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course, be exercised judicially, but it seems to me that the discretion is very wide.”

On an examination of all the authorities cited before me and on the evidence, I think that this is a fit and proper case where this court will not err in exercising its discretion by granting the plaintiff one or other of the reliefs sought. I prefer to grant him the relief sought in the alternative and I do so grant him. There will be no order as to costs.

Freetown
May 10,
1962

Cole J.

[SUPREME COURT]

SULEMAN LASAWARRACK Plaintiff
v.
RAFFA BROTHERS AND THE NORTHERN ASSURANCE
CO. LTD. Defendants

[C.C. 321/60]

Tort—Negligence—Motor vehicle accident—Damages.

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 Company Limited, which held itself bound to indemnify the defendants if negligence was proved.

The accident took place on August 18, 1959, and, as a result, plaintiff spent 183 days in a hospital. There was no evidence regarding his age. The medical report of the surgeon who examined him, dated April 7, stated, inter alia, that plaintiff had a permanent deformity of the left hip with a 2½ inch shortening of the left lower limb resulting in a limp. Nine 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.

Held, for the plaintiff, plaintiff was entitled to damages of £13,108 4s. 2d. made up as follows: medical expenses, £485 12s. 6d.; loss of earnings, £1,622 11s. 8d.; general damages, £11,000 0s. 0d.

Zinool L. Khan for the plaintiff.
No appearance for defendants.

Note: On November 1962, the Sierra Leone Court of Appeal reduced the general damages awarded in this case from £11,000 to £3,000 (Civil Appeal 17/62).

COLE J. This is an action in which the plaintiff claims against the defendants damages for personal injury and loss sustained by him due to the breach committed by the defendants of a contract of carriage and/or breach of a duty to carry the plaintiff safely.

On June 9, 1961, on the application of the defendants, the Northern Assurance Company Limited was made third party to these proceedings. On October 24, 1961, the defendants moved the court for third party directions. It was then ordered, inter alia, “that the third party, having admitted liability to indemnify the defendants against the plaintiff’s claim, be at liberty to defend

the action on behalf of the defendants.” The action was tried on April 4, 1962, and there was no appearance of or for the third party. Mr. Mohamed Raffa, who, according to the evidence, was at all times material to this action, trading under the name and style of Raffa Brothers, appeared in person. The plaintiff gave evidence and called two witnesses, Nicol George Anthony and Dr. Archibold Dewar McIntyre. Mr. Mohamed Raffa did not give evidence, nor was any evidence called on behalf of the defendants. By the defence the third party denied that the defendants, their servants or agents were at all guilty of negligence or that the accident was caused by negligence on the part of the defendants, their servant or agent or that the plaintiff suffered the injuries alleged in the statement of claim.

According to the plaintiff, he was, on August 1, 1959, a passenger on board the defendants’ motor lorry, registered No. N.45, driven by one, Samai Koroma. He was travelling from Zimmi to Yonni and for this he paid a fare of 2s. The lorry in question was at the time licensed as a goods and passenger vehicle. The driver of the lorry, Samai Koroma, was at the time a paid servant of the defendants.

The lorry was at the time loaded with piassava and the plaintiff was sitting in the truck of the lorry. A few miles after leaving Zimmi the driver started to drive at a great speed, about 50 to 60 miles per hour. The plaintiff said he was afraid because of the speed at which the lorry was being driven. Whilst the defendants’ lorry was descending a hill another lorry was ascending the same hill. The driver of the other lorry stopped and parked it well on its near side leaving ample room for the defendants’ lorry to pass. The defendants’ lorry continued to be driven at the same very high speed and in crossing the stationary lorry the truck of the defendants’ lorry collided with the stationary lorry. The collision was so violent that the defendants’ lorry somersaulted. Plaintiff became unconscious for about two hours. He sustained injuries on his head and face, and his left leg and left hip were fractured. He was brought to the Government hospital in Bo the same day, where he was admitted.

He was discharged on March 13, 1960. He spent in all a total of 183 days in the hospital. He paid hospital bills at the rate of £2 12s. 6d. a day and paid the doctor the sum of £5 5s. He produced in support a total of 23 receipts. Plaintiff said he is still unable to work because of the injuries and still suffers pains, headaches and dizziness. He was a salesman at the time of the accident and was receiving a salary of £50 a month. As he has not worked since the incident, he has been paid no salary. Plaintiff’s father-in-law, Nicol George Anthony, gave evidence that before the incident plaintiff was a strong, able-bodied man with a very pleasant disposition. He added that plaintiff went to live with him after his discharge from the hospital; that plaintiff was no longer the same type of person he was before the incident and that whenever he has attacks of pain in his hip plaintiff can walk only with the aid of sticks. This witness added that plaintiff, because of his injuries, has done no work since his discharge from hospital.

