IN THE SUPREME COURT OF SIERRA LEONE

SC. Civ. App. No.2/79

CORAM:

The Hon. Justice E. Livesey Luke	- Chief Justice
The Hon. Justice C.A. Harding	- J.S.C.
The Hon. Justice O.B.R. Tejan	- J.S.C.
The Hon. Justice A.V.A. Awunor-Renner	- J.S.C.
The Hon. Justice M.E.A. Cole	- J.A.

BETWEEN:

IDRISSA CONTEH - APPELLANT

AND

ABDUL J. KAMARA - RESPONDENT

Berthan Macauley Jr. for the Appellant.
J.H. Smythe Q.C. with him A.E. Manley-Spaine for the Respondent.

JUDGMENT

Delivered on Tuesday 1st April, 1980

Livesey Luke C.J.:

The appellant is a farmer residing at Malal Village in the Tonkolili District. On 13th June, 1975 while travelling as a passenger in a vehicle owned by the respondent, the appellant sustained personal injuries as a result of the negligent driving of the vehicle by the respondent's servant or agent. In May, 1976, the appellant instituted proceedings in the High Court against the respondent for damages for negligence. The respondent did not file a defence to the action. In due course the action came up for trial. Liability was not in issue. The only issue was the quantum of damages. The appellant gave evidence in support of his claim for special and general damages. A surgeon specialist was called on behalf of the appellant. Both parties were represented by Counsel at the trial. The trial judge gave judgment on 24th November, 1977 awarding the appellant the sum of Le.9,000 as general damages and the sum of Le.2,067 as special damages.

The respondent appealed to the Court of Appeal against the award. The appeal was heard on 8th June 1978 and Judgment was

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delivered on 9th February 1979 allowing the appeal and reducing the general damages to Le.4,500 and wholly setting aside the award of special damages. It is against that judgment that the appellant has appealed to this Court.

The issues in this appeal may be briefly stated. They are (i) whether the Court of Appeal was right in reducing the general damages awarded (ii)whether the Court of Appeal was right in wholly disallowing the special damages awarded.

In arguing the first issue, Mr. Berthan Macauley Jr. learned Counsel for the appellant submitted that the Court of Appeal wrongly applied well-established principles governing the powers of an Appellate Court in interfering with an award of damages. Before determining the issues raised, I think that it is necessary to consider whether the Court of Appeal has any power to review awards of damages by a judge sitting alone, and if so, in what circumstances. I think that it is important to state that by virtue of rule 9(1) of the Sierra Leone Court of Appeal Rules, 1973, and appeal to the Court of Appeal is by way of re-hearing. An appeal against an award of damages is, like appeals generally, by way of re-hearing and therefore the Court of Appeal has power to review the award. But a well established rule has been accepted over the years as governing an Appellate Court in the exercise of its power to review an award of damages by a judge sitting alone. The rule is that an Appellate Court will not interfere with an award of damages unless it is satisfied that the judge acted on a wrong principle of law, or has misapprehended the facts or has made a wholly erroneous estimate of the damages to which the claimant is entitled. The rule was stated with much clarity by Greer L.J. in the English Court of Appeal in Flint v. Lovell (1935) 1 K.B.354. He said inter alia at p. 360:-

> "..... I think it is right to say that this Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this Court should be convinced either that the judge acted upon some wrong principle of law or

> high or so very small as to make it, in the judgement of this Court, an entirely erroneous estimate of the damages to which the plaintiff is entitled"

In Owen v. Sykes (1936) 1 K.B. 192 C.A., Greer L.J. elaborated upon the rule. He said at p. 198:-

> "It has been laid down in Flint v. Lovell that this Court does not readily interfere with the estimate of damages made by a learned judge at the trial. An assessment of damages is necessarily an estimate, and an estimate is necessarily a matter of degree, and it seems to me that unless we ~~come~~ ~~to~~ the conclusion that the learned judge took an erroneous view of the evidence as to the damage suffered by the plaintiff, or made some mistake in giving weight to evidence that ought not to have affected his mind, or in leaving out of consideration something that ought to have affected his mind, we ought not to interfere."

