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his object—and was able to increase his overdraft, which grew to be over £4,000. As the consequence of what he had done, it was inevitable that, should the launch become a total loss, the money would be paid to the bank, who could do no other thing with it than pay it into his heavily overdrawn account. The £3,950 nearly squared the appellant's account, and then the bank refused to allow him any more credit. This seems to have much aggrieved the appellant, according to the evidence; but the matter was quite irrelevant to proof or rebuttal of the charges.

One of the particulars of misdirection (p. 35, lines 9–11) was made the basis of a complaint that the learned judge commented adversely to the appellant on his silence when being interviewed by Superintendent Wray of the C.I.D. The learned judge does not seem to us to have done so; he was reminding the assessors that in reply to a question by the judge asking the appellant if he had told Wray that Anthony had signed the letter of July 2, the appellant had replied "yes." The judge then reminded them that Wray's evidence, which had already been read to the assessors, was otherwise. (Wray had said that he was investigating a case of forgery and the appellant had asked if Anthony had seen the letter.)

We can briefly dispose of the remaining grounds of appeal. Grounds 3 and 4 are both about the weight of evidence and we find that there was ample evidence to support the convictions. The last ground complained that the learned judge failed to give sufficient consideration to the defence. We have already said that the defence was put to them fairly in the long review of the evidence in the first 26 pages of the summing-up.

The appeal is dismissed in so far as it relates to counts 3, 4, 5, 7, 8 and 9. The appellant was also convicted on count 10. This was very clearly intended to refer to the uttering of the document referred to in count 9, namely, the Lloyd's policy. When considering our judgment, however, we noticed that it does not do so, but refers to the document which was the subject-matter of counts 7 and 8, namely, the Institute of London Underwriters' Company's Policy. This appears to have been a clerical error in preparing the information. It could have been amended at any stage of the trial: but the mistake went unnoticed by anyone and was not amended. Consequently we cannot have a conviction on two identical and unamended counts and so quash the conviction on count 10 and direct that an entry be made that that count should not have been proceeded with owing to the finding on count 8 of which it was a duplicate.

Freetown
July 11,
1961
Ames P.
Bankole
Jones Ag.C.J.
Marke J.

[COURT OF APPEAL]

ARTHUR MASSALLY . . . . . *Defendant/Appellant*

v.

THERESA BECKLEY . . . . . *Plaintiff/Respondent*

[Civ. App. 15/61]

Tort—Negligence—Automobile accident—Quantum of damages—Method of assessing damages—Relevance of English decisions.

Plaintiff was injured in an automobile accident and obtained a judgment against defendant for £88 special damages and £2,500 general damages. Defendant

appealed on the ground that the amount of damages awarded was too high. Regarding the amount of damages, the trial judge had said: "In order to arrive at the quantum of general damages which court should award I shall be guided by the case of *Metz* v. *Bristol Tramways Co.* reported in [1955] Current Law Year Book and decided by Pilcher J. in which are certain similarities in the nature of the injuries sustained as those by plaintiff in this case." Counsel for appellant argued that this statement contravened the "principle" laid down in *Sierra Leone Mineral Syndicate Ltd.* v. *Amadu Conteh,* Sierra Leone and Gambia Court of Appeal, June 22, 1960, in which it was said that in assessing general damages in cases of this sort the court should proceed as if Sierra Leone were the only country in the world.

Held, dismissing the appeal, that the amount of damages awarded was "not so generous a figure as to suggest that it must have been fixed on some wrong principle."

The court (Ames P.) also said, obiter, regarding the practice of referring to English decisions in assessing the amount of damages, "Is it not much better to start and end in Sierra Leone? In England courts do not find out what would have been awarded in comparable cases in the United States of America, Australia, India or anywhere else and then translate it into terms of England. They start and end in England."

Cases referred to: *Metz* v. *Bristol Tramways Co.* [1955] C.L.Y., para. 741; *Sierra Leone Mineral Syndicate Ltd.* v. *Amadu Conteh,* Sierra Leone and Gambia Court of Appeal, June 22, 1960 (Civil Appeal 21/60).

