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

CORAM : FROST, A.C.J.
WEDNESDAY,
1ST OCTOBER, 1969.

RAYMOND v. McCALLUM.

REASONS FOR JUDGMENT.

1969.
Sept. 8, 9.
Oct. 1
PT. MORESBY
Frost, A.C.J.

This is an action for damages for personal injuries suffered by the plaintiff on the 14th December, 1968 in a collision between a motor scooter being driven by her and a motor car being driven by the defendant in Bisini Parade, Boroko.

The collision occurred on the intersection of Bisini Parade and Mavaru Street, which enters, but does not cross, Bisini Parade from the east. Both roads are level and paved. There was a "Give Way" sign in Mavaru Street for traffic proceeding towards Bisini Parade. The plaintiff's account of the collision was that about 4.45 p.m., she was driving her motor scooter along Bisini Parade in an approximately southerly direction, at about 20 - 25 miles per hour, when she saw the defendant's car coming down the middle of Mavaru Street in a westerly direction, and as he was in the middle of the road and going, it seemed to her, a pretty fast speed, and he was also looking up to the left and not even glancing in her direction at all, she slowed down to almost a stop. The defendant gave no warning of any intention to turn right and did not slow down before the turn. The plaintiff was thus on the right of the car. The car did not slow down, the defendant cut the corner and hit the scooter head-on. The plaintiff placed the point of impact about fourteen feet back north of the northern kerb of Mavaru Street and almost on the edge of the gravel strip on the eastern side of Bisini Parade. She was about 20 - 30 feet back from the point of impact when she first saw the car, and the car was at least thirty feet back from the eastern kerb line in Bisini Parade. At this point, she almost immediately started

to slow down. There was a garden on the north-eastern corner planted with shrubs, which could have interfered with the vision of the defendant. She said that she did not swerve or deviate her course in any way, the reason for this being that she would not have had time to get out of the way of the car.

The plaintiff's evidence as to the point of impact was supported by Sub-Inspector Illsley, who came to the scene of the collision shortly afterwards. He noticed small pieces of glass from the headlights of the motor scooter in Bisini Parade about seven paces back from the intersection, and the mark he placed on the plan exhibited in evidence showed the point of impact approximately in the same position as indicated by the plaintiff, but a little closer to the middle of the road. In a conversation with the defendant at the scene, the defendant told Sub-Inspector Illsley that he was going at about 20 - 25 miles an hour at the point of impact. The plaintiff was also supported by the evidence of Joseph Shaw, a police reservist, who found her lying on the road near the edge of the bitumen and gravel about fifteen feet north of the intersection. After the plaintiff was taken to the hospital, she was visited by the defendant, with whom she had a conversation. She said that the defendant told her that it was all his fault and that he didn't see her. Miss Dickson, who was called by the plaintiff and who was present at the time, said that the defendant said: "It was all my fault. I looked, but I didn't see you."

The defendant's version was that he was travelling in a westerly direction in Mavaru Street. As he came down to the intersection, he was travelling less than ten miles an hour and on the left hand side of the road. He was not travelling fast. He looked to the right and could not see anything coming from that direction. He then continued on, looked to the right again and saw there was a motor scooter in front of him. The motor scooter was coming straight towards him at an angle on his right-hand side. There was nothing he could do to avoid a collision. The plaintiff made no attempt to move off her course. He was about

twelve feet away when he saw her. He put his foot on the brake, but the vehicles collided and the motor scooter was dragged forward about ten or twelve feet. The right-hand corner of the car near the headlight came into collision with the front of the motor scooter at the point of impact. The defendant said at the moment of impact he was travelling at about five miles an hour and the scooter was moving very slowly. After the collision, he noticed fairly heavy scratch marks of about eight or ten feet in length where the scooter had been dragged under the car, and he estimated the point of impact as being a spot about three feet north of the kerb line of Mavaru Street and close to the gravel edges. His vision was restricted by several large bushes for a distance of fifty to sixty feet back from the intersection. As he was travelling west at this time of the day the sun was shining directly in his eyes. He denied that he had made any such admission as was deposed to by the plaintiff and Miss Dickson.

Upon the question of liability, Mr. Wood did not concede that there was negligence on the defendant's part, but he offered no argument against such a finding being made. Although there was a conflict of evidence as to the precise point of impact, the defendant placing it closer to the intersection than the witnesses called on behalf of the plaintiff, the inference I draw from the whole of the evidence is that the collision occurred either on or close to the edge of the bitumen on the plaintiff's left-hand side of the road and a short distance north of Mavaru Street. So, plainly, when the defendant proceeded to make his right-hand turn, he was cutting the corner. I accept the evidence of the plaintiff, who appeared to me to be a witness of truth and good observation, that as the defendant travelled down Mavaru Street, he was looking to the left immediately prior to making his right-hand turn and he did not look to his right. This was supported by the defendant's evidence that he saw the plaintiff when she was only twelve feet away, so that, at this point, he had turned already in her direction. I accept the plaintiff's evidence also that the defendant was proceeding at

about 20 - 25 miles an hour. I consider that if the scooter had been carried along the roadway for the distance stated by the defendant after he had put his brakes on, he must have been travelling at more than five miles per hour. In my judgment, the cause of the accident was the fact that, as the defendant came to the intersection, he may well have looked to the right, but his vision was obscured by the bushes on his right at the corner. In this respect, I was much assisted by Mr. Frawley's evidence that the size of these bushes and their position made it a dangerous corner and no doubt required the "Give Way" sign. A prudent motorist, in my judgment, would have come either to a stop at the intersection or have slowed down to such a speed at a point where his vision was no longer affected by the bushes and have looked to his right. In failing to do this, in failing to give way to the plaintiff, and in proceeding on without any reduction of speed, and cutting the corner to such an extent that he had the plaintiff, who was travelling on her extreme left of the road, directly in his path as he commenced to straighten up, the defendant was guilty of negligence. I also accept the evidence of the plaintiff and Miss Dickson that the defendant admitted that he had not seen her and that it was his fault.

Mr. Wood contended that the plaintiff was guilty of contributory negligence in two respects; first, that she was not competent to drive a motor scooter and secondly, that she had failed to take evasive action in not swerving to the left when she saw the defendant's car being driven towards her. In fact, the plaintiff did not have a licence to drive a motor scooter, but only a car licence, but I am satisfied from the journeys she had made around Port Moresby, that she was sufficiently competent to drive it. The onus is on the defendant to satisfy me on the balance of probabilities that the plaintiff was guilty of contributory negligence. On her evidence, which I accept, she was on the left side of the bitumen surface of the road, she had slowed right down and then suddenly found the defendant cutting the corner and coming straight in her direction. She said that she would not have had time to get out of his way by swerving. Her action in merely slowing down has also to be

considered in all the circumstances, which were that she was faced with the sudden emergency caused by the defendant's negligent driving, and in my judgment, I am not satisfied that her failure to do other than to slow down in that brief interval was negligence on her part. This defence also fails. There must be judgment for the plaintiff, without any reduction.

I now come to damages. The main injury suffered by the plaintiff was to her right knee, which required surgical removal of the patella. After the accident, as she lay on the roadway, the knee was pushed in and deranged, with the lower leg twisted outward. She had abrasions to her right foot and also the left thigh and right groin, both of which developed later into very severe bruises. Her leg was straightened by the ambulance men, which was painful, and placed in a splint. When she was taken to hospital, the knee had to be bent again for x-ray, and this again proved painful. Afterwards, a plaster cast was made, but the leg became very swollen, so that four days later she was operated on and her patella removed. Her leg was then placed in plaster. She was discharged from hospital on the 25th December, 1968 and her leg remained in the plaster cast for about 4½ weeks. For a few days, she was on crutches. She had physiotherapy to restore movement in the leg and as usually happens after a joint has been immobile for some time, the initial movements were quite painful. She has a scar across her knee, which is quite visible. She returned to work on the 27th January, 1969.

Dr. Reid was called to give evidence on her behalf. The operation had been performed by Mr. Rich, who has since left the Territory. Dr. Reid saw the plaintiff on the 2nd June, 1969. He said that she had a well-healed scar over the knee, a transverse scar about 5" long, with stitch marks visible, but the knee itself had a full range of movement. There was some flattening of the knee in the front, which was consistent with the removal of the patella. She also had some movement of the femur upon the tibia which indicated that there was also some injury to the ligaments inside the knee. These cruciate ligaments limit the

movement of the femur on the tibia in an anterior and posterior direction, but as the knee could be moved backwards and forwards beyond the normal extent, Mr. Reid's opinion was that one of the ligaments had been torn. Thus, the knee is not as stable as a normal one, the femur tends to glide on the tibia. Movement is not attended by pain, but is more one of discomfort and produces a feeling of instability. The injury is a permanent one with no prospect of further improvement. An operation can be performed to form a new ligament, but Dr. Reid did not advise this, nor did he consider that plastic surgery would make the scar less noticeable.

The removal of the patella will affect the plaintiff in a number of ways. Kneeling, walking up and down stairs or over uneven or rough ground are difficult and she will not be able to either walk or play sport for long periods without a feeling of tiredness, which would require intermittent rests. Playing tennis and squash or basketball of a high competitive standard would probably be barred to her, but she would be quite fit to play these games socially without pain or marked disability. Similarly, in the case of dancing, although not the more active modern types of dancing. She will be able to continue with social tennis and squash, in which she can take a rest from time to time. Apart from the knee, the other injuries were the severe bruising which Mr. Reid noted behind the right knee and the mid left thigh and also on the right groin, which were still persisting when he saw her in June. In the early stages, these would have caused considerable pain, but the discolouration has almost gone and the effects will disappear.

The plaintiff herself said that she had always enjoyed outdoor sports and Miss Dickson, who gave evidence on her behalf, said that she was good at tennis and squash. Since leaving school, she has played tennis and squash, but not in competition. In Brisbane, she had found pleasure in jazz ballet and she felt that she would no longer be able to do this. However, as there have been until recently no facilities for this type of dancing in the Territory, it is not certain that she would have returned

to it. She is conscious of the scar on her leg, although when she wears stockings, it is less visible. She feels that she walks with a limp, although as I saw her in court, I could not discern any visible limp. If she walks lengthy distances or quickly, she tires very easily and her gait becomes uneven. She has the feeling, which Dr. Reid stated was a usual sequela of her injury, of her knee "giving out on her", difficulty in getting up and down stairs and in bending. She also has pain after sitting down in a confined space for any length of time, which is relieved by getting up and moving about. She cannot play tennis or squash as well as before, she has difficulty in running, her leg tires easily. However, she is attempting squash quite often and has played tennis also since the accident, although it does not give her as much pleasure.

She is twentyone years of age and a steno-secretary employed by the Administration of Papua and New Guinea. Her injury will not affect her after marriage in housekeeping or bringing up children, nor will it affect her in following her present occupation.

The plaintiff's special damages are as follows:-

Repair of motor scooter	$120.00
Hospital and medical attention	99.50
Chemist	2.00
Loss of sick leave	334.47
Loss of salary after her sick pay had expired	23.00
	$578.97

So far as the loss of sick leave is concerned, the plaintiff is not necessarily entitled to be reimbursed her salary for the whole of this period. It is for the court to assess what sum should be allowed, having regard to the risk of her becoming sick during the remainder of her contract and being left without sick pay because it has been exhausted as a result of the accident. However, Mr. Wood did not contend that the whole of this item should not be allowed and I consider that this item

should be awarded, so that the sum she is entitled to for special damages is the sum claimed, viz. $578.97.

Turning to general damages, the plaintiff is entitled to be compensated for pain and suffering and loss of amenities. There is no evidence to support a claim for future economic loss. As a result of the accident and the treatment for injury, the plaintiff had for a period of about six weeks suffered from time to time considerable pain, and thereafter, but to a lesser extent, from bruising. Mr. Wood, on behalf of the defendant, submitted that a proper award for general damages would be in the region of $2,000 - $2,500. Mr. Pratt, on the other hand, submitted a much higher range of $5,000 - $8,000. But this, in my opinion, is too high and indeed out of proportion to the injury and its effect. This is not a case in which the injury will affect her in the future in gaining her livelihood or as a housewife, and she will be able to play tennis and squash, although not as well nor with as much enjoyment as before. She had ceased to play competitive sport. Further, having seen her in the witness box, I should think that the probabilities are that she will marry and inevitably there will be certain stages in her married life when sport will not play an important role. However, she is entitled to fair compensation for the permanent limitations of movement and exertion and the proved loss of amenities and for the scar on her knee, of which it is only natural a young woman would be conscious. I have decided to award the sum of $3,300, so that, adding thereto the special damages, the total award is $3,878.97, with costs to be taxed.

Solicitors for the plaintiff : Craig Kirke & Pratt.

Solicitors for the defendant : Cyril R. McCubbery & Co.