IN THE SUPREME COURT OF QUEENSLAND No. 2339 of 1984

FULL COURT

BEFORE:

Mr. Justice Kneipp

Mr. Justice Thomas

Mr. Justice Derrington

BRISBANE, 25 OCTOBER 1988

BETWEEN:

HIEN VAN NGUYEN (First Plaintiff) First Respondent

-and-

TRONG HIEU NGUYEN (by his next friend Hien Van Nguyen) (Second Plaintiff) Second Respondent

-and-

THI KIM LAN NGUYEN (by her next friend Hien Van Nguyen) (Third Plaintiff) Third Respondent

-and-

THANG VAN NGUYEN (Defendant) Appellant

JUDGMENT

MR. JUSTICE KNEIPP: My brother Thomas will deliver the first judgment.

MR. JUSTICE THOMAS: This is an appeal against an assessment of damages for personal injury made by Master Weld. The grounds of appeal challenge assessments for pain, suffering and loss of amenities of life, economic loss, and other components which form part of the assessment. The learned Master was faced with a difficult task in the present matter because the possibilities before him were very wide-ranging. It was a case where there was a very wide discretion open to the assessing tribunal.

The most important point raised on this appeal concerns the learned Master's treatment of the evidence of a depressive illness from which the appellant suffered. It is common ground that the injuries asserted by the appellant were a soft tissue injury to the neck, and the depressive illness as to which one psychiatrist was called. It seems to me that the learned Master's findings of fact in this respect are unassailable, at least from the point of view of any attack on them by the appellant. In fact, if the Master erred, the error seems against the defendant, especially in relation to the finding that the plaintiff's depressive neurosis was caused partly by what may be called nervous shock. The evidence to support any finding that the neurosis was caused by the shock of seeing his wife at the hospital (or through sudden sensory perception as identified by Mr. Justice Brennan in Jaensch v. Coffey (1984) 155 C.L.R. 549, at 567) was very tenuous. Indeed, the primary view of the only psychiatrist called, Dr. James, was that the neurosis was caused by a bereavement reaction to his wife's death. Dr. Myers expressed a similar view. On this basis the neurosis would not be compensable at all. However, on the footing that there was more than one origin of the neurosis from which the plaintiff actually suffers, the learned Master correctly observed that:

> “I must make or attempt to make some evaluation of the extent to which the emotional or depressive reaction was caused by the nervous shock as distinct from the bereavement.”

This was not a situation where the onus shifted to the defendant, as it does in some situations such as those mentioned in Watts v. Rake (1960) 108 C.L.R. 158, and Purkess v. Crittenden (1965) 114 C.L.R. 164. As Mr. Justice Matthews observed in this Court in Edwards v. Hourigan [1968] Qd.R. 202, at 209:

> "... the respondent's right to damages was not governed by the principle in Watts v. Rake ... and explained in Purkess v. Crittenden ... but by the decision in Neall v. Watson (1961) 34 A.L.J.R. 364."

His Honour went on to quote from that decision including the statement that

> "a defendant is liable only for the harm his negligence causes, not for harm later ensuing from the operation of a new and independent cause."

In Edwards' case it was held that the plaintiff, whose post-accident nervous instability was aggravated by the death of her husband, could not obtain damages for such aggravation and that the onus was on her to disentangle the causes of the condition, not on the defendant. It was also held in that case that the impairment of the plaintiff's capacity to withstand the buffets of life was a matter for which she was entitled to be compensated, but that the death of her husband was something which reacted upon this impaired capacity and was remote from the original damage. It follows in my view that the appellant cannot complain in relation to the Master's treatment on the issue of neurosis.

There is no basis for disturbing his award for pain, suffering and loss of amenities, which it may be inferred was an award of approximately $17,000. As I have mentioned, the basis of the claim was soft tissue injury and neurosis. There is no reason to believe that either of these conditions would continue for a substantial period, and in any event the defendant's liability to compensate the plaintiff for the neurosis is quite limited.

One of the grounds of appeal complained about the omission of an established figure of $503 for special damages, and it was conceded that this was omitted in error. It should therefore be included in the award.

The assessment of economic loss of $17,000 cannot, in my view, be described as inadequate against the acknowledged fact that the plaintiff had had only one job since coming to Australia and had relinquished it after one week. There was very little basis on which to assess a substantial earning capacity or to assume that there would have been regular work. The plaintiff was obviously going to face substantial difficulties in obtaining and holding employment. The Master's view of the plaintiff's chances on the labour market is adequately reflected in the award of $17,000 under that head.

It was then submitted that the allowance for future pharmaceutical and medical expenses was inadequate. The Master made what he called a modest allowance for this. The appellant's counsel submitted that he ought to have been awarded a sum of $3,400 based on a figure of $8.40 per week for six years. This, however, was not supported by medical evidence substantiating such a need. Furthermore, the period for which it could properly be allowed would have to take into account that the medication was primarily for the neurosis which, of course, is partly caused by the grief reaction and not on the basis of physical injury. The learned Master was entitled to assess “over a very limited period” having regard to the degree of recovery he perceived the plaintiff would have made both from the soft tissue injury and neurosis.

Finally, the amount allowed by way of interest under the Common Law Practice Act is challenged on the basis of mathematical error. The learned Master intended to allow interest on the sum of $33,000 at 6 per cent for 6.3 years and erroneously calculated this at $10,395. The error is some $2,079.

The appeal should therefore be allowed, but only to the limited extent of adding to the damages $503 and to the interest $2,079, making a total addition to the award of $2,582. In the circumstances, I would propose to make no order for costs of the appeal.

MR. JUSTICE KNEIPP: I agree.

MR. JUSTICE DERRINGTON: I agree.

MR. JUSTICE KNEIPP: The orders of the Court are that the appeal is allowed to the extent of setting aside the judgment for the sum of $45,395 and costs of the action to be taxed, and substituting judgment for $47,977 and costs of the action to be taxed. There is to be no order as to the costs of this appeal. Order also that the amount of security paid into Court be paid out to the solicitors for the appellant.
