JUDGMENT NO. 107

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

CORAM: THE CHIEF JUSTICE ALAN MANN.

1956 No. W.S. 53.

B E T W E E N

KEITH COLLINS Plaintiff

and

LAWRENCE SHEEDY and R.S. EAKIN. Defendants

J U D G M E N T

This is an action in which Keith Collins, the Plaintiff, sues two Defendants for damages for negligence arising out of a motor accident in which the Plaintiff was a passenger in a jeep driven by Defendant Sheedy, the accident occurring on the 18th August, 1956 on the Brown River Road.

It is common ground that if either Defendant is liable for negligence, liability attaches to both Defendants by reason of the provisions of Section 6 Sub-Section 2 of the Ordinance dealing with Compulsory Third Party Insurance. I therefore do not need to consider the effect of that Section.

The substantial defence which was raised amounted to this, that the Defendant Sheedy, being the holder of a permit to drive a motor vehicle as a learner, requested the Plaintiff, who was a licenced driver, to accompany him on a trip for the purpose of giving the Defendant driver instruction in the driving of the car, and that therefore the Plaintiff must be taken to have voluntarily incurred the risk involved, because he knew that Sheedy was not a competent or experienced driver, or alternatively, that the Plaintiff was the instrument of his own damage by failing to take reasonable care in exercising control over the vehicle whilst instructing Sheedy in the driving of it.

This interesting defence was not, I think, established on the evidence. The main evidence was given by the Plaintiff Collins and the Defendant Sheedy, and although there is some ground for criticism of each of them as witnesses, I do not think that either witness proved unreliable in the witness box, or gave his evidence in such a way as to arouse any deep suspicion. I think that the Plaintiff Collins, of the two, was the better witness, but there is one aspect of his evidence which I find very hard to accept, and that is his

statement that he was not aware, in fact, that the Defendant Sheedy was not the holder of a motor driving licence. I think his evidence as to this point was, in some respects, inconsistent, contradictory and not entirely satisfactory; on the other hand, the Defendant Sheedy's evidence lacked, in some respects, conviction, and I was left in the position where I think the only solution is to decide what I think is the most probable version of the facts. I think that that amounts to this: that Collins did, in fact, know that Sheedy did not possess a full driving licence, that Sheedy, who was expecting to pass his driving test and regarded himself as a perfectly competent driver, asked Collins to play the part of a licenced holder to enable the vehicle to be hired from the owner, the Defendant Eakin.

Once possession was obtained of the vehicle, I think the Defendant Sheedy took over the wheel, and part of his purpose was to get driving practice, and part was to enable him to invite the Plaintiff Collins to express the opinion by way of confirmation of his own view that he was likely to pass the driving test.

On the whole, the evidence does not support the suggestion that Collins was actively engaged in teaching the Defendant to drive the vehicle or was expected to exercise any close supervision; he left the driving and management of the vehicle to Sheedy, and there is no basis on which I can find that Collins undertook as a volunteer any risk which might be involved by Sheedy's negligence.

I am unable, on the evidence, to find circumstances from which contributory negligence against Collins could be inferred at the time when the accident occurred, because Collins was not, in fact, paying immediate attention to the driving of the car; he had his head down, eating his lunch, and the incidents leading up to the accident occurred whilst he was in this position.

I find, therefore, that the only explanation of the accident which I can infer is that the Defendant Sheedy took a curve in the road where the nature of the road surface and the slope of the hill down which he was travelling called for special care and reduction in speed, and that he was travelling at an unduly high speed at the time. Having regard to his lack of experience as a driver, as much as to the physical circumstances existing on the road, I find that the Defendant Sheedy was guilty of negligence in failing to slow down, and that both Defendants are liable to compensate the Plaintiff in respect of the damage which he has undoubtedly suffered.

The question of damage is one of great difficulty because the whole question is so much at large. The only assistance that I can derive from the evidence is to have regard to three main headings of damages.

First, it is clear that the Plaintiff has incurred some cost in supplying himself with an artificial leg, and he will be involved in future cost for the maintenance of the artificial leg or its replacement and for various items of clothing which will either be required in relation to that or which will wear out all the sooner because of the use of the artificial limb. There is no evidence as to other financial loss, and I am unable to say what cost, if any, has been incurred in other expense. I think that, having regard to the prospective future expenses, the greatest sum which I could reasonably award under the heading of actual expense incurred or likely to be incurred in the future would be the sum of £500.

The second heading of loss is for the inconvenience, restriction in activities and general deprivation of activity in the future resulting from the permanent loss of the use of the leg. The Plaintiff is a young man; he was actively interested in and engaged in sport and recreation. He is starting out in life earning his own living and making his own way in the world. I think these factors indicate that I should allow a maximum amount, having regard to the fact that there is no evidence to suggest any immediate or prospective financial loss; his future employability is not in question on the evidence. It appears - not the evidence - from one's knowledge of life - that a person with only one leg is at a disadvantage if a situation should arise when employment would be difficult to obtain. A person without that disability may have preference; the Plaintiff may be under various disadvantages at different stages of his life, but the evidence does not suggest any actual or impending financial loss, therefore I think that under this general heading of the permanent deprivation of the leg, I could not contemplate a figure in excess of £1,200. That brings the total, so far, to something in the region of £1,700 and the third topic is for pain and suffering.

Well now, the evidence does not indicate that that was any greater than must inevitably be suffered in a serious and violent accident of this kind. There is no long medical history of operations or consequential pain. There is some pain intermittently suffered from nervous reactions which the surgeon has described as phantom pain; that is a common experience resulting from operations of this kind, so that I think that under this third heading I cannot allow any unusually large sum.

I think having regard to the evidence as a whole, I should allow a total sum of £2,000 damages, and I feel that in allowing that figure, I have fixed an amount as high as I

reasonably can, having regard to the evidence.

There will be judgment for the Plaintiff against both Defendants for the sum of £2,000. damages with costs to be taxed.

Sgd. Alan Mann

C.J.

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