IN THE SUPREME COURT OF QUEENSLAND No. 770 of 1984

CIVIL JURISDICTION

BEFORE MR. JUSTICE MACROSSAN

BRISBANE, 14 APRIL 1986

BETWEEN:

STEVEN RUKAVINA Plaintiff

-and-

STRAMIT INDUSTRIES LIMITED Defendant

JUDGMENT

HIS HONOUR: In this matter the damages are assessed at $173,691.90 and there is interest allowed as well. There was to be a deduction made from the amount of the assessment of $56,878.10. That means there will be judgment for the plaintiff against the defendant for $116,813.80, together with interest as stated in my reasons.

I publish my reasons.

...

HIS HONOUR: The plaintiff is to have the costs of and incidental to the action, including reserved costs, if any, to be taxed.

I give liberty to apply in the matter should either party wish to draw my attention to any mere mathematical detail or other similar formal matter.

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AND:

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JUDGMENT - MACROSSAN J. - CIVIL ACTION

Delivered the 14th day of April 1986.

This is an action in which the plaintiff sues his employer for damages for personal injuries suffered when he fell from an elevated roof in the course of his employment. At the trial, the only issue remaining for attention was the quantum of damages.

The accident which was the subject of the action occurred on 12th February, 1982 and in the fall on that day the plaintiff struck his back with some force. Notwithstanding the passage of time, the plaintiff complains of pain in many areas of his body but the substantial injury for the purposes of compensation is the fracture which occurred in his cervical vertebra.

A number of witnesses gave evidence, both lay and expert, and I was helped to varying degrees by this material.

The plaintiff has not worked since his accident and the claim is that he is presently unable to re-engage in any substantial employment and that his condition for the future will continue as it now is.

At the time of the accident the plaintiff was working as a roof plumber, a calling in which he said he originally became qualified in his native Yugoslavia and, although he did not immediately work as a plumber when he came to Australia he had, for a number of years, been following that occupation. Not long before the accident he had come to reside on the Gold Coast after having lived and worked for a number of years in Melbourne.

Two other episodes of some significance have befallen the plaintiff since the date of the subject accident. In August 1983 while in Melbourne, he was involved, as a passenger, in a motor vehicle accident and suffered some injury as a result. Further, in April 1985 after complaints by the plaintiff of low back pain he underwent an operation, a laminectomy. During the trial it became necessary to disentangle the effects of these two episodes for the purpose of assessing the damages for which the plaintiff is liable.

From the hospital and medical reports it is apparent that in the subject accident the plaintiff suffered an injury to his pelvis, a fractured right ilium, a fractured right rib which caused a haemothorax, and, of the greatest significance, a compression neck injury which resulted in a fracture at the location C5. There is no doubt that a substantial degree of pain would have been associated with these injuries and their subsequent treatment. One of the medical witnesses, Dr. Dodd, an orthopaedic specialist, was first consulted by the plaintiff in a private capacity in May 1982. The plaintiff was then complaining of pains in his neck, headaches and other pains radiating from the primary area of complaint. Dr. Dodd treated the plaintiff with fair frequency for quite an extended period and he said that pains which the plaintiff later complained to him about included symptoms in the right hip. Dr. Dodd was of the view that the plaintiff continues to experience a substantial disability due to his neck injury and, from his evidence and the other medical evidence I have no doubt of this fact. Dr. Dodd further believes that the plaintiff

continues to suffer a substantial degree of incapacity due to his original pelvic injury but of this there is much more doubt and the balance of medical evidence or at least the medical evidence which I am disposed to accept is against this view. Dr. Drake, another medical witness, also attended and treated the plaintiff quite frequently over a long period but in assessing the plaintiff's present consequential injuries and the extent of his disability I was most assisted by evidence of Dr. Watson, Dr. McGuire, Dr. James, a psychiatrist and, Dr. Dodd so far as his testimony related to the plaintiff's neck. There was other evidence as well including evidence of psychologists, the plaintiff's wife and friends and workmates of the plaintiff, but in the end the testimony from these sources was of less significance for my assessment.