Dr. McIntyre also gave evidence for the plaintiff and put in evidence a medical report (Exh. “C”). It purports to be an injury report on plaintiff made by Dr. B. N. Baijal, F.R.C.S. (England), who was at the time Acting Surgeon Specialist, Bo Government Hospital. It is dated April 7, 1960. Evidence was led, which I accept, that Mr. Baijal was no longer in Sierra Leone. According to Exh. “C,” the injury report, the plaintiff had the following

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injuries: (1) a large lacerated wound about 9in. long over the right forehead involving right eye-brow with some glass pieces embedded in it; (2) contused wound on the right scalp 2in. long; (3) contused wound on the top right shoulder with abrasion all round; (4) extensive contusion on the right chest posterior; (5) large contused wound on the inner side of the right knee about 6in. long; (6) contused wound on the web space of the right middle, and index fingers; (7) contusion and abrasion left knee anteriorly; (8) contused wound anterior aspect lower left leg; (9) swelling and deformity on the left hip area.

Plaintiff was X-rayed and the X-ray revealed: (a) multiple fracture some comminuted of the ribs involving four to 12 ribs posteriorly with haemothorax right side, and (b) inter-trochanteric fracture of the upper end femur. Plaintiff had repeated attacks of pleurisy on the right side chest and basal consolidation.

On discharge, the Surgeon Specialist in his report (Exh. "C"), had the following to say about plaintiff:

"In my opinion, the patient has permanent deformity of left hip with 2½in. shortening of left lower limb and limbs. Osteoarthritic changes in hip joints have set in due to injury. He has scarring over right forehead and right eye-brow orbital with orbital neuralgia due to nerves involved in injury. Deformity of right chest with thickened pleura due to multiple fractured ribs on right side and haemothorax. He is now suffering from post traumatic neurasthaenia as a result of head injuries to right face of forehead. He is recommended complete rest for further six months. He will be unfit to carry on any work for at least one year."

I should add that in his evidence Anthony said this about plaintiff:

"He is still not well. About three months ago I had occasion to send him to Mattu Hospital."

I accept the evidence of plaintiff and that given on his behalf. I am satisfied on the evidence that at the material time Samai Koroma was the driver of the defendants' lorry and that he was the paid servant of the defendants driving the lorry in the course of his duty. I am also satisfied on the evidence that Samai Koroma was grossly negligent in the way and manner he drove the defendants' lorry on the day in question. I am also satisfied that the plaintiff sustained the injuries complained of as a result of the negligent driving of the defendants' lorry by Samai Koroma.

I now come to the question of damages. I am satisfied that the plaintiff has proved claim for medical expenses and this I allow, that is, 183 days at

£2 12s. 6d. a day	£480 7s. 6d.
Medical certificate	£5 5s. 0d.
	<hr/>
	£485 12s. 6d.
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I accept plaintiff's evidence that he earned £50 a month immediately before the incident and that he has been paid no salary since. I accept the evidence that plaintiff is incapable of working as a result of the injuries. I allow him special damages of £50 a month from 18/8/59 to 30/4/62—£1,622 11s. 8d.

As regards general damages the guiding principle is that set out in Halsbury's Laws of England, 3rd ed., Vol. 11, p. 255, para. 427—*Personal injury*—

“In a claim for damages for personal injury whether caused by trespass, or by negligence, or by breach of statutory duty, the damages are, apart from special damages, at large, and will be given for physical injury itself and, in case of loss of limb, disfigurement, or disablement, for its effect upon the physical capacity of the injured person to enjoy life, as well for his bodily pain and suffering, and for shock or injury to health. Such damages cannot be a perfect compensation but must be arrived at by a reasonable consideration of all the heads of damage in respect of which the plaintiff is entitled to compensation and of his circumstances, making allowances for the ordinary accidents and chances of life.”

Applying this principle to the facts of this case, which I have already found in favour of plaintiff, particularly the medical evidence, the general damages must of necessity be substantial. Learned counsel for the plaintiff has in the course of his address urged me to award for this item a figure in the neighbourhood of £15,000 and he cited authorities in support as a guide to the court. Taking all the circumstances of this case into consideration I do feel justice would be done if I allow 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 2½ inch shortening I award plaintiff £7,000.

In the result there will be judgment for the plaintiff for £13,108 4s. 2d. made up as follows:

Medical expenses	...	...	...	...	£485 12s. 6d.
Loss of earning	...	...	...	...	£1,622 11s. 8d.
General damages	...	...	...	...	£11,000 0s. 0d.

Plaintiff to have the costs of the action, such costs to be taxed.

[SUPREME COURT]

IN THE MATTER OF THE GOLD COAST PROPERTIES COMPANY LIMITED

[C.C. 420/61]

S. C.
1962

LASA-
WARRACK
v.
RAFFA BROS.
AND
NORTHERN
ASSURANCE
CO. LTD.

Cole J.

Freetown
May 28,
1962

Bankole Jones
Ag.C.J.

Companies—Landlord and tenant—Lease to company which went into voluntary liquidation—Application by lessor for order rescinding lease—Whether proper to make application by motion—Title of lessor denied by lessee—Breach of covenants by lessee—Companies Act (Cap. 249, Laws of Sierra Leone, 1960), ss. 215, 252, 262.

In 1955 and 1956, Mr. B. L. Macfoy leased two adjacent pieces of land to the Gold Coast Properties Company Limited, which changed its name in 1957 to the Central Property Company (Ghana) Ltd. (the Company). In August 1957, the Company went into voluntary liquidation. In November 1961, Macfoy applied to the Supreme Court by motion on notice under section 252 (5) of the Companies Act for an order that the two leases be rescinded. Section