crux of the case was whether the Court was justified in finding that the pains which she said she was still suffering at the time when she gave her evidence had been continuous throughout the period and were of a serious nature, and whether these pains were likely to continue.

The trial judge does not make any findings as to whether these pains are likely to continue. His assessment of the evidence was extremely brief. He merely says that "I believe the plaintiff's complaint of headaches, dimness of vision, disturbed sleep and loss of memory is genuine". So that it appears that he accepts that there was some continuance of these headaches in addition to whatever pain she suffered in the first few weeks after the accident, and it is in respect of this that he has awarded a sum of $5,500.00.

-As I say,-

As I say, I feel myself that this is a rather high amount to award for pain and suffering on the evidence the Court has before it. On the other hand the judge's position was very difficult. This was a very difficult case for him to decide what was a fair amount to award, and I do not think that I am in a position to say that that award is inordinately high.

I have no fault to find with the award for change of personality and loss of memory. There is ample evidence to support that, but again I would comment on this that on the evidence as it stands I would have thought that more would have gone towards change of personality than towards pain and suffering. However, the result is that she got $9,500 for the whole thing and I do not think that this is excessive for general damages in this case. Therefore I agree that this appeal should be dismissed with costs.

(Allen Lewis)
Chief Justice.

GLASGOW, J.A. (Acting)

My own view is that the amount awarded for pain and suffering is a bit on the high side, though not so high as to justify the interference of this Court.

I, too, agree that this appeal should be dismissed with costs.

(E. F. Glasgow)
Justice of Appeal (Ag.)