

1981/12
2nd July, 1981

16

Vautier
-v-
D.C.Allen Limited

DEPUTY BAILIFF: This is an actionⁱⁿ which the Court has been asked to assess the damages arising out of an accident which happened to Mr. Lyndon Hedley Vautier at his place of work on the 16th June, 1977, whilst he was in the employment of the defendant D.C.Allen Limited. It is not necessary for us to set down the details of the accident itself, because liability on the question of negligence as pleaded in the Order of Justice and in the answer is admitted. We are, therefore, only concerned, as I have said, with the question of damages. When we retired we considered whether it would be appropriate to reserve judgment and to deliver a written judgment at a later date, but having regard to the time that has expired between the sustaining of the accident, a painful accident admitted as such by Mr. Myles, the surgeon called by the defendant, (but nevertheless like all medical witnesses here to assist the Court and not to take sides), we think that it would be in the interests of justice and for the assistance of the plaintiff if in fact we gave our judgment tonight.

The heads of damage are set out in the Order of Justice and include a number of special damages. This morning, by leave of the Court, the special damages were amended insofar as concerned a claim for loss of wages, holiday and pay credits and the wife's loss of earnings, and, therefore, the amended particulars of the special damages now read:- Medical reports - £30.00; Doctor's fees to the 3rd April, 1978 - £7.00; Taxi fares or petrol and use of car to physiotherapy and doctors up to 3rd April, 1978 - £116.00; Loss of wages, holiday and pay credits from the 16th June, 1977, to 18th May, 1978, a total of £3,047.19; and loss of wages from the 18th May, 1978, to the 12th November, 1980, (not as stated on the written amendment submitted to us, the 2nd July, 1981, - today - because there is no evidence upon which we could be satisfied that between the date of the 12th November, 1980, and today there has in fact been a loss of wages). The figure given there is £1,169.94, but with the deductions comes down to £898.52. The wife's net loss of earnings from the 27th June, 1977, to the 30th July, 1977, is £184.32. In addition of course general damages are claimed.

Now the injuries which were sustained by the plaintiff, or the more grave injuries: at least, are set out in the Order of Justice which of

course in turn is taken from the medical reports. I cite from that of Mr. Myles, who is a Consultant Orthopaedic Surgeon at the General Hospital for something over twenty years, of the 21st January, 1978, and he says in the paragraph referring to the injuries: "unfortunately the original Hospital Records relating to his initial treatment have been mislaid, so it is not possible to give exact details of the injuries and treatment. The X-rays are available, and these give all the necessary information about his more serious injuries". The ones we are concerned with are in fact, "3. Bruising to the left shoulder. 4. Fracture of the body of the left os calcis (heel bone). 5. A possible fracture of the left navicular (one of the bones of the foot). 6. A fracture of the base of the second left metatarsal. 7. A fracture of the base of the proximal phalanx of the big toe. 8. Fractures of the lower end of the left tibia and fibula." The plaintiff has given evidence as to his loss of earnings during the periods I have just mentioned. His counsel, Mrs. Pearmain, has submitted that it would be right to calculate possible future earnings so as to be able to apply the appropriate multiplier. The Court can find no evidence of any loss of earnings after the 12th November, 1980, apart from the evidence of the plaintiff and some of his workmates, but we feel it would be unsatisfactory of us to base our findings that there was a loss of earnings during that period on that evidence alone and we are not satisfied that it particularises the loss with sufficient clarity, nor, indeed, certainty so as to enable us to find other, as I have said, than that the loss appears to have finished on the 12th November, 1980.