Lord Wright after expressly approving of the rule as stated by Greer L.J. in Flint v. Lovell (supra) continued his speech in the House of Lords in Davies v. Powell Duffryn Associated Collieries Ltd. (1942) A.C. 601 at p. 617 as follows:-

> "The scale must go down heavily against the figure attached if the Appellate Court is to interfere, whether on the ground of excess or insufficiency."

The rule has been adopted and applied by our Courts in Sierra Leone over the years, and in my view, rightly so.

In delivering the judgment of the Court of Appeal in Suleman Lasawarrack v. Raffa Brothers & The Northern Assurance Co. Ltd. (1962) 2 S.L.L.R. 196 Bankole Jones Ag. C.J. (as he then was) said inter alia at p. 197:-

> "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 will be convenient to consider now the principles applicable in making assessment of general damages in personal injury cases. The most important principle applicable is that general damages must be fair and reasonable compensation for the damage suffered and that perfect compensation is not possible nor permissible. The judge making the assessment must do his best to arrive at a fair and reasonable estimate and for this purpose he may use certain aids by considering the award of damages under various "heads of damage." The accepted heads are: the bodily injury sustained, the pain and suffering endured, past, present and future, injury to health, loss of amenities, loss of expectation of life and the present and future financial loss. But the judge is not obliged to state the amount awarded under each head. His duty is to satisfy himself that at the end of the day the total of the sums awarded under the various heads is fair and reasonable:

See Watson v. Powles (1968) 1 Q.B. 596. In this connection the words of Lord Denning M.R. in Fletcher v. Autocar and Transporters Ltd. (1968) 2 W.L.R. 743 C.A. are instructive. He said inter alia at p. 748:-

> "In the first place, I think he has attempted to give a perfect compensation in money, whereas the law says that he should not make that attempt. It is an impossible task. He should give a fair compensation."

And he continued at p. 749:-

> "In the second place, I think that the judge was wrong to take each of the items as a separate head of compensation. They are only aids to arriving at a fair and reasonable compensation
> ..... There is to my mind, a considerable risk of error in just adding up the items. It is the risk of overlapping."

I would also commend to judges and Courts engaged in the task of assessing general damages for personal injuries the words of Lord Morris of Borth-y-Gest in H. West & Son Ltd. v. Shephard (1963) 2 W.L.R. 1359 H.L. at p. 1368:-

> "But money cannot renew a physical frame that has been battered and shattered. All that judges and courts can do is to award sums which must be regarded as giving reasonable compensation. In the process there must be the endeavour to secure some uniformity in the general method of approach. By common assent awards must be reasonable and must be assessed with moderation."

The next question I propose to consider is whether the Court of Appeal was right in holding that the award of Le.9,000 as general damages was excessive. I think that it should be stated at the outset that the Court of Appeal did not say or suggest that the learned trial judge applied any wrong principle of law. All that that Court said was that the award of general damages was excessive "bearing in mind the quality of the evidence" which was before the trial judge. What then was the evidence before the trial judge on which he based his assessment? The evidence was that the appellant was a man aged about 35 years. He was a farmer in a village in the Tonkolili District. He sustained the following injuries as a result of the accident:-

(i) Contusion of the chest wall and
(ii) Fracture of the right humerus complicated by involvement of radial nerve.

The fracture was united but he has been left with a wrist drop. He complained of pains in his chest. He would not be able to use his wrist as a farmer. He would not be able to lift any heavy object. He cannot lift any heavy object. He cannot use his cutlass with his right hand. He cannot grip well with his right hand. He used to grow rice and pepper and his wife used to assist him in the farm. He used to earn Le.800 per annum from his farming. Since the accident he had not been able to carry on farming, and he had not earned any income since then. According to the surgeon specialist the appellant's recovery could not be absolute, his recovery was only partial. He could follow other gainful employment. The surgeon specialist agreed

that physiotherapy plays an important role in the treatment of such injuries, but that he did not order physiotherapy treatment and that appellant had not received any such treatment. The surgeon specialist assessed the appellant's final residual disability at 12 per cent.

