

CIVIL JURISDICTION

BEFORE MR. JUSTICE ANDREWS

BRISBANE, 1 MAY 1979

BETWEEN:

VLADO BATINIC

Plaintiff

- an -

ZIATKO RUZICHICH

Defendant

JUDGMENT

HIS HONOUR: This is a matter which, notwithstanding the short interval of time during which I have considered it, is not without its difficulties, and the decision which I have reached is not without some misgiving. It is one of those extraordinary cases where the plaintiff is suffering - using my own term - from a syndrome which is common among people from the area from which he comes.

He was injured in a very minor way in a motor accident on 19 October 1973 whilst he was seated in his stationary Valiant sedan motor car at a railway crossing at Brandon in North Queensland when another vehicle driven by the defendant collided with his vehicle at its rear. Fairly substantial damage was caused to both vehicles, although the plaintiff's vehicle was capable of being driven after the accident. He was taken by a police officer to the Ayr Hospital where he was examined, where a doctor told him that he had a minor injury and would recover in a matter of two or three days.

According to the police officer, the plaintiff complained of soreness to the shoulders and also a bruised shoulder. As a result of his visit to the Ayr Hospital some records were kept upon which a report was later based which commented upon the fact that no reference had been made, presumably in the records, to neck injury. Nevertheless, the plaintiff says that he suffered pain in the shoulders and neck. Indeed, it is not difficult to find evidence of complaint by him of pain somewhere or other at various stages of the history of this matter, or of his history generally. He was, nevertheless, at work on Monday performing the duties of a rigger. He said that for a time he was unwell - I have forgotten his exact description of it - during the early period of his undertaking this job as a rigger. He said that during the period of about 11 weeks - which becomes significant, of course, as will appear - he performed his daily duties as a rigger without any loss of time but, according to him, under some difficulties because of pain in his shoulder and neck, and generally.

In January 1974 while he was engaged in his employment as a rigger at or near the top of a large gas tank he was required to handle what he says now was a block and chain - what appears in the claim for workers' compensation was a five foot length of 4 x 4 steel - and to bend over while bearing the weight of this object, and it appears that while this was happening he suffered either a back injury or an exacerbation of a previously existing back condition, as a result of which he said that he had pain in the back going up to the top of his back in the area of his neck.

He has not worked since, and his case is to the effect that the injuries that he sustained in the accident in October 1973 contribute to the symptoms which he now suffers. It is, I think, fair to say that it is common ground that the symptoms of which he complains are substantially neurotic in origin. It is, I think, reasonable to say that most of the doctors who have given evidence in the matter find it difficult to say whether he is genuine or whether he is exaggerating in his description of his symptoms and his apparent response to

them, but it seems fairly clear that all are of the opinion, with one exception, that there is an underlying basis of symptoms of neurotic origin, supported indeed by neurosis rather than physical injury.

I am assisted a good deal in the matter by evidence given by Dr. Jenkins, a psychiatrist. I think a reasonable interpretation of his evidence, coupled with the view that I take of it, comes down to this: that he suffered a minor injury in the accident of October 1973; that it is a contributing factor to the symptoms of which he now complains; that the episode of January 1974 triggered off the neurosis and the consequent exaggeration, both deliberate and non-deliberate, of the symptoms of which the plaintiff now complains; and the question is whether one can go back to the incident of October 1973 and find it to be a contributing cause.

I find that he suffered a minor injury to the neck and shoulders at the time, which resulted in his being in a state of minor injury, which contributed to the symptoms and contributed to the onset of the neurosis that was in fact triggered off by the injury in January 1974. However, when making an estimate of the effect of the accident of October 1973, one must have regard to the man's previous history, because it is Dr. Jenkins's opinion that other episodes also contribute to the neurosis and to the symptoms sustained by it, of which he complains, but which are related to injuries suffered by him.

In 1967 he had a back injury and he was off work for, as I recall it, something of the order of a fortnight. In 1969 something similar happened to him. He received workers' compensation as a result of injury to his back. In each case, as I recall the evidence, it was his lumbar spine that was involved. In 1971 a similar injury was sustained by him. In 1972 his hand was injured and, as a result of it, he later underwent an operation involving a grafting of an artificial knuckle. He was then off work for about five months on workers compensation.

It is with these episodes as a background that one has to make some assessment of the contributory effect of the accident of October 1973. It is to my mind significant that he lost no work at all pursuant to it, and it is therefore my view that the contributory effect is of a quite minor character and less in its impact on him than any of the prior episodes, and significantly less than that of January 1974.

He is, according to, I think, the better view of the medical evidence, virtually unemployable. He is now only aged 41 years. It is difficult to come to such a conclusion without some measure of doubt because of what I find to be his tendency deliberately to exaggerate in his complaints about his illnesses and his symptoms.

I am satisfied on the evidence of Dr. Jenkins that the man had a predisposition to the neurosis which, as I have said, substantially supports his symptoms. This is a quite significant discounting factor. I have already adverted to the other episodes which I regard also in their operation as significant discounting factors. One might say that if every matter of complaint could be attributed to the accident of October 1973, his damages would have been very large indeed.

He has been without wages for a considerable time, and one could point to a loss of net wages amounting to something like \$35,000 up to date, and later ahead some years for a normal person to something like, perhaps, 15 years of purchase or a 15 years' multiplier. Having regard to his predisposition and having regard to his history, I think that all these things contract and, taking into account the view that I have that this accident was quite minor in its contribution to his condition, I come by way of assessment to a modest sum both by way of economic loss and interference with his capacity to enjoy life.

It is a most difficult case but, doing the best that I can, I think that a sum of \$5,000 is sufficient to compensate him. There are no special damages. I have not dwelt in any detail upon his symptoms, because they are extensive. One is more concerned with finding causes. Of

course, assessment of damages, in any event, is a very inexact science, but this is, in addition, a very inexact type of a case. However, doing the best I can, I think \$5,000 is enough to compensate him, and he will have judgment for that.

There will be judgment for the plaintiff in the sum of \$5,000. I order that money paid into court be paid out, with any accretions, to the plaintiff's solicitors in part satisfaction of the judgment, and that the defendant pay the plaintiff's costs to be taxed according to the appropriate District Court scale.

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