Now that being so it must follow, as Mr. Valpy has said, that there can be no claim or award for loss of future earnings on the calculations as suggested by Mrs. Pearmain. However, that is not the end of the matter because if we were satisfied that in fact there had been a loss of earning capacity, that would still entitle us to include in the general damages an award under that particular head - it is called either loss of earning capacity or, perhaps, the handicap on the labour market; whichever label one fixes to that particular head. I am now reading from Volume 1 of the 1975 edition, 4th edition of Kemp and Kemp on quantum of damages at page 121:-

"An injured plaintiff is entitled to damages for loss of earnings and profits which he has suffered by reason of his injuries up to the date of the trial and for the loss of the prospective earnings and profits of which he is likely to be deprived in the future. There must be evidence on which the Court can find that the plaintiff will suffer future loss of earnings - it cannot act on mere speculation. If there is no satisfactory evidence of future loss of earnings, but the Court is satisfied that the plaintiff has suffered a loss of earning capacity it will award him damages for his loss of capacity as part of the general damages for disability

and not as compensation for future loss of earnings".

That leads me on to say this. A footnote on page 123 adds the following:-

"A consequence of this distinction .."

(that is the distinction between loss of earning capacity and damages for loss of future earnings)

" is that interest will be payable under the rule in Jefford -v- Gee upon damages for loss of earning capacity whereas it is not payable upon general damages for future loss of earnings."

Whilst the Court is minded to make an award under that head, and it is going to do so in a moment, it is not entirely clear as to whether it would be entitled to award interest on that sum. It would appear to be so from Jefford -v- Gee which the Court has not had an opportunity to refer to during the adjournment, and if it is entitled to award damages at what rate that figure should be and from what date. It is minded to make an award on the capital sum, which I am going to mention in a moment, at twelve and a half per cent from the date of the accident to the date of judgment, but there may be authorities for saying that that course would be wrong and we would leave that matter open for counsel to discuss with the Greffier, and you can come back to Court if you cannot agree. I do not think that we can argue it this afternoon; there isn't time.

Now as to the capital sum itself we are satisfied from the evidence of Mr. Allen that there is no substantial risk that the plaintiff is going to lose his immediate employment. On the other hand, we are satisfied that if anything happened to the firm of Allen and he did lose his employment through no fault of his own he certainly would have a handicap on the open labour market and we think it would be appropriate to include under the head of "General damages" the sum of £2,000 under that head and we so award.

Turning now to the pain and suffering and general loss of amenities, we are satisfied from the plaintiff's evidence that he has incurred some pain during the period in question and that it is not entirely due to his exaggerating what he has suffered. Nevertheless we have taken note of what Mr. Myles has told us, that on occasions, quite unconsciously, plaintiffs are anxious about the outcome of a case. But, nevertheless, we think it is a pity that Dr. Bevans was not called by the plaintiff and we had to rely on lay evidence which however sympathetically given, cannot be the same as a doctor giving his objective evidence by reference to his practice cards which would have shown us with exactitude what amount, if any, of analgesics were prescribed for the plaintiff. However we are satisfied that it would be proper to make a reasonable

award under this amount having regard to the painful nature of the accident, his length of time in hospital, his loss of some earnings under the special damages up to the 12th November, 1980, and his loss of his one main hobby, that of low water fishing. Taking all those matters into consideration we have come to the conclusion that the proper figure to award under the head of general damages for pain, suffering and loss of amenities is the figure of £3,500, on which interest will be awarded, as agreed by counsel to be appropriate, twelve and a half per cent from the 31st May, 1978, when the Order of Justice was served on the defendant. Now if our arithmetic is, therefore, correct we award the following amount - perhaps counsel would check them as we go through them: First the agreed award which was settled this morning on the loss of wages from the 16th June, 1977, to the 18th May, 1978, £3,047.19. I would be grateful if counsel would take them down with me. Then between the 18th May, 1978, and the 12th November, 1980, £898.52. The wife's loss of earnings is £184.32. The medical expenses, we think it right to make an award, £30.00 The other figure of £7.00 is for doctor's fees. The figure of £116 for taxi fares and so on. The £2,000 which I have mentioned for the loss of his earning capacity or disability on the labour market and the £3,500 general damages for pain and suffering and loss of amenities. Now, that total we make £9,783.03, that's excluding of course any further interest ^{upon} the sum for future loss of earnings.