

TRANSCRIPT OF PROCEEDINGS

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DISTRICT COURT

No 1608 of 1990

CIVIL JURISDICTION

JUDGE PRATT

MAURICE WILLIAM BRITZ

Plaintiff

and

J B DAVIES ENTERPRISES PTY LTD

Defendant

BRISBANE

..DATE 19/03/93

JUDGMENT

HIS HONOUR: On 28 September 1988 the plaintiff, now 44 years, suffered personal injuries during the course of his employment with the defendant. The parties agreed to apportion liability 5 per cent to the plaintiff and 95 per cent to the defendant. Special damages were agreed at \$9,438.18, and no interest was claimed on that sum. Workers Compensation payments in the sum of \$35,250.44 have been properly paid.

The plaintiff was a very strong and energetic worker. Apart from the effects of an earlier injury he was in good health. He had no difficulty in performing his duties as a construction labourer on a road construction site at Bryants Road, Loganholme.

The cause of his injuries was an RSJ over 40 feet long which fell and rolled on to the plaintiff's legs pinning them to the ground. The plaintiff pleaded that he suffered a compound fracture of the middle third of the left tibia, injury to the right foot, injury to the left

ankle, injury to the left shoulder, aggravation of pre-existing injury to the spine and shock.

The pre-existing injury to the plaintiff's spine was caused by a motor vehicle collision which took place on 24 April 1986 and he subsequently received \$17,000 by way of agreed compensation. At that time it appeared that the lower back pain which was being experienced by the plaintiff was due to the trauma of the collision of 24 April 1986 having aggravated a pre-existing spondylolysis.

As a result of pressure to his legs the plaintiff sustained a compound injury to his left leg with a fractured tibia. He was taken to theatre and a compound scrub and fasciotomy was performed. A long leg plaster was applied. The wounds were debrided and a split skin graft was taken. Subsequently the graft was attached to his wound and he was rested in the plaster for three to four weeks in hospital. After 15 weeks the fracture was deemed to have healed and the plaster was removed.

The plaintiff continues to feel pain in the leg, ankle and knee joints. Sometimes the ankle and knee swell up. There is some clicking and catching of the ankle. Because of his injured leg the plaintiff has trouble squatting, kneeling, running and jumping. He cannot walk well on rough ground and he cannot hike for long distances. If he drives for long periods his leg gets stiff and sore. He still feels pain at the fracture site, the knee joint and the ankle joint.

The plaintiff is 44 and otherwise reasonably healthy except that he is very much overweight which is not ideal for his convalescence. The plaintiff was justifiably off work for 18 months before he returned to his job for a week but could not cope. He has subsequently tried again but failed. He has not worked since apparently because he wished to do the same sort of hard semi-skilled work.

In my opinion his failure diligently to pursue other forms of employment such as driving light trucks or taxis must go against him. I am quite prepared to accept that the plaintiff has been permanently injured, suffers and

will continue to suffer pain and that he has suffered a diminution of his capacity to enjoy life.

I accept that he now has more difficulty enjoying fishing and motor bike riding but my several questions as to why he had not sought adequately to mitigate his loss by seeking alternative employment remained unanswered. I am prepared to find that the plaintiff has suffered a loss of between 10 and 15 per cent of the efficient function of the whole left lower limb in that it has decreased his strength and the range of movement in the ankle and knee.

The plaintiff has chronic venous insufficiency in his left lower leg which is a direct result of the subject incident. He has been left with some chronic swelling in his left calf which will continue to cause him relatively minor discomfort. Scarring remains to the left lower limb which is unsightly and permanent.

I accept that he will continue to have some chronic swelling of his left lower leg which will not be completely cured and which will require the continual use of an elastic stocking. I am not satisfied, however, that the subject incident did more to his pre-existing back condition than heighten its effect slightly and I do not think it should sound in damages other than to become a very slight factor in general damages though the period over which relevant symptoms were felt was about 12 months.

As to the plaintiff's future work prospect I find that he could work as a leading hand carpenter so long as he was able to avoid heavy lifting, bending and very prolonged periods on his feet. As to alternative avenues of employment I accept that he is ill equipped for most sedentary occupations but I am satisfied that he could manage light carting and taxi driving. He has clearly suffered a diminution of his earning capacity but he is far from unemployable.

For pain, suffering and loss of amenity I have been asked to allow \$30,000 plus interest of \$1,800, being 2

per cent of \$20,000 for four and a half years. I will award such sums.

As to the remaining heads of past and future economic loss I have been greatly assisted by a report/letter from Vincents, Chartered Accountants, which became Exhibit 10. Such assistance is to be encouraged. The time is long past when Judges of this Court should be expected to flounder about with a mass of material which is not brought together in a professional manner. I am prepared to accept the Chartered Accountants' scenario 1 in point of concept and calculation so that one can safely take the figure of about \$90,000 as a starting point.

The plaintiff's counsel asked me to allow \$70,000. The approximate result of a reduction of 20 per cent for contingencies, I shall allow, however, only \$65,000 plus interest at 6 per cent per annum on \$25,000, that is \$6,750. As I have said already the plaintiff should have made strenuous attempts by now at getting back into the workforce.

As to future economic loss the plaintiff very wisely accepted that allowance must be made for his obvious ability to earn money despite the serious diminution to his earning capacity which has resulted from the subject incident. Accepting a net pay of \$389 plus average overtime, the figure of \$413 is reached. The plaintiff being 44 asks that I apply a 20 year multiple on \$200. I am prepared to accept a 20 year multiple but the figure of \$200 per week seems to me too high. It does not truly reflect a proper deduction for the usual contingencies.

However well paid construction workers may be from time to time, few today need to be reminded of the precarious nature of the industry. I think a lesser figure of \$100 would be fairer. I allow \$65,000.

To sum up, pain and suffering \$30,000, interest \$1,800, special damages \$9,438.18, past economic loss \$65,000, plus interest \$6,750, future economic loss

\$65,000, less 5 per cent, less workers compensation at \$35,250.44, total \$133,838.33.

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HIS HONOUR: The defendant will pay the plaintiff's taxed costs of an incidental to the action.