IN THE SUPREME COURT OF SIERRA LEONE

Coram:

Hon. Mr. Justice E. Livesey Luke	-	C.J.
Hon. Mr. Justice C.A. Harding	-	J.S.C.
Hon. Mr. Justice O.B.R. Tejan	-	J.S.C.
Hon. Mrs.Justice Awunor-Renner	-	J.S.C.
Hon. Mr. Justice K.E.O. During	-	J.A.

Civ. App. No. 3/80

Between:-

Alimamy Turay - Appellant

and

Cecilia Koroma - Respondent

E.A. Thomas, Esq. for the Appellant

R.L. Michael, Esq. for the Respondent

Judgment

LIVESEY LUKE C.J.:

The respondent was injured in a motor accident on the Freetown/Bo Road on 17th July, 1975. As a result, action was taken against the appellant for damages for negligence. The respondent was a 13 year old school girl at the time of the accident. She suffered from a fractured pelvis as a result of the accident. She was admitted in hospital from 17th July, 1975 to 8th September, 1975 and continued physiotheraphy treatment thereafter as an out-patient. When the Specialist Gynaecologist and Obstretrician examined her on 31st March, 1977 his findings were: the fracture had healed but there was gross deformity of the pelvis canal i.e. the birth canal. The injuries were permanent. As a result of the deformity of the pelvis, future full term pregnancies will have to be delivered by caesarean section operation. This will limit her child bearing to three children. The carriage of a pregnancy will be painful as a result of the bone injuries to the pelvis. She would probably always

Although the reason for the proceedings was irrelevant yet pertinent and useful evidence did emerge from them.

It was from those proceedings that the learned trial judge could have, instead of making a negative finding as he did, found the 19th August, 1966 as the Court of Appeal, the learned C.J. and O.B.R. Tejan J.S.C. found as the date of execution of the deed.

It was from the evidence in those proceedings that the reason for non-registration within 10 days of the 6th August, 1966 emerged.

I agree with the learned Chief Justice that the Court of Appeal, having established the date of execution, considered a reason for the failure to register that was not in relation to that date.

The reason for failure to register within 10 days from 6th August, 1966 as disclosed by the evidence was that the applicant in the High Court felt that the deed was not yet ripe for registration as both parties had not by then signed the document. This misapprehension in my opinion must have been induced by the testimunium clause in the deed. Considering all the circumstances and the dictum of Lord Aitkin at p.649 of the report in Evans & Bartham cited by my brother Tejan J.S.C. I would say the reason was excusable.

I would therefore dismiss the appeal and grant leave to the Respondents to register the deed Ex. "A" to take effect as from 19th August, 1966.

Hon. Mr. Justice C.S. Davies
Justice of Appeal
16/12/81.

it is necessary to refer to the judgment. After the learned judge had considered and decided on the claim for special damages he proceeded thus:

> "I have now to consider plaintiff's future or prospective loss of earnings. I realise that Plaintiff is an infant still attending school and has not yