Freetown
Nov. 15,
1962

Ames Ag.P.,
Bankole Jones
Ag.C.J.,
Dove-Edwin

[COURT OF APPEAL]

SULEMAN LASAWARRACK . . . . . *Plaintiff/respondent*

v.

RAFFA BROTHERS AND THE NORTHERN ASSURANCE CO. LTD. . . . . *Appellants*

[Civil Appeal 17/62]

Tort—Motor vehicle accident—General damages—Whether damages excessive—Test to be applied.

Plaintiff was injured in a motor vehicle accident caused by the negligent driving of Raffa Brothers' servant. Plaintiff brought an action against Raffa Brothers, who obtained leave to institute proceedings against the Northern Assurance Co. Ltd., which held itself bound to indemnify the defendants if negligence was proved. At the hearing, the trial judge (Cole J.) found for the plaintiff and awarded the sum of £11,000 as general damages. The insurance company appealed on the ground that the amount of damages was excessive.

The accident took place on August 18, 1959, as a result of which plaintiff spent 183 days in a hospital. There was no evidence regarding his age. The medical report of the surgeon whom examined him, dated April 7, 1960, stated, inter alia, that plaintiff, had a permanent deformity of his left hip with two and a half inches' shortening of the left lower limb resulting in a limp. His fourth through twelfth ribs were fractured which caused a deformity of his right chest. The surgeon recommended complete rest for a period of six months and stated that plaintiff would be unfit to carry on any work for at least a year. At the hearing on April 4, 1962, plaintiff's father-in-law testified that plaintiff was still not well and was still not working and that he had had to send him to another hospital three months previously. There was no evidence produced as to plaintiff's condition while at this hospital.

Held, allowing the appeal, that the amount of damages awarded was so inordinately high that it must be considered a wholly erroneous estimate.

The court reduced the damages from £11,000 to £3,000.

Cases referred to: *Sierra Leone Mineral Syndicate* v. *Amadu Conteh*, Sierra Leone and Gambia Court of Appeal, Civil Appeal 21/60; *Saidu Conteh* v. *Julius M. Coker*, Sierra Leone and Gambia Court of Appeal, Civil Appeal 31/60; *Flint* v. *Lovell* [1935] 1 K.B. 354; *Owen* v. *Sykes* [1936] 1 K.B. 192.

John E. R. Candappa for the appellants.
Zinenool L. Khan for the respondent.

BANKOLE JONES AG.C.J. In an action brought by the plaintiff for damages for personal injury and loss sustained by him in a road accident, the defendants sought and obtained leave to institute proceedings against a third party—the Northern Assurance Co. Ltd. The third party held themselves bound to indemnify the defendants if negligence was proved. By their defence they denied that the accident was caused by the negligence of the defendants their servant or agent or that the plaintiff suffered the injuries alleged in the statement of claim.

At the hearing, the third party did not appear, nor did counsel on their behalf. The trial judge proceeded to take the evidence of the plaintiff and his witnesses and in his judgment found as a fact that the accident was caused by the negligent driving of the defendants' servant and that the plaintiff sustained the injuries complained of as a result of such negligent driving. He awarded the amount claimed as special damages and the sum of £11,000 as general damages.

This appeal is only against the amount of general damages awarded, on the ground that they are excessive.

The facts were that the accident took place on the Zimmi Road in the Pujehun District in the then Protectorate of Sierra Leone on August 18, 1959, as a result of which the plaintiff spent 183 days in a hospital. There is no evidence about his age. I think there should have been. The medical report of the surgeon who examined him and dated April 7, 1960, stated, among other things, that the plaintiff had a permanent deformity of his left hip with two-and-a-half inches' shortening of the left lower limb resulting in a limp. His fourth to 12th ribs were fractured which caused a deformity of his right chest. These appeared to have been the most serious injuries the plaintiff sustained.

The surgeon recommended complete rest for a further period of six months and stated that the plaintiff would be unfit to carry on any work for at least a year. The writ in this action was issued on August 15, 1960, but the hearing took place on April 4, 1962, clearly more than the six months' period recommended for complete rest and the year during which the plaintiff was said to be unfit to carry on any work. However, on April 4, when evidence was taken, one of his witnesses, his father-in-law, deposed that the plaintiff, who had stayed with him since his discharge from hospital, was still not well and was still not working and that he had had occasion three months prior to the hearing to send him to another hospital—Mattru Hospital. It is, in my view, a matter of regret that there was no evidence produced from this hospital as to the plaintiff's condition at that time.

