

seeking compensation for personal injury and property damages. In both cases liability is in issue.

In the case of Risdale quantum for personal injury has been agreed at \$70,000. There is a claim for the Cost of treatment at the Townsville General Hospital. The defendant disputes liability for this and I have to determine that question.

Property damage for Risdale's motor vehicle is agreed between the parties at \$1,725. In the case of Suhr, the only matter agreed is the quantum of property damage for his vehicle agreed at \$4,065.

I shall deal first of all with the question of liability. The nature of the intersection is depicted in a number of photographs which were tendered. There are eight black and white photographs and two coloured photographs. Exhibit 7A and 7B show the intersection as it appeared to Suhr as he approached it. Exhibit 7C and 7D are photographs taken from Church Street looking up Mary street. These show the section of road used by Risdale prior to the collision. On the right can be seen the Bowls Club. The photographs also show the stop sign which was facing Risdale and the stop line on the surface of the bitumen at the mouth of the intersection. Photographs 7E and 7F show the intersection from the direction taken by Risdale. The hedge around the Bowls Club can be seen on the left with the stop sign on the left some short distance back from the intersection. The stop line painted on the bitumen is also visible.

A police officer who went to the scene shortly after the accident gave evidence that the stop sign was then in position and the stop line painted across the road surface as shown in the photographs. Exhibits number 7G and 7H are taken from Mary Street looking up Church Street. However, it would appear that 7G is taken on or close to the centre line in Mary Street while 7H appears to be taken from the other side of Mary Street from that used by Risdale. These two exhibits appear to give a false impression of the visibility that would have been available to Risdale as he drove up to the intersection.

It was accepted by the drivers that when the collision occurred it was on dusk. Risdale said his headlights were on. Suhr said he had no difficulty seeing at that time. He said at first he was pretty sure his lights were on in cross-examination this strengthened until he could say positively that his lights were on. I shall deal with that matter later. Risdale's evidence was that he had not travelled along Mary Street before. He did not know about the stop sign and he did not see it. He did not even see the stop line on the surface of the bitumen. He travelled towards the intersection slowing his vehicle to about 5 km/h. He looked right, then left, and right again. He did not see any traffic so continued at about that speed across the intersection. Shortly before impact his brother called out and Risdale saw the Ford immediately before impact. The impact occurred about the centre of his vehicle which rolled over in the collision, finishing on its wheels. Some of the damage to his vehicle is shown in Exhibit 6.

From the evidence I am satisfied that his vehicle was hit with considerable force. The evidence of Suhr can also be briefly stated. He has travelled over this piece of road many times and says that it is a bad intersection. He was travelling at about 50 to 55 km/h. As he approached the intersection he saw the car in Mary Street, he knew there was a stop sign there, so he drove on. The other car came out in front of him, Suhr braked, swerved his vehicle but was unable to avoid the collision. When he first saw the other car it was only five to ten yards from him. Suhr was asked "Where were you in relation to the intersection when you saw that vehicle?" Answer, "I was more or less nearly right out into the intersection, sort of." From his evidence it all happened in a very short space of time after he had seen Risdale's car. When speaking to a police officer after the accident Suhr basically told the same story:

"I said, "What happened?" He said, "I was coming down here", and at the same time he pointed in the direction of Church Street, "Going out to pick up my girlfriend. This bloke in that car came down and straight through the stop sign." He was also indicating the blue Holden station wagon. "He came

boring through. I saw him and I hit the anchors and pulled to the left but there wasn't anything else I could do. I know I hit him and the next thing, I was on my roof hanging upside down in my seatbelt." I said, "This street is Church Street, is that the street that you referred to as the one that you were on?" To which he replied, "Yes." I said, "Where did the other driver come from?" To which he replied, "He was coming this way along Mary Street." I said, "Did you see him prior to the actual collision?" He said, "Yeah, he was at or somewhere near that line to the stop sign." I said, "Did you see him before that?" He said, "No."

There was considerable damage caused to the front of Suhr's car and it ended up on its roof. So far as Risdale is concerned, I find that approaching the intersection he failed to see the stop sign or the stop line on the bitumen. He glanced to his left but did not see Suhr's vehicle which was then close to the intersection. He proceeded across the intersection and into the path of Suhr's vehicle. I am satisfied that he was only travelling at a slow speed across the intersection. I find that he was not keeping a proper look-out in the circumstances and that his failure to do so was a cause of the collision. He is, therefore, liable. I have been unable to determine whether or not the headlights of Suhr's vehicle were on. Risdale did not see that vehicle till immediately prior to impact. Suhr on this aspect was not impressive and I do not accept his evidence. However, in the circumstances, I do not think this a significant matter. The light was good enough for Risdale to see Suhr's vehicle had he been keeping a proper look-out.

