

CIVIL JURISDICTION

BEFORE MR. JUSTICE DEMACK

ROCKHAMPTON, 26 MARCH 1987

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BETWEEN:

WAYNE RODNEY LEWIS

Plaintiff

-and-

MAXINE WEBB

Defendant

JUDGMENT

HIS HONOUR: Mr. Lewis was born on 21 May 1966. He was seriously injured in a motor vehicle accident on 2 July 1984. The collision was a head-on collision and the motor vehicle was crushed back on top of his legs. The defendant has accepted liability for the accident.

Mr. Lewis suffered a great deal of pain and distress while attempts were made to free him from the badly damaged vehicle. He was taken to the Gladstone Hospital and on admission showed a closed transverse mid fracture of his left femur, a closed oblique fracture of his right femur, fractured distal left radius and a compound laceration to his left knee. He underwent surgery in which his knee was sutured and Kuntscher nails were inserted in both left and right fractured femurs. The hospital reports from the Gladstone Hospital do not refer to the fact that subsequently it was discovered that he had also a fracture

in the right arm. That was not diagnosed for approximately two weeks. His right arm was then put in plaster, and there does not seem to be any disability arising from that injury that requires any further consideration.

He was released from hospital on 7 August 1984 and went back to visit the premises of his employer, Bob Jane T-Mart, Gladstone. He was apparently going there to have some forms signed and he slipped as he entered the building. He was on crutches at that time and obviously the healing in both his legs was at a very early stage. He fell and bent a Kuntscher nail in his left leg. He was readmitted to hospital and a further operation was performed to remove the bent nail and to reinsert another nail. He was in hospital then until 5 September 1984.

The nail in the right femur was subsequently removed but the nail in the left femur was inserted to such a depth that it cannot now be removed without some chipping away of the head of the femur. Dr. McClymont recommends that the nail remain where it is. It is worth observing that in the report of the Gladstone Hospital Board two particular visits are noted, and the symptoms that are then observed need to be recorded:

28 December- Progress and X-ray. Walking well but still
1984 with a limp.
15 March- Progress and X-rays. Right leg healed well.
1985 Some healing still to go with the left leg. Will
be reviewed in six months.

In fact, Mr. Lewis had returned to work on 5 December 1984. This, to my mind, illustrates something which is I think very obvious in Mr. Lewis's case, namely, that he is a very highly motivated young man who has worked very hard to try to recover his physical capacities.

Prior to the accident he was working for Bob Jane T-Mart, Gladstone. He had been involved with tyre fitting ever since he left school at the age of 15. The manager/franchisee of the Gladstone Bob Jane T-Mart, Mr.

Davies, was called to give evidence. He spoke in very high terms of Mr. Lewis and I accept his evidence. I accept that at the time of the accident he had marked Mr. Lewis out to become his assistant and that there was a very strong possibility that his then assistant would have moved to Mackay shortly after July 1984. I am satisfied that Mr. Lewis had a very good future in that industry, with every prospect of becoming someone who would be a franchisee of premises at some stage. Part of his success in business lay in the fact that he was a very good footballer. Evidence from a man who is a district coach, Mr. Mitchell, was given, which was filled with praise of Mr. Lewis's talents. I did not think that Mr. Mitchell displayed any indications that would demonstrate that he was overstating the case. He seemed to me to be a dedicated and honest man who had formed the opinion that Mr. Lewis would be able to go on to play A-grade Rugby League in Brisbane, and that representative football in Queensland and beyond was within his capacity.

The coach of the football team in Gladstone for whom Mr. Lewis was playing in 1984 was also called. He was Mr. Bruce Warwick, a very experienced Rugby League footballer with some ten years A-grade football in Sydney and in Brisbane. He said that he found Mr. Lewis to be both dedicated and having exceptionally good natural skills. He was inclined also to see an international future ahead of Mr. Lewis. The evidence of Mr. Warwick was, of course, tempered by the admissions that he made in cross-examination that there is many a slip twixt cup and lip in the game of football, and many promising 18 year olds simply do not make it to international standard for a variety of reasons. However, it seems to me, bearing in mind that this young man came from Gladstone and that his immediate future lay in that city, that his football prowess, together with his capacity in handling customers at the T-Mart, guaranteed that he would be able to achieve a high standard of economic performance in the immediately close years of his life. The fact that he was working for an enterprise that was initiated by a sportsman, and the

fact that his football coach has become a businessman in Gladstone, would be strong incentives to a well motivated young man to use his prestige as a sportsman to his advantage in business.