The learned trial judge on the question of damages had this to say:

> "Taking all the circumstances of this case into consideration I do feel that justice would be done if I allow the plaintiff the sum of £4,000 for the physical injury itself, bodily pain and suffering and the shock and injury to health. For disfigurement and disablement, which include permanent deformity of right chest and the left hip with two-and-a-half inches' shortening, I award the plaintiff £7,000."

The principles on which an appellate court will interfere with an award of damages where the trial is by a judge alone are laid down in a long line of cases and are well established. Counsel referred us to both local and English cases, for example, *Sierra Leone Mineral Syndicate* v. *Amadu Conteh*, S.L. & G.C.A., Civil Appeal 21/60; *Saidu Conteh* v. *Julius M. Coker*, S.L. & G.C.A., Civil Appeal 31/60; *Flint* v. *Lovell* [1935] 1 K.B. 354 and *Owen* v. *Sykes* [1936] 1 K.B. 192.

An appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. It can only properly interfere if it is satisfied that the judge applied a wrong principle of law or that the amount awarded is either so inordinately high or so inordinately low that it must be a wholly erroneous estimate of the damage.

It must be remembered that there was no evidence as to loss of expectation of life or loss of future earnings, and the learned judge did not include those two items. With respect to the trial judge, in my opinion, the amount awarded was so inordinately high that it must be considered "a wholly erroneous estimate." I would, therefore, reduce the amount awarded for physical injury, etc., from £4,000 to £1,000 and that awarded for disfigurement and disablement from £7,000 to £2,000 and I consider these figures generous. The general damages are, therefore, reduced from £11,000 to £3,000.

Freetown
Nov. 15,
1962

Ames Ag.P.,
Bankole Jones
Ag.C.J.,
Dove-Edwin

[COURT OF APPEAL]

IBRAHIM JALLOH . . . . . *Appellant*

v.

C.F.A.O. LTD. . . . . *Respondent*

[Civil Appeal 18/62]

Tort—Negligence—Ferry carrying overloaded lorry sank in river—Whether driver employee of lorry owner or hirer—Effect of permission by head ferryman to put lorry on ferry—Law Reform (Law of Tort) Act, 1961 (*No.* 33 *of* 1961)—*Ferries Rules* (*Laws of Sierra Leone,* 1960, *Vol. VII, p.* 974), *r.* 4—*Court of Appeal Rules* (*Laws of Sierra Leone,* 1960, *Vol. VI, p.* 325), *rr.* 35, 36.

Appellant was the owner of a lorry which was hired by the respondent company to carry 30 drums of kerosene from Freetown to Kailahun. While crossing a river on a Government ferry, the ferry sank because of the combined weight of the lorry and kerosene. There were abitration proceedings, which ended in favour of the insurers of the lorry. Appellant then sued respondent in contract. The judge found that the lorry was on special hire by respondent at the time of the accident and that both respondent and the driver of the lorry were negligent. He also found that the driver was in the employment of appellant, held that the doctrine of "respondeat superior" applied and apportioned the negligence 50 per cent. to each party. The judge then directed that the matter be referred to the master and registrar for assessment of the loss. Against this judgment, appellant appealed.

Held, allowing the appeal, (1) that, at the time of the accident, the driver of the lorry was in the employment of respondent; and

(2) That the fact that the head ferryman allowed the lorry to be loaded on the ferry did not affect the question of negligence.

The court (Ames Ag.P.) said, obiter, that it was questionable whether the judgment appealed from was a final judgment; and that rules 35 and 36 of the Court of Appeal Rules would not enable the Court of Appeal to reverse a part of the judgment unfavourable to the respondent in the absence of a cross-appeal by the respondent.

Case referred to: *A. H. Bull & Co.* v. *West African Shipping Agency & Lighterage Co.* [1927] A.C. 686.

Cyrus Rogers-Wright for the appellant.

Claudius D. Hotobah-During for the respondent.