

IN THE SUPREME COURT
 OF THE TERRITORY
 OF PAPUA AND NEW GUINEA }
 CORAM: FROST, J.
 Friday
 30th May, 1969.

DORIS MAY NOAL

v.

MAUA PAPENA

REASONS FOR JUDGMENT

22nd, 30th
MORESBY
 Frost, J.

This is an assessment pursuant to a Writ of Enquiry of the damages which the plaintiff (now 56 years of age) is entitled to recover under a judgment given against the defendant for damages caused by the negligent driving of the defendant. On the 1st October, 1967 on the Rouna Road a motor car driven by her husband was in collision with a utility driven by the defendant and the plaintiff suffered severe facial injuries, mainly by reason of broken glass. Her main injury was a perforation of the right eye, which unfortunately had to be removed in operation.

Her whole face and nose were most severely lacerated and swollen. One laceration extended from above the left eye down the nose and across the right upper cheek. Her nose was fractured, but the soft tissue of the nose and face was so extensively swollen that it was not possible to administer the usual treatment. Her body was badly bruised, especially her chest, sides, arms and knees.

Whilst in hospital in Port Moresby, she suffered severe headaches and generalised pain. Her first period in hospital was until the 10th November, 1967. She was readmitted on the 27th November, 1967 and finally discharged on the 8th December, 1967. She

had two operations, one in which the eyeball was removed, but much surgery and suturing was required to repair the lacerations to her face. When she was sufficiently recovered, she went to Sydney and was admitted to the Hornsby District Hospital, where she underwent a further operation for the fitting of an artificial eye and further surgical repair of the nose. Mr. Smyth, the specialist surgeon who managed her case in Port Moresby Hospital, is of the opinion that her face under the right eye and her nose on the right side will be permanently swollen due to thickened skin and damage to the underlying tissues. There is a scar which Mr. Smyth considers less disfiguring than the swelling. If she desired to have a further operation, the scar could be excised and the swelling reduced so that her present disfigurement could be made more cosmetically acceptable. She has an obstruction so that she is able to breathe through only one nostril and this too could be corrected under operation.

She has not only lost her right eye, but also the movement of her right eyelid, so that a conscious and exaggerated effort is required by screwing up her face to close her right eye. Thus, when she sleeps, the artificial eye is visible. The loss of her right eye does not prevent her reading, although using the spectacles especially ordered, she complains that, when she concentrates, she soon becomes tired. But a person with one eye only suffers the permanent disability of a reduced field of vision and it is difficult for a person of the age of the plaintiff to adjust to this by turning her head and neck. She also

has suffered the loss of binocular vision, which has impaired her appreciation of depth in vision.

Mr. Smyth was unable to find any organic cause for the headaches which she still continues to suffer, although they are diminishing. He considers they may be due to post-traumatic neurosis and they will diminish in intensity with the passage of time, as she gradually becomes accustomed to her injury. As the artificial eye is not capable of movement, it does not entirely remove the cosmetic effect of her injury and there is some discomfort caused by the abnormal sensation of its presence. After some time, mucus develops about the eye and it is a daily routine that it should be removed for washing.

Her injuries - and I refer not only to the loss of her eye, but also to her disfigurement - have had a marked effect on her personality and enjoyment of life. Her husband said that, after the accident, she became almost a recluse, so conscious was she of her injury, and even now she seldom goes out visiting. Only the closest friends are invited to her house. She cannot now bring herself to have sexual relations with her husband. She has become short-tempered. She used to find pleasure in sewing and cooking, but now she does only what she has to. Her inability to follow the ball in flight caused her to give up golf, which she used to play regularly. She rarely now visits the cinema. Mr. Smyth considered that these personality changes were a quite likely effect of injuries such as these, especially suffered by a woman.

From time to time, she will incur medical expenses and she will have to visit her Sydney doctor at approximately six-monthly intervals, and if she decides to have the obstruction to her nose removed, the cost will be about \$200.

Mr. Pratt submitted that the principles I should apply in assessing damages which are well-established are as set out by Dixon, J. (as he then was) as follows:

"..... in assessing a just and fair compensation the purpose is not to attempt by means of money completely to insure that the plaintiff will be placed for the rest of his life in the same position as if he had not sustained the injuries. A full compensation must nevertheless be awarded. It is a compensation once for all. Besides the actual expenditure incurred as the result of the wrong and the actual loss suffered the damages must cover a reasonable estimate of future 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, if he has, as in this case, suffered a permanent injury, an amount to compensate him for that and for the changed circumstances of life it entails. These last 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 (1).

He referred also to various decisions in which damages for the loss of an eye were awarded, but each case must be decided on its own facts. See Rouney Aura v. Papuan Airline Transport Limited (2), West v. Darr & Others (3), Chinn v. Shields and Another(4), and Hazell v. Hazell and Others (5).

In my opinion, the plaintiff has not only suffered a severe injury in the loss of her eye, but there has also been a considerable impairment of her enjoyment of life. The injuries she suffered are particularly distressing in the case of a woman, who will find it difficult not to be conscious of her artificial eye and the disfigurement to her face. The daily cleaning of the eye must also be a depressing factor in her life, reminding her of her injuries. There is the loss of use of her right eyelid. I have the impression that she and her husband enjoyed a happy home life, enjoying the company of their grandchildren, for whom she used to sew and cook, her homely pursuits and the company of her friends, and that this has been greatly affected. I should also take into account the effect of her relations with her husband. It is true that she is in late middle-age, but she was entitled to look forward to a settled period in her life, free from this disrupting injury. In my judgment, the proper amount of general damages is \$13,500. To this there is to be added the sum of \$714.20 special damages, making a total award of \$14,214:20.

Solicitors for the Plaintiff: Craig Kirke & Pratt
Solicitor for the Defendant: A. L. Godfrey, Esq.

- (2) (1963) P. & N.G. LR 272
(3) (1962) Q. W.N. 62
(4) (1966) Q. W.N. 33
(5) (1967) Q.W.N. 49.