Arthur E. Dobbs for the appellant.
Kenneth O. During for the respondent.

AMES P. This is an appeal against the quantum of damages awarded to the plaintiff/respondent in a running down case.

The accident took place as long ago as February 17, 1958. The writ was dated April 28, 1960; the judgment appealed from was given on January 27, 1961; the amount awarded was £88 special damages and £2,500 general damages. It is the latter, and not the special damages, which aggrieved the appellant and caused him to appeal.

The only ground of appeal is "that having regard to the evidence and the learned judge's findings, the learned trial judge erred in principle in awarding so high a figure."

It was said by the Court of Appeal for Sierra Leone and the Gambia in a judgment given in June of last year in the appeal *The Sierra Leone Syndicate Ltd.* v. *Amadu Conteh* (not yet reported) that in assessing general damages in cases of this sort, the court should do so as if Sierra Leone were the only country in the world.

The method of assessing damages in that case had been that a search was made for a case of comparable injury in England to see how much the English court had awarded, and then it was varied because the facts were not exactly like those in *Conteh's* case and then it was considered how much, if at all, the amount should be reduced owing to different circumstances prevailing in Sierra Leone.

In the instant case, the learned trial judge, having set out the particulars of the matters to be taken into consideration, said:

"In order to arrive at the quantum of general damages which court should award I shall be guided by the case of *Metz* v. *Bristol Tramways Co.*

reported in [1955] Current Law Year Book and decided by Pilcher J. in which are certain similarities in the nature of the injuries sustained as those by plaintiff in this case."

It is argued by Mr. Dobbs for the appellant that this contravened what he described as the "principle" laid down in *Amadu Conteh's* case. It appears that in the *Bristol Tramways* case £6,000 was awarded as general damages. Here the learned judge awarded £2,500. I fail to see in what way the learned judge was guided by the *Bristol Tramways* case or in what sense he meant that he would be.

The learned judge set out all the items he considered; pain and suffering as a result of the serious injuries during five weeks' treatment of the plaintiff/respondent as an in-patient and one month as an out-patient during part of February, March and April 1958; also loss of business during that period; there was excessive bone formation at the side of union of the five ribs which had been broken; there is persistent pain on the chest and occasional difficulty in breathing; she is constantly mentally upset due to a nasty scar on her neck which resulted from one of the injuries; she is not able to work as hard now as she formerly did; she cannot attempt long journeys without being exhausted. The respondent is a lady of 41 years of age and a trader, who has two shops.

I personally consider the award of £2,500 a generous award, but it is not so generous a figure as to suggest that it must have been fixed on some wrong principle.

I would dismiss this appeal.

There appears to be, perhaps, some misunderstanding as to what was meant in *Conteh's* case when the then existing Court of Appeal said that the matter should be considered as though Sierra Leone were the only country in the world. It seems to me to be common sense. It only referred to general damages.

The method adopted in that case adds to the admitted difficulty of assessing the amount to be awarded. If it is followed, it means looking for a "comparable case" reported in England. Well, cases usually are not exactly alike; so the English case which has been found has to be adjusted, up or down, to guess what a court or jury in England would have awarded had the case been exactly alike. Then it is necessary to consider if that figure should be varied, owing to the "special conditions" existing here. One is then supposed to have arrived at the proper figure. Is it not much better to start and end in Sierra Leone? In England courts do not find out what would have been awarded in comparable cases in the United States of America, Australia, India or anywhere else and then translate it into terms of England. They start and end in England.

In this country, of course, there are very few reported cases of this kind, and it may be necessary to create a precedent in any particular case.

What was said in *Conteh's* case was not meant to affect the principles applicable, which have been well settled by English case law, and which apply here. It was only meant to apply to the fixing of the figure of general damages. Nor did it apply to special damages. For example, if it is reasonable to go outside Sierra Leone for treatment, perhaps because it cannot be had in this country, of course, that can be taken into account.

As I have already said, I would dismiss this appeal, with costs, as allowed on taxation.