X-rays of the plaintiff show the old fracture at C5 and damage in the area of the surrounding discs. Surgery is not recommended to deal with the disability flowing from these areas, Dr. Watson said. Further difficulty which has to be allowed for in the assessment is that the plaintiff has, as Dr. James indicated and as I would accept, hypochondriacal tendencies and there is emotional involvement overlaying his injuries. Dr. James when he first saw the plaintiff in 1983 and was told of his numerous symptoms concluded that the plaintiff was suffering from a reactive depression but on later visits, including one at the end of that year, Dr. James detected a degree of recovery in the plaintiff's mental condition. That witness suggested that the plaintiff now suffered from a mild anxiety state and that the hypochondriacal tendencies themselves contributed in a mild to moderate degree to some disability for employment.

Dr. McGuire who was called by the defendant was of the view that the plaintiff was suffering from a degeneration of the cervical region which predated the subject accident with the result that the accident and the fracture at C5 significantly aggravated his state. Dr. McGuire thought that the plaintiff would now suffer symptoms which could be

stated as mild to moderate neck pain, intermittently, when he was under stress. He thought that a light labouring job was within his capacities but he felt obliged to exclude heavy and sustained use of the spine.

In determining, for the purposes of assessment, the present extent of the organic orthopaedic disability which the plaintiff suffers I am disposed to accept the opinion of Dr. Watson, supported, so far as the neck is concerned, by the opinion of Dr. Dodd. On the extent to which the plaintiff is disabled from following useful occupations and upon the extent to which his activities are restricted by this injury I conclude that the greatest degree of assistance comes from the respective views of Dr. Watson, Dr. James and Dr. McGuire. I am not prepared to attribute the plaintiff's present complaints of pain in the legs and buttocks to the pelvic injury suffered in February 1982 or to any other injury received by the plaintiff on that date.

In the car accident in which he was involved in August 1983 the plaintiff says that he struck his shoulder, hip and head on the left side but that the injuries he received were minor. He was taken to casualty and remained there for one to two hours following that accident. He consulted Dr. Drake on his return to the Gold Coast and he later took proceedings to recover damages for those injuries. It emerged that he was paid almost $14,000.00 damages as a result of those proceedings but the plaintiff said that the amount he received included an amount assessed for costs. The plaintiff consulted Dr. Toakley in connection with that claim and I am satisfied that he gave Dr. Toakley a description of a substantial degree of incapacity following the accident. Although the plaintiff was now disposed to minimise the effects of the car accident he told Dr. Toakley that he was restricted to moving around with sticks for some four weeks after that accident occurred.

Dr. James was of the view that once the present action was settled, the plaintiff's present neurotic symptoms would improve. The neurotic hypochondriacal features of the

plaintiff's personality which have caused a great deal of complaint about aches and pains will also not be as prominent when the case is over. I accept this view and the further aspect of that view that the plaintiff would be disposed to over-react to any other physical injuries which he might receive.

When entering and moving around in the court-room the plaintiff appeared alert and looked quite tanned and healthy. I think it likely that he is very aware that he is engaged in a compensation exercise and he finds that avenue attractive. I am satisfied that he is astute enough to endeavour in the present proceedings to minimise the effects of the car accident but his personality, be it the hypochondriacal tendency or some other aspect of it, disposes him to overstate those of his present symptoms which will necessarily form the basis of this assessment. I am satisfied, overall, that the plaintiff has some substantial although still limited working capacity left but his inability to engage in heavy or sustained physical labour and his lack of fluency in English are particular factors to bear in mind. He has made no attempt to go back to work following the accident and he is, to date, uninterested in utilising the working capacity which he is left with. He does not seem to be at all strongly motivated in that direction. When the litigation is over, his attitude to usefully occupying himself will be unproved. He mentioned an interest in running a shop or small business with the assistance of other members of his family. From the evidence of his friends and workmates I am satisfied that the plaintiff was at least a satisfactory worker before the accident but I did not find their evidence reliable upon the level of remuneration which the plaintiff might have hoped to receive in the business of a plumber. In that respect, I am more assisted by regarding the level of the award and the amount received during the plaintiff's brief working contact with the defendant.

