

MARGARET WIDLOITHER

Plaintiff

and

JOHN JAMES SADLIER

Defendant

JUDGMENT

In this case there were, in a technical sense, two issues, namely an issue of negligence and an issue as to the quantum of damage.

So far as the issue of negligence is concerned the evidence shows that at the material time, the plaintiff was a pillion-rider on a motor cycle which, while rounding a curve veering to its right at a reasonable speed and well on the correct side of the roadway, was struck by a motor car proceeding in the opposite direction which at the time of impact was well on its wrong side of the road.

No evidence was called for the defendant and no explanation was offered for the conduct of the defendant.

In these circumstances there must be a finding that the collision was caused by the negligent driving by the defendant of the motor car which was involved in the collision. Accordingly there must be judgment for the plaintiff, and the question is for what amount.

Mrs. Widloither, the plaintiff, was at the time of the collision twenty-seven years of age. She was employed by the Education Department of this Territory in its correspondence teaching service and as a teacher of English to classes which were held outside her normal hours of employment. She was the holder of a certificate of the Sydney Teachers' College, which qualified her to teach pupils in Junior Secondary Schools in that State up to Intermediate Standard in that State.

She was married, was living with her husband, and was pregnant. She was a healthy, ambitious and intelligent young woman, obviously prepared to continue to exert herself in conjunction with her husband to build up a sound, economic position for herself. With this object in view, she was working in the Department substantially from 7.45am to 4.00pm five days a week and overtime on three afternoons per week teaching English from 4.10 pm until 6.10 pm to a fairly large class of pupils of about twelve to fourteen years of age.

She had reached a stage in the salary scale in which she received a basic rate of about £28 and an overtime payment of about £5.12.6 for the services mentioned above. It was the intention of herself and her husband to remain in the Territory until about February 1963, and then to return to New South Wales. She hoped to continue teaching in the Territory until her departure South and then to resume her teaching activities with the New South Wales Government, or some other institution in that State.

Arising out of the collision, she received serious personal injuries which caused her much physical pain, disability of a persisting character, emotional and psychological disturbance, considerable disruption of her life, and economical loss.



Although she suffered what is called an impacted fracture of the neck of the left humerus, this injury is now completely recovered, causes minimal trouble, and needs no particular consideration for present purposes.

The real injury was to the right leg. The evidence concerning her condition, past, present and future, depended upon her own evidence, which was fairly conceded to be truthful, and in my opinion, rightly so, and that of her husband and the contents of medical reports admitted by consent, and what I could see for myself.

The leg appears to have taken a direct blow just above the knee. She suffered a compound comminuted fracture of the lower end of the femur involving the femoral condyles. The wound was ragged, eight inches long and gaping to four inches wide, and there was extrusion and loss of bone.

The plaintiff regained consciousness on the road in time to be able to observe and appreciate the apparent extent of the injury. She suffered no pain, however, until journeying to and in hospital, when she suffered the kind of pain and discomfort inherent in the treatment of the kind of injuries she had received. The wound was excised, foreign bodies removed, loose bone removed, and after a day or so her leg was placed in a Thomas Splint with below the knee skin traction. She lay on her back with the leg in traction for about nine weeks. On the 25th May, after being transferred to Brisbane, her ununited right supra condylar fracture was exposed and cleaned and an intra medullary cortical graft was inserted and packed around with cancellous bone and cortical chips. The new bone was obtained from a bone bank.

After this operation she was placed in a plaster spica cast. The spica cast encased both legs and extended from her feet to her waist and suitable adjustments were made as her pregnancy progressed. She remained in this cast from early June until shortly before the delivery of the child. She stated that occupancy of the spica cast was terrible at first but that she ultimately became used to it, albeit suffering much depression.

Her child was born on 30th October. She suffered from a severe post-partum haemorrhage. The delivery was rendered difficult by the fact that the body muscle tone was necessarily low and she could not assist herself adequately, and her leg was still in a splint. It is reasonable to believe that a period of pregnancy in her constrained circumstances brought its own anxieties and distresses.

The surgery of 25th May was successful and the bone at the site of the graft was quite sound by early November. It was then stated that she had some abnormal lateral mobility at the knee which was likely to improve gradually and that after several months she could expect a strong useful leg. Pain was still present due to the discomfort of encouraging the return of function. Permanent limitation of movement was expected and osteo-arthritic changes were said to be expected after some years. These changes were likely to cause discomfort with use, especially in regard to negotiating ships or prolonged walking or standing. Shortening of two and one-quarter inches was present and a build-up of about an inch on the right shoe would always be necessary.

