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DIP NARAYAN

v.

LEYLAND LIMITED & ANOTHER

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[SUPREME COURT, 1972 (Tuivaga Ag. J.), 22nd June, 2nd August]

Civil Jurisdiction

Damages—personal injuries—collision between motor vehicles—loss of earning capacity—future pain and expense from arthritis—loss of amenities of life.

C *Negligence—personal injury—award of damages—loss of earning capacity—future pain and expense from arthritis—loss of amenities of life.*

D An award of damages for personal injury to a man of forty-nine years and a partner in a business, took into consideration loss of earning power (though no actual diminution of income had been shown) future recurrent expenditure to combat pain from arthritis due to the injury, and loss of amenities of life due to a permanent residual disability of 20%; the sum of \$3,500 was awarded as general damages.

Cases referred to :

Arthur Robinson (Grafton) Pty. Ltd. v. Carter (1968) 41 A.L.J.R. 327.

E *Chattur Singh v. Ram Bhaj Singh* Civil Action No. 206 of 1966 — unreported.

Action in the Supreme Court for personal injuries suffered in a collision between motor vehicles.

D. N. Sahay for the plaintiff.

F *C. L. Jamnadas* for the defendants.

Only that portion of the judgment which deals with the question of damages is set out below.

2nd August 1972

TUIVAGA Ag. J. (in part) :

G As a result of the accident the plaintiff suffered a fracture of the right patella (knee cap) and hematoma (collection of blood) in the right knee. The injury caused a lot of pain and certain amount of shock. The plaintiff was admitted to the C.W.M. Hospital, Suva, on the 6th February, 1969. At the hospital blood was aspirated from the knee and the leg was immobilised in plaster. On the 14th February, 1969 he was still complaining of pain and the plaster was split and further blood was aspirated from the knee. The plaintiff was discharged on the 15th February, 1969. The plaster was removed on the 23rd March, 1969 and the plaintiff was referred to physio-therapy for further treatment. When he was again seen at the hospital on the 23rd July, 1969 it was found that he was

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regaining the power in his muscles and the movement of the knee. According to Mr. Shiu Chand Ramrakha (PW1) the Consultant Surgeon who had treated the plaintiff that on the 4th April, 1970 when he saw the plaintiff, he was still suffering from pain in the right knee. On examination it was found that the plaintiff had full movements of his knee and his knee muscles appeared to be quite strong. Since the 26th November, 1969 after he had been back at work for about two weeks the plaintiff began to develop pain in the right shoulder about which a diagnosis of "frozen" shoulder was made. It is not in dispute that this injury to the right shoulder was also caused at the time of the accident. At the present time his fracture of the knee cap has healed but has left an incongruous undersurface. There is still some interference of the knee which may not heal altogether. In future he would continue to suffer pain indefinitely on and off due to the onset of osteo-arthritis in the right knee. The plaintiff, according to medical evidence, should be able to swim but not as well or as freely as before. He has full extension of the knee but this is limited by a certain amount of restriction on bending. He could run to some extent but with difficulty. The plaintiff is still unable to raise his right arm above his shoulder. His residual physical disabilities have been assessed at 20%.

The plaintiff has also given evidence in regard to his injuries, which evidence I fully accept. He stated that he still suffers from pain in both the knee and the shoulder for which he has been taking pills more or less regularly. He has difficulty in climbing hills and cannot go fishing or shooting pigeons as he used to do before. His enjoyment of outdoor life has been severely affected by the accident. The plaintiff has not been able to carry out his work as a saw doctor at his firm's saw-mill at Navua. As a result it was necessary to engage a person from Australia to carry on this work. The work of a saw doctor involves using a hammer and a file and extensive walking around. The plaintiff's work at the saw-mill is now largely of a supervisory nature.

In performing the difficult task of assessing the appropriate sum to award the plaintiff by way of damages, I have had regard to the principle, stated in the judgment of Barwick C.J. in *Arthur Robinson (Grafton) Pty. Ltd. v Carter*, 41 A.L.J.R. 327 which I have found of great assistance. With regard to compensation to injury sustained in a running down case, Barwick C.J. stated that such compensation must cover

- (1) loss of earning capacity;
- (2) necessary recurrent expenditures flowing from the injuries,
- (3) loss of the amenities of life.

Whilst since the accident the plaintiff's income has not been shown to have fallen it is clear that his earning capacity in the saw-mill business of which he is manager and a partner has been reduced by his injuries. No longer is the plaintiff able to carry on work as a saw doctor which he had been doing since 1939 until the accident occurred. He is now only able to do supervisory work. Another person from Australia was engaged to do his work in this respect. It is clear that the plaintiff will not be as productive as he was prior to the accident so far as the saw-mill business in which he has a direct personal interest is concerned.

A I am also satisfied that the plaintiff will require to purchase pills over the years to combat the pain arising from arthritis which he has since contracted. Fortunately these pills are only required at intervals according to the frequency of pain. This will be a recurrent expenditure.

B The plaintiff has also suffered loss of amenities of life. When the accident occurred the plaintiff was 49 years of age and was of normal and sound physical and mental health. He used to enjoy outdoor life and in particular he used to go fishing, swimming and shooting pigeons. These activities have had to be curtailed. From the injuries themselves the plaintiff has suffered much pain and discomfort. He was hospitalized for over a week after which he continued to receive treatment. His right leg has gone thinner. According to the medical evidence he has residual disability of 20% which appears to be permanent. This Court has been told that his arthritic condition will be a source of pain in years to come and this will necessarily affect his enjoyment of life for the rest of his life. The plaintiff's pattern of life has been drastically changed by reason of the accident.

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E Apart from the above matters I have also considered a number of cases to which Counsel for the defendant has referred this Court concerning the awards made in comparable cases in England. These cases are noted in *Chattur Singh v. Ram Bhaj Singh and others* (Civil Action No. 206/66) also a case of fracture of the patella in which a sum of \$1500 was awarded to the plaintiff by way of damages. I have studied those cases carefully which have been most useful as a guide in my assessment of the damages in the present case. In assessing damages I have considered the many imponderables such as those referred to by Barwick C.J. in the case cited above. However, doing the best I can on the material before me I think the amount of damages to award the plaintiff which is fair both to him and the defendants is \$3,500. There will therefore be judgment for the plaintiff for that amount with costs. Such costs will be taxed, if not agreed.

Judgment for the plaintiff.