To complete the picture of the plaintiff's circumstances it should be recorded that he was born in

April 1947 and that he was, at the date of trial, almost 39 years of age. He says that he now gets most pain in his neck and he gets headaches and associated pain in his right shoulder and back. I am prepared to accept that these symptoms and the disability which they reflect are the result of the accident but I am not so satisfied in respect of the hip and right leg pain of which he also complains. The plaintiff said that he qualified as a roof plumber in the year before he came to Australia, which was in 1966. Over the following years he worked in various labouring occupations and did not return to plumbing until 1974. He spoke of starting sub-contracting as a roof plumber at the end of 1978, but this is not to be regarded as an indication that he was then conducting any substantial business. He did not employ labour until 1981. It was at about Christmas time in 1981 that he came to the Gold Coast because of his daughter's ill health. He said that he intended to work in the roofing trade, starting off by working for other people and he stated that if he could not get work locally he would have travelled back to Melbourne, moving back and forth as necessary. He has two children, a son and daughter now aged respectively 16 and 12 and he said that his family relationship with them and with his wife was very good prior to the accident but now is disturbed and deteriorated. The plaintiff says that he spends his days doing very little. He goes for walks, he swims a little and can drive a car although he says that he finds driving long distances difficult and, for example, between Brisbane and the Gold Coast it is necessary for him to pull over to the side of the road and rest. The family is now supported by the working efforts of the plaintiff's wife.

I think it is likely that the plaintiff did indeed work quite hard before the accident but, with his personality as it was he had probably reached a stage where his determination to continue was somewhat weakened. It is rather surprising that he has made no attempt to go back to any work since the accident. For the purposes of assessment I will not assume that apart from the present accident it

is likely that he would have worked with dedication as a plumber or in any other heavy labouring capacity up to the usual retiring age. He appears to have a susceptibility to adverse reaction and the laminectomy and the car accident would have upset any prevailing working pattern, as would any other similar episode. I find, nevertheless, that his present level of disability is substantially due to the fall from the roof and is not now added to or contributed to by the motor vehicle accident or the events associated with the laminectomy in April 1985. Those last two factors I find have probably now run their course. If the subject accident had not happened the plaintiff at this point would probably have enjoyed a physical capacity not greatly different from what it was in 1982. His capacity to enjoy life would probably also be equal now to what it then was. I say this to illustrate how the effects of the two subsequent episodes should now be excluded but of course there is the possibility that he might at any time have been involved in some other episode which may have disabled him. In a general way, his disposition makes him chronically vulnerable to upset and this personality feature, or its potential condition, I find predated the subject accident and is a factor calling for discount in the economic assessment of his future prospects. The two supervening episodes to which I have referred even though their effect is now dissipated nevertheless call for some discount of assessment of past economic loss and they would, of course, have involved some diminution of the plaintiff's capacity to enjoy life for the periods when they remained operative factors.

A number of schedules were tendered to assist in the task of assessment. These were numbered A1 to A5 respectively. Exhibit 21 shows the amount of Workers' Compensation payments received and it is agreed that the amount of the judgment will have to be reduced by $56,878.10 although the so-called Fox v. Wood component will need to be added in on the credit side. The defendant was disposed to accept that the plaintiff might be regarded as having established past economic loss for a period of

about one year that being, it was contended, a reasonable time to take for his mood depression to run its course and for recovery to take place from the orthopaedic injuries. The gross wage rates shown on the schedules A2, A3 and A4 were not contested and no real contest was offered upon the net rates, after tax, which the plaintiff suggested. Interest was not sought by the plaintiff on the special damages except upon the extent to which past economic loss, as it should be assessed, exceeded the weekly payments received in the past as shown on ex. 21. On the component of damages assessed for pain, suffering and loss of amenities interest also was claimed so far as that was attributable to the pre-trial period.