On all other matters of liability I was satisfied that Suhr was honestly attempting to describe an incident which for him occurred in a very short space of time. From the evidence I find that as he approached the intersection he did not see Risdale's vehicle until it was almost: on Church Street. His own vehicle was then a short distance from the intersection. Had he been keeping a proper look-but he would have been aware of Risdale's approach further back in Mary Street, as Risdale had his headlights on. Suhr was travelling at 50 to 55 km/h with no time after sighting Risdale's vehicle to avoid the

collision. I am satisfied that had he been taking reasonable care and precaution for his own safety, he would have been aware of Risdale's vehicle at an earlier time and would have had time to take evasive action to avoid the collision. I therefore find that he was negligent and his negligence was also a cause of the collision.

It remains to apportion responsibility. It is my opinion in these circumstances that Risdale must bear the major portion of responsibility for the collision. I assess Risdale to be 80 per cent responsible with Suhr 20 per cent to blame. Quantum of damages for Risdale has been agreed at \$70,000. This figure must be reduced by 80 per cent and I arrive at a figure then of \$14,000. Property damage for his motor vehicle has been agreed at \$1,725 and this again must be reduced by 80 per cent, giving me a figure of \$345. To this must be added interest for a five and a half year period, at 12 per cent, and that figure of interest is \$299.48. That means that total property damage for Risdale is \$644.48. Risdale received treatment at the Townsville General Hospital for varying periods from the date of the accident up to August of 1986. The total amount payable for this treatment is \$18,640 and this amount is claimed by the board. If that sum is payable by Risdale, then it is a special damage which he can claim in his action.

In the past such claims have been considered in a number of cases under the Public Hospitals (Fees and Charges) Regulations of 1989. In those cases it was held that fees were not recoverable by the hospitals against the plaintiffs and that therefore they were not recoverable as damages in the various actions. For example, see the case of Smith v. Day Townsville No.22 (1989) 11 December 1990.

The regulations were amended in 1990 to provide as follows:

"3. Amendment of reg.3. Interpretation. Regulation 3 of the Principal Regulations is amended by omitting the definition "third party patient" and substituting the following definition:-

““third party patient” means a patient who-

- (a) is receiving care and treatment in respect of an injury, illness or disease;

and

- (b) at any time, whether before or after receiving the care and treatment, receives or establishes a right to receive payment by way of compensation or damages (including payment in settlement of a claim for compensation or damages) in respect of the injury, illness or disease.”

Risdale fulfils the requirements of subparagraph (b) but does not fulfil the requirements of subparagraph (a). I therefore find that the sum is not recoverable from Mr. Risdale by the Hospitals Board and that it is therefore not payable as a special damage in his claim. It can be further argued that the matter is determined anyway by the Acts Interpretation Act s.281(c)

I shall now deal with the assessment of damages with respect to Suhr. He is 33 years of age having been born on 23 May 1958. He was educated at school up to Grade 9. After leaving school he worked as a labourer for one month and then worked as an apprentice butcher for a number of years. After that he worked as a stockman. During this period he was unemployed for a period of 12 months. He worked as a stockman up until he was seriously injured in the motor vehicle accident on 12 March 1982. In that accident he received a fractured cervical spine. He was placed on an invalid pension and has been on a pension ever since. There is no claim for economic loss.

In October of 1987 he was involved in a minor motor vehicle collision, however, this did not cause or aggravate any of his symptoms. In his evidence he says that prior to the collision in May of 1985 he had been left with some weakness on his right side, some limitation to the movement of his neck, but no cervical pain. The low back/symptoms following the first accident were only provoked by prolonged bending and excessive heavy lifting. After the collision in May of 1985 he did not go to hospital or seek mediate medical treatment.