The present condition of the leg appears to be that there is,



- (a) permanent shortness of two and one-quarter inches with considerable scarring just above the knee;
- (b) firm union without tenderness at the fracture site;
- (c) restriction of flexion to 25 degrees with a forecast of permanent restriction to not more than 30% of normal;
- (d) the lower leg exhibits slight internal rotation;
- (e) there is instability in the knee caused by lateral mobility;
- (f) there is some limitation of flexion and external rotation of the right hip;
- (g) Walking is slow and laboured and performed in fear of a fall;
- (h) walking is not actually painful but there is a kind of ache or tension in the upper part of the leg.
- (i) the plaintiff is still required to wear a full-length caliper which causes much discomfort.

The forecast is for improvement but there will be considerable permanent partial disability due to shortening restriction of flexion and instability of the joint. It is said that this will preclude her from taking an active part in sports requiring walking or running and that activities such as entering trams and negotiating steps and rough ground will be more difficult than normal.

In addition, osteo-arthritic changes which will introduce the factor of pain in any use of the leg of a substantial nature will develop after a few years.

It is the opinion of her doctor that she would be able to resume employment as a teacher "in a few months", but that that activity will be handicapped by the physical limitations of the leg and possibly by psychological reaction to the deformed leg.

With this background I approach the assessment of her damages in its various aspects. So far as economic loss is concerned, the parties are agreed that medical expenses of various kinds incurred to date total £1,691.0.11. It is probable that she suffered a loss of earnings (including overtime) at a rate of about £34 per week from the 18th March, 1961 until about mid-October, 1961. This would amount to £1,020. It is said that it is probable that she would resume teaching early in 1962 and that her resumption both as a correspondence teacher and as an overtime class-teacher will be delayed. Mr. Kilduff argued that the plaintiff would not make a successful return to work for some two or three years, but in my opinion, this is unduly pessimistic, and cannot be supported by the evidence. For purposes of this aspect of her damages, I find that in all probability her resumption as a correspondence teacher will be delayed until 12th August 1962 and that she will not resume class-teaching. This finding adds to her calculable loss of earnings, thirty weeks at £29 per week, namely £870. It would be reasonable, I think, to assess her loss of overtime at £250. What may be called her calculable damages, in the nature of special damages, therefore amount to £3,831.0.11.

Further damages must be assessed in respect of past pain and suffering and in respect of prospective damage in the form of future probable pain, suffering and inconvenience, probable loss of earning power (excluding that already provided for) and inability to live a full life and enjoy the amenities of living.

In this case the plaintiff has a substantial claim in each of these categories. She has obviously endured much pain and suffered much distress. The fact that the record of her medical treatment coincided



with a pregnancy and complicated the delivery of the child was an aggravating feature.

In the future she will suffer pain until exercise has restored the leg to its maximum efficiency. At some stage, not so many years distant, osteo-arthritis will cause her to have pain in relation to the use of the leg, whenever serious service is required of it. She will always have the inconvenience of having one leg materially shorter than the other; a built-up shoe, and a leg which cannot be put out of the way when she is in a sitting posture. She will suffer fatigue when she would not otherwise have done so. It is probable that she will experience difficulty, and thus incur loss, in gaining new employment from time to time, and in finding just that kind of employment which her disability will permit her to perform. In all probability she will suffer economic loss from time to time by reason of enforced periods of non-employment. Finally, she will be unable to lead the full life she might otherwise reasonably have expected to live. Mobility is fundamental to life and a permanent interference with mobility is, in my opinion, a very serious thing for anybody, and particularly for an active energetic ambitious young married woman.

Mr. White has reminded me that the plaintiff appears to be a woman of character who may be expected to cope well with her difficulties. While this is probably true, the plaintiff appears to be the type who would have endeavoured to get the most out of life, using her mental and physical capacities to their limits, and, in her case, the difference between her probable full life, but for the injury and her life restricted by the injury, is likely to be marked.

I must remember that a perfect compensation is not possible and should not be attempted; that all life is subject to hazards which may result in unexpected disasters, that compensation is to be awarded now, once and for all, and that in this case, payment of damages at this stage represents, in relation to some aspects of this assessment, present payment for future ills. Nevertheless, there must be a full compensation in the sense that the award must represent a reasonable estimate of future money losses and a reasonable recompense in respect of past and future pain, inconvenience and restrictions of life and other losses.