From the amount of $44,749.78 shown on ex. 21 when the Fox v. Wood component of $7,380.40 is deducted, a net amount of $37,369.38 results. For the purpose of interest, it was not contested that that was the figure which should be deducted from past economic loss as assessed and, if this showed a credit amount, then interest was to be awarded.

Special damages were agreed but not in the original total shown on schedule A1. It was subsequently agreed that the amount shown against the Allamanda Private Hospital on that schedule should be deducted and the medical expenses as there shown reduced by $3,250.00 so that a new total of $16,311.50 should, subject to what follows, be awarded. The defendant contended that of the component of $6,326.70 (remaining when $3,250.00 is subtracted from the total of $9,576.70 previously shown for hospital and medical expenses on the schedule) only 40 per cent should be allowed as being a fair proportion attributable to the first post-accident year. It was, however, agreed by both counsel that should I find a second year's hospital and medical expenses attributable to the subject accident I should award another 40 per cent and should thereafter, dependent upon my findings, allow a further proportion up to the total for that component of $6,326.70. It was agreed that I should grade as may be necessary if I made

intermediate findings. The amending schedule, A5, shows the agreed adjustments to A1 and the defendant's limited concessions in respect of it. I find that all of the hospital and medical expenses and related expenses shown on that schedule are attributable to the subject action.

In the assessment of past economic loss, particular factors to be borne in mind are the doubts concerning the steadiness with which the plaintiff would have worked had the accident not occurred and the occupation or occupations in which that employment may have been undertaken. For the future years the same factors are to be borne in mind when the assessment is undertaken of what the plaintiff has lost, economically, as a result of the accident.

Since I think that it is reasonable to allow the whole of the hospital and medical costs included in the special damages claim, the total assessed under this heading will accordingly be $16,311.50.

Because I am satisfied that the plaintiff has substantial earning capacity remaining which he will be disposed to utilise when the case is out of the way I think there is cause to make a significant discount in the claim for future economic loss as it was advanced on the plaintiff's behalf. I think there is also good cause to discount the quantum of past economic loss which was claimed upon the basis that the plaintiff would have been in full employment on at least plumbers' award wages had the accident not occurred. In the case of both future and past economic loss because of the various factors operating in the plaintiff's case, I think that it is appropriate to award global sums. Greater precision is not reasonably possible.

For past economic loss for the period of about four years from accident to trial I allow the sum of $45,000.00. Interest was sought on the difference between the amount I should award under this head and the lesser net figure for weekly payments emerging from ex. 21 as a result of an agreement of the parties, that is, the net figure of

$37,369.38. I allow interest on the difference between this lastmentioned sum and the figure of $45,000.00, that is upon $7,630.62, at the rate of six per cent from the date of the writ to date of judgment.

The Fox v. Wood component of $7,380.40 will be added to the assessment otherwise made but no interest is claimed upon it.

For future economic loss I award the round figure of $65,000.00.

For pain and suffering and loss of amenities past and future I assess the figure of $40,000.00. For the purposes of the award of interest, one-third of this figure is allocated to the period pre-trial and that fraction of the sum will carry interest at the rate of six per cent from the date of writ to the date of judgment.

The total assessment of damages is then $173,691.90 with the interest to be calculated in addition. The parties were agreed that from the amount of assessment a deduction should be made of the refundable amount $56,878.10. That means that the plaintiff will have judgment against the defendant for $116,813.80 plus interest as stated above. The plaintiff is to have the costs of and incidental to the action including reserved costs if any to be taxed.