However, two to three days after he states in evidence the following: "I had considerable trouble with my lower back and had prominent pains in my neck and was suffering extremely bad headaches." Some five years after the accident his present symptoms, on his evidence, are as follows:

- (1) Substantial lower back pain which is a constant pain and numbness across the lower back; for this he takes medication.
- (2) Headaches, approximately two a week; which are mild to extreme in severity; these can last from two to five hours.
- (3) His neck is not a serious problem.

He has been examined and treated on a number of occasions by Dr. Roger Watson, a specialist in rehabilitation medicine. His reports have been tendered in this trial. He was also examined by Mr. Gavin Douglas, an orthopaedic surgeon and his report is Exhibit 5.

From the medical evidence I am satisfied that the headaches from which he suffers are a consequence of the 1985 accident. However, I am not satisfied that they are as frequent as stated by Suhr, having regard to the following comment by Dr. Watson in his report on 6 August 1990, "His neck ache and stiffness is only intermittent and mild and associated headaches now only occur in summer ahgrthen not with consistency." However, I accept that this problem detracts from his quality of life and he must be compensated for it. I am also satisfied that he now suffers rom severe low back pain with no prospect of any change for the better.

In his report of 6 August 1990, Dr. Watson makes the following comment:

"Opinion and Prognosis.

Now five years since the second accident with an increased level of low back pain which is a distinct functional handicap, he is now destined to a lifetime of such time with the very real risk with the passage

of years of deterioration as accelerated degenerative change occurs.

There is no doubt in my mind that he is now unemployable whereas prior to the accident in question he had employable potential in low physical stress but unskilled areas such as a driveway attendant or shelf packer at a supermarket.

I believe he will now remain on the Invalid Pension indefinitely."

I also had the good opportunity to observe him while he sat in Court and while he was giving evidence. He appeared to me to be comfortable the whole time, continually moving and twisting. In my view, although this man when injured in 1985 already had severe disabilities, his enjoyment of life has been greatly diminished by the severe back pain from which he now suffers as a result of this collision. In my view, what he had before the 1985 accident was bad enough; what he has now is a very serious disability indeed.

General damages, I allow the sum of \$20,000. Of that, for the past five and a half years, I allow the sum of \$7,000. For a five and a half year period, allowing interest at 6 per cent, the figure I arrive at is \$2,648.60. That gives a total figure of \$22,648.60, which must be reduced by 20 per cent as his responsibility for the collision and the figure that I then arrive at is \$18,118.88. Property damage for his vehicle was \$4,065 and reducing that by 20 per cent gives me a figure of \$3,252. Interest on the \$3,252 at 12 per cent for five and a half years give me a figure of \$2,823. That means the total property damage in his case is \$6,075.

...

HIS HONOUR: Judgment for Risdale against the defendant, Suhr, for personal injuries in the sum of \$14,000, with costs to be taxed.

Judgment for Risdale against the defendant, Suhr, for property damage in the sum of \$644.48, with costs to be taxed.

Judgment for against the defendant by election for personal injuries in the sum of \$18,118.88 with costs to be taxed.

Judgment for Suhr against Risdale for property damage in the sum of \$6,075, with costs to be taxed.

Does that cover all the matters? if.

MR. DREW: My instructing solicitor is a little - not confused - but he wishes me to clarify something with Your Honour. Judgment for the property is in the second action in each case?

HIS HONOUR: It is broken up, of course. See, there are two actions just being heard together.

MR. DREW: But the property damage in relation to Risdale's counterclaim in the second action-----

HIS HONOUR: Well, I suppose you can break them up in their various numbers as they were given on the court file. There really shouldn't be any confusion about it.

MR. DREW: I can't see any confusion about it. Your Honour gave judgment - I think the pleadings reveal where the claims are made - if Your Honour made judgments, they must apply to those claims.

HIS HONOUR: I can't see that there would be any problem, but if you can give them their various court numbers - judgment for Risdale against the defendant, Suhr, that was only and could only be Action 349 of 1990; that is that. Then in relation to the question of his property damage, that was a counterclaim-----

MR. DREW: That was a counterclaim in No. 16 of 1985.

HIS HONOUR: And that was in the other action - wasn't it - Action No. 34 of 1991?

MR. DREW: Yes.

HIS HONOUR: So if that is designated, there shouldn't be any problem there.

MR. DREW: Yes.

HIS HONOUR: Then the other matters are all judgments in Action No. 34 of 1991.

MR. DREW: Yes.

...

HIS HONOUR: I make an order as per draft in respect to the Appeal Costs Fund.
