

Raine, J. 790

IN THE SUPREME COURT OF)
PAPUA NEW GUINEA)

CORAM: CLARKSON, J.

Friday,
28th June, 1974

W. S. No. 284 of 1971 (P)

BETWEEN: GEOFFREY FOWLER

Plaintiff

AND: RENZO GOVONI

Defendant

1974

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PORT
MORESBY

The plaintiff sues for damages for negligence arising from injuries he suffered in a traffic accident on 28 March 1971 when a motor cycle he was riding south in Waigani Drive, Waigani, collided with a car being driven in the opposite direction by the defendant.

Each party alleges that the accident was caused by the negligence of the other. The plaintiff says that he was driving at a slow speed on his correct side of the road; that the defendant suddenly came over the crest of a hill travelling fast on his incorrect side of the road. The defendant says in effect that he was driving at a moderate speed along the road and that whatever his position on it was, the plaintiff rode from the side of the road across the defendant's course and collided with the side of the defendant's vehicle.

No witness supported the defendant's version and two independent witnesses, one standing some distance away near the road and the other travelling in a vehicle passed by the defendant immediately before the collision, confirmed material parts of the plaintiff's account.

I have no hesitation in concluding that the accident was caused solely by the negligence of the defendant in overtaking another vehicle when it was unsafe for them to do so with the result that the plaintiff was suddenly confronted with the defendant's vehicle, on its incorrect side travelling fast towards him in circumstances which gave him no opportunity to avoid the collision.

The plaintiff suffered severe injuries which have substantially affected his mode of life. He was born in 1948 and was almost 23 years of age at the time of the accident. He left school at 15 years with an Intermediate Certificate and was subsequently employed for almost a year as a bank clerk and subsequently for some

months as a junior station assistant with the Government Railways. He subsequently worked as a labourer and then a certificated train driver at the Port Kembla Steelworks until called up for National Service training during which he completed a clerical course. He served as a clerk in Vietnam for 8 months and on his discharge resumed employment at the steelworks.

Aiming to improve his position and attracted by service in tropical areas he applied in September 1970 for appointment as a trainee teacher in Papua New Guinea in what was known as an E course. This was an intensive 6 months course designed to qualify mature age, well motivated people as teachers for Primary I schools, principally in rural areas. He was accepted and commenced training on 30 November 1970. This accident occurred on 28 March 1971 while he was still training.

The plaintiff suffered severe injuries to both legs. The injury to the right leg amounted to a partial amputation below the knee. Because of the consequent failure of the blood supply to the lower leg gangrene developed and amputation just above the knee was effected.

In the left leg, the ligaments of the left knee were severely torn and nerve damage resulted in foot drop. The damaged ligaments were repaired by surgery but the knee is permanently unstable and will always be painful unless the joint is fused.

During the first five or six weeks in hospital the plaintiff underwent four operations to the right leg and one to the left. He also suffered considerable pain then and thereafter.

By July 1971 he had progressed to the stage where an artificial limb could be fitted to the right leg, the left leg had responded to surgery and was out of plaster although the foot drop still existed. He was discharged from hospital.

The plaintiff then travelled to Australia to spend some weeks with his family and on 6 September 1971 returned to Port Moresby to complete his course of training which he did successfully, qualifying as a teacher Grade 1 in early December 1971.

On 26 January 1972 the plaintiff took up an appointment at a rural primary I school at Okapa, 40 miles from Goroka in the Eastern Highlands. At that stage his remaining leg was in a caliper but he was able to move about without a walking stick.

The plaintiff says he found he was unable to fulfil his duties effectively and thereupon resigned and returned to Australia and the reasonableness of his doing so was challenged by the defence.

The plaintiff's last period of practical training before qualifying was at the Hohola Primary School in November 1971. He says that at the end of the first week of teaching the stump of his right leg was raw as a result of rubbing and excessive perspiration. He then had doubts whether he would be able to cope with a teaching career but accepted an appointment because he thought he would like teaching.

He asked for an appointment in the Highlands because he thought it would be cooler and therefore easier with his artificial limb. He did not think he would be able to serve anywhere but in the Highlands climate although he appreciated that it was only with extreme difficulty that he was able to walk on rough and hilly ground.

At Okapa he found he was not equal to the task.

A former Superintendent of the Division of Primary Education gave evidence that a primary school teacher in rural areas required considerable physical agility; he must be on his feet moving around his class room and outside it is called upon to supervise cleaning up, gardening and the construction and maintenance of buildings.

I have no doubt that the plaintiff's injuries constituted a serious handicap in the performance of such duties, that he genuinely intended to continue his teaching career and that he acted reasonably when he abandoned it.

Then there followed a period of almost 18 months before the plaintiff became settled in permanent employment in Australia.

He returned to his family's home in Lismore, N.S.W. in February 1972. He was without regular employment for some months and in September 1972 sat for an entrance examination for the P.M.G. Department.

From October 1972 to March 1973 he worked, not very successfully, as a travelling insurance salesman and then in casual employment with the Lismore City Council until July 1973 when he commenced a training course with the P.M.G's Department which he completed successfully. When he gave evidence at the trial he was designated as a permanent employee.