The "quality" of the evidence which appeared to have influenced the Court of Appeal in coming to their decision to reduce the general damages are (i) the evidence of the surgeon specialist that physiotherapy treatment could have played an important role in the treatment of the injury, and yet he did not refer the appellant for physiotherapy treatment; (ii) there was no evidence from the surgeon as to the residual disability of the appellant.

With respect, it was clearly wrong to say that there was no evidence as to residual disability. That evidence was contained in the medical report prepared by the surgeon specialist and admitted in evidence. I think that undue emphasis was placed on the surgeon specialist's failure to refer the appellant for physiotherapy treatment. My understanding of the evidence of the surgeon specialist is that there was a possibility that such treatment might have improved the condition of the appellant. There was certainly no positive evidence that such treatment would have improved his condition. In my opinion the Court of Appeal misapprehended the evidence in support of the claim for general damages. The proper course the Court of Appeal should have adopted was to consider the evidence as a whole including the evidence relating to the treatment of the appellant and his residual disability and then decide, having regard to the various heads of damage, whether the award made was fair and reasonable.

When the evidence is taken as a whole, the overall award of Le.9,000 as general damages ~~may be said~~ to be generous or high, but to say that an award is generous or high is not the same as saying that it is excessive. In my opinion the overall award was not so high as to amount to a wholly erroneous estimate of the damages to which the appellant is entitled. Therefore, in my opinion, it cannot be said that the award was excessive. It may have been helpful if the learned trial judge had given some indication of the awards made under the various heads, but, as stated earlier, he was under no obligation to do that. The important duty of the judge was to ensure that the overall figure awarded was fair and reasonable. I have no doubt that the judge discharged that duty in this case. In my judgment there is no

valid ground for interfering with the award of the judge in this case. The Court of Appeal therefore erred in interfering with the award of general damages.

The appeal relating to special damages can be disposed of briefly. Judging from the record of the evidence at the trial it would appear that the respondent did not seriously contest the claim for special damages. And according to the records, when learned Counsel for the respondent addressed the trial judge he confined his address to general damages. He made no reference to the Special Damages claimed. Also in the three grounds of appeal relied on by the present respondent before the Court of Appeal there was no specific ground complaining about the whole or any item awarded as special damages. In my view on a proper reading of the three grounds of appeal, the only reasonable conclusion is that all the complaints of the present respondent (i.e. the appellant in that Court) related to the award of general damages. That conclusion is supported by the fact that the recorded submissions of his Counsel before the Court of Appeal in arguing all three grounds were to the effect that the award was "inordinately ~~high~~" ~~and~~ that ~~"the~~ trial judge must have used wrong principles."

In my opinion such submissions are more germane to an attack on a general damages award than to a special damages award.

In my opinion, in the circumstances just related, the Court of Appeal should have adverted its mind to rule 9(6) of the Court of Appeal Rules 1973 and invited argument on special damages. In all the circumstances, the Court of Appeal erred, in my judgment, in interfering with the award of special damages. But even assuming that the Court of Appeal could properly have interfered with the award of special damages, the result would ~~have~~ been ~~the~~ same. I say that the result would have been the same because as Mr. Smythe learned Counsel for the respondent rightly and properly conceded there was unchallenged evidence in support of the items of special damages claimed and the learned judge was entitled to award each item and the total amount he awarded by way of special damages. The Court of Appeal was therefore wrong in holding that the special damages were not proved.

In the result I would set aside the judgment and orders of the Court of Appeal and restore the orders of the High Court.

..... C.J.
E. Livesey Luke

(Sgd)

I agree

..... (Sgd)
C.A. Harding, J.S.C.

I agree

(Sgd) .....
O.B.R. Tejan, J.S.C.

I agree

(Sgd) .....
A.V.A. Awunor-Renner, J.S.C.

I agree

(Sgd) .....
M.E.A. Cole, J.A.