Turning then to his loss of economic capacity, first of all, schedules have been tendered which became Exhibit 8. These show a loss of income after the accident to which adjustments have to be made to take account of payment that he has received from Queensland Tyre Services and from unemployment benefit. These show a loss of some \$8,300. However, these figures are all calculated on the basis of his continuing to work as a tyre fitter. Clearly, on what I have said, he would have become someone more valuable in the business some time ago and his income would have been greater than that. Also, he would have had the opportunity by now of playing in two full seasons of football, almost certainly in Brisbane, and consequently something has to be allowed for his loss of income from that. I assess past economic loss at \$16,000.

So far as the future is concerned he is now working as a process worker with Queensland Alumina Ltd. Over the past 12 months he has earned approximately \$12,000 net. The man whose shoes he would have filled at Bob Jane T-Mart has earned approximately \$15,000 in that same period. It seems to me that this difference of something like \$60 net per week is some indication of his loss of economic capacity. It is not the whole story but it does set some base figures.

He is still a very young man and it seems to me that taking into account all of the contingencies, at least 30 years working life must be allowed and this produces a sum which I would round off at \$50,000.

The present work he has, which is producing a good income for him, is work that he does with difficulty. It involves a great deal of climbing of ladders as well as steps and involves a lot of walking. Dr. McClymont recommends that he should get out of this work as soon as

he can and that seems to me to be sensible advice. This means that some allowance has to be made for his vulnerability in the work place because of his limited ability to move about. For this I shall allow the sum of \$15,000.

Also, there has to be some allowance for what he might have done at football. This is a component which is a matter of the purest speculation. There is no evidence before me but there are some things that even judges notice in the world about them and if he were to acquire the fame of his namesake he might well find he could not be paid the high fees that clubs offer to pay him. So it is a matter, as I say, of speculation. However, here at a point very early in his career, it seems to me that the speculation has to be in modest terms and I shall allow \$15,000 to cover that part of his loss. I therefore assess his future loss of economic capacity as \$80,000.

So far as his present disabilities and condition are concerned, Dr. McClymont says that he has lost 20 per cent of the function of his left leg. This is largely because of creakiness and stiffness and pain in the knee. Dr. McClymont is of the view that there is probably a torn meniscus following the laceration in that knee. As a result, this knee locks up quite often and Mr. Lewis has to manipulate it to unlock it. His right leg is half an inch short and there is a considerable, external rotation deformity because of the way the bone has healed. Because of this, which means that his foot turns out some 30 to 35 degrees, Dr. McClymont assesses his loss of function in the right leg also at 20 per cent. There is stiffness in the left wrist and Dr. McClymont assesses a 10 per cent loss of function of the left arm. Mr. Lewis seemed to me to make a bit more of the disability in the left arm than Dr. McClymont would allow. It is still less than three years since the accident and it may well be that Mr. Lewis will gain a bit more confidence with his left hand and wrist than he has shown up to date. Certainly Dr. McClymont's estimate of the disability was not challenged.

There are very obvious scars on both upper legs and to the left knee. Dr. McClymont measures these as a scar overlying the medial side of the left knee some 3½ inches long. Part of this scar involves quite a marked depression. It is certainly conspicuous and would attract comment. The scar on the left lateral thigh is 10½ inches long and over the right thigh, 9 inches long. There are scars above the hips. The one overlying the right hip is 2¼ inches long. There is a T-shaped scar overlying the left hip, the limbs being 2¼ inches and 4 inches long. Part of these scars at least is visible when he wears shorts. He has been transformed from a very healthy, vigorous young man who enjoyed football and other sports to someone who has great difficulty squatting, who has difficulty running, who has this knee which locks up. He says that he has tried to play indoor cricket but was not any good and developed pain in both legs afterwards. He has made a considerable effort to get his strength back by attending physio and by attending the gym but by and large he is left with very little by way of sporting activity even though at this stage he is only 21. The condition of his right leg means that there is a possibility of osteo-arthritis in the knee; in the left knee, that is a certainty.

He is not a married man at this stage but obviously these disabilities are going to affect him in family life if he chooses to marry and have a family. For all these disabilities and for the loss of amenities of life that they bring, I assess the sum of \$40,000.

I shall allow interest on past economic loss and on \$10,000 of the pain and suffering award. I assess that interest at \$4,200.

In summary, then, the agreed specials, none of which attract interest, are \$11,781; past economic loss, \$16,000; future economic loss, \$80,000; pain and suffering, \$40,000; interest, \$4,200, a total of \$151,981.

There will be judgment for the plaintiff against the defendant in the sum of \$151,981 together with costs including reserved costs to be taxed.
