

SUPREME COURT OF QUEENSLAND

No 2691 of 1989

CIVIL JURISDICTION

WILLIAMS J

DALE LAURENCE LOCKWOOD

Plaintiff

and

SUNCORP INSURANCE & FINANCE

Defendant

BRISBANE

..DATE 16/05/95

JUDGMENT

HIS HONOUR: The plaintiff, Dale Laurence Lockwood, sustained very serious injuries in a motor vehicle accident which occurred on 20 January 1988. He was born on 17 December 1968 and was thus aged 19 when the incident occurred.

The injuries were sustained when a Suzuki motorcycle collided with a motor vehicle on Guinness Creek Road, Currumbin. All of the evidence suggests that the motor vehicle was on its correct side of the road and the motorcycle on its incorrect side when the collision occurred. There were two people on the motorcycle, the plaintiff and one Brett William McCabbin. McCabbin died instantly as a result of injuries sustained in the collision.

The action was commenced by the plaintiff against the defendant, Suncorp Insurance and Finance, on the basis that McCabbin was the rider of the motorcycle at the time and that the plaintiff's injuries were sustained as a result of McCabbin's negligence. The defence denied liability and alleged that at the material time the plaintiff, and not McCabbin, was the rider of the motorcycle.

The trial commenced before me this morning and I heard a full opening from Mr Clifford QC, who appeared for the plaintiff. It is fair to say from all that I heard in that opening that there would be no direct evidence led on behalf of the plaintiff to the effect that the plaintiff was the pillion passenger and McCabbin the rider at the material time. Because of his head injuries, the plaintiff has no recollection, or certainly no reliable recollection, of any relevant events.

Negotiations took place between the legal representatives of the parties whilst the plaintiff was still in evidence in chief. That resulted in my being informed that the basis of a settlement had been reached subject to my sanction. Sanction is required because of the plaintiff's diminished mental capacity consequent upon his head injuries. Counsel made it clear that the settlement was heavily influenced by the issue of liability to which I have already referred.

It was agreed that the somewhat unusual course should then be taken of the plaintiff's legal advisers and the plaintiff leaving the courtroom whilst counsel for the defendant outlined to me the evidence available to the defendant on the issue of liability and, in particular, on the issue as to who was the rider of the motorcycle at the material time. That statement was fully recorded.

It is sufficient for me to say that on the defence opening there would be at least two, if not three, eyewitnesses to the incident who would give evidence that it was the plaintiff and not McCabbin who was the rider of the motorcycle at the material time. Of course, any comment that I make is based on the opening and it should be remembered that the evidence as opened was not in any way subject to testing under cross-examination.

The defendant would also have relied on a number of matters tending to suggest, apart from the identification evidence, that it was the plaintiff who was the rider of the motorcycle at the material time.

I must say that having heard the evidence on liability opened from each side, there is clear justification for a settlement based upon an apportionment of liability 90 per cent against the plaintiff and 10 per cent against the defendant. Such a settlement can only be justified on the commercial realities of the situation.

At the outset I was told the trial would last four days and, of course, that would be a costly trial. One has to concede that, notwithstanding the preponderance of evidence in favour or apparently in favour of the defendant's contention, there was always a possibility that the plaintiff may have succeeded. It is really a commercial assessment of that possibility which has, as I understand it, resulted in the 90/10 apportionment and, as I have already said, that does appear, in all the circumstances, to be realistic.

I have had regard to the affidavits of Aidan Errol O'Keefe and Helena Lucy La Valle, the next friend of the plaintiff. I have also had regard to the joint opinion of counsel which has been tendered to me. That opinion in due course will be sealed in accordance with a term of the consent order.

In the light of all that material, a settlement on the basis of the plaintiff receiving \$100,000 is, in my view, in the best interests of the plaintiff and is a settlement that should be sanctioned.

I have been handed a draft order. The legal representatives on all sides agree with the terms of it on the assumption that I am prepared to sanction the settlement. As I am prepared to do so, in the circumstances I will make an order as per the initialled draft.

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HIS HONOUR: Order as per draft.
