

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

- 2 -

BETWEEN:
RALPH GUISE
 Plaintiff
 and

BOLESLAU ZMARZLY
 Defendant

JUDGMENT

The first question is whether the Defendant was negligent. There are several views that could be taken of the evidence and on this issue it is largely a contest between the Plaintiff and the Defendant as witnesses. The Defendant was quite unreliable as to the position in which he left his vehicle and his willingness to draw absurd conclusions as to the Plaintiff's conduct made his evidence quite unreasonable. The Plaintiff is supported to some extent by Mr. Bliaux. His evidence was I think the most reliable as to matters which he actually observed. There is no doubt that the Defendant's truck was parked across about five feet of the bitumen surface of the roadway and I think that in all the circumstances I should conclude that the Defendant switched off his tail light when he decided to leave the vehicle there all night.

The question whether the Plaintiff was also negligent is one of considerable difficulty. The weather conditions called for the utmost care in driving and the Plaintiff may well have been driving too fast to see clearly. In the circumstances of this case however I am not prepared to draw the inference that the Plaintiff was negligent because he was driving into what was a situation of great danger and difficulty and the accident was one which could well happen without negligence on his part. A large vehicle parked under the trees under those weather conditions could easily go unnoticed by the most careful driver. Similarly there is in my opinion no justification for drawing the inference that the Plaintiff was driving too fast. The damage done to the vehicles affords no reliable indication of speed.

I find therefore that this accident was caused by the negligence of the Defendant and that the Plaintiff is entitled to damages.

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Special damages come to £1202.3.2. The Plaintiff's financial loss in relation to his earning capacity is not likely to be very great. He is still able to earn £35 per month which was his rate of pay before the accident. There is however a risk that in the future he will find himself at a severe disadvantage in seeking employment should his present employment cease.

The Plaintiff's injuries were very severe and he is now left with the risk of further operations in the future should his condition become any worse. There is no prospect of any real improvement. He has suffered a good deal and is likely to suffer a good deal more in the future.

I assess the general damages at £5,000.

There will be judgment for £6,202.3.2. with costs to be taxed.

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