Prior to the accident, the plaintiff was a young man who took pride in his physical fitness and good health and obtained enjoyment from outdoor sporting activities. He is now substantially crippled with his right leg amputated above the knee and his left knee permanently unstable and painful. Osteoarthritis is likely to develop in this joint which at best will be a daily nuisance con-

trolled by analgesics and at worst may develop over a period of some years as a major disability requiring fusion of the knee joint. The foot drop previously noticed has disappeared.

The present effects of these injuries are naturally substantial. His mobility is severely restricted, he is unable to stand for long periods, he is insecure on his feet and the injuries cause pain and embarrassment. I think it says much for the plaintiff's determination that he is able with difficulty to walk distances of up to a quarter of a mile.

If it becomes necessary for his left knee joint to be fused his mobility will be restricted further.

The effect of his injuries on the plaintiff's earning capacity is not easy to assess. With his qualification of an E course and a Grade 1 appointment he could have acted in or been promoted to Grade 2 or even Grade 3 but no further. The localisation programme then being commenced could have resulted in quicker promotion if the plaintiff's position had not been localised or termination of his appointment on as little as three months notice if it had. In the latter event, there would have been some prospects of retraining for teaching in Australia, a prospect which his injuries has now destroyed. It was highly unlikely that he would have continued as a primary school teacher in this country for more than 5 years, so that in any event a return to Australia and a change of employment well before he was 30 years of age was likely.

The financial consequences to the plaintiff of the various courses his career might have followed as compared with his present prospects were canvassed helpfully and in detail and it is unnecessary for me now to repeat all that was said.

My conclusions are as follows:

Special damages - It was agreed that between the date of the accident and the date on which the plaintiff resumed training he lost income of \$1400 and incurred medical and other expenses of \$1867.

His motor cycle was badly damaged for which he claimed \$230. I am not satisfied that the whole depreciation in value should be attributed to the defendant and allow the sum of \$160.

During the period 1 February 1972 to 16 October 1972 the plaintiff lived with his family. He applied for several jobs and drew unemployment benefits. He does not appear to have been anxious to obtain employment and I am not prepared to allow the full amount claimed. At the same time I do not accept the defence submission in respect to this and later

periods that the plaintiff acted unreasonably in not staying in employment in Okapa. I allow \$2,000.

From October 1972 to July 1973 the plaintiff as an insurance salesman and on unemployment relief earned considerably less than he would have as a teacher. On the evidence available I allow \$1,000.

For the period from July 1973 to date of trial the plaintiff was earning \$70 per week net with the P.M.G. Department. He would have received at least one annual increment of \$300 to his salary as a teacher. Taking into account the accommodation benefit available here and the likely increase in tax rates I allow \$350.

Special damages - Summary

Medical and other expenses	\$1,867
Damage to motor cycle	160
Loss of wages	4,750
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	\$6,777
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General Damages. The plaintiff whilst not conceding that his career as a teacher in Papua New Guinea would necessarily have ended by 1979 submitted calculations to show that the accumulated difference between his salary in his present employment and that as a teacher over that period would approximate \$20,000. In fact if account is also taken of annual increments accruing to the teacher's salary the difference is some thousands in excess of that figure. Any such figure would of course be discounted to ascertain the present value of the estimated future loss.

The defendant points out that this calculation assumes that the plaintiff would have advanced to Grade 2 by 1975 which is by no means certain and that the chances are against the plaintiff's having retained his employment here until 1979.

It must also be remembered that the chances of successful retraining in Australia to qualify for teaching there are not high and that with no further qualifications the plaintiff may well have commanded a salary only of the order of that he now earns but with an increased risk of periods of unemployment.

I agree that this is ahead of substantial damage when assessing a fair and proper amount for general damages but I am not persuaded that the plaintiff's accident probably deprived him of a lifetime of service in the teaching profession.

I also take into account further pecuniary loss apart from loss of earning capacity. Additional expenses will be incurred by the plaintiff for medical treatment of his leg stump, drying agents

and so on. It was not disputed that this would amount to about \$100 a year. In addition the artificial leg is likely to be replaced at a cost of about \$300 every three years or more. Some allowance should also be made for extra travelling expenses and the extra expense of maintaining a motor vehicle with automatic rather than pedal controlled transmission, although the amount of \$12 or more claimed under these headings is I think too high. I must also take into account the medical evidence that major surgery may be necessary at some time in the future.

Clearly the plaintiff is also entitled to substantial damage for non pecuniary loss of the sort usually referred to as loss of amenities together with pain and suffering.

I have already briefly described the course of his treatment and rehabilitation. There are however some matters in particular which impress me in this case.

The plaintiff had not yet attained the age of 23 years when the accident occurred. His history shows him as a young man who was determined to better himself and who was succeeding despite deficiencies in his formal education. His ambitions have suffered a cruel blow. He was also a young man who took considerable pride in his physical fitness; immediately before the accident he had completed a fast walk of 18 miles. The acute sense of prestige attaching to his perfect physical condition is replaced by embarrassment caused by his maimed legs and consequent helplessness. Finally there is the real risk that the left knee joint may require to be fused which would result in an even greater degree of limitation of all all physical activities. Weighing all the factors I conclude that a fair and reasonable award for general damages is \$45,000 to which I add special damages of \$6,777 giving a total amount of \$51,777.

Solicitor for the Plaintiff : Mr G. R. Keenan, Act. Public Solicitor
Solicitor for the Defendant : Miss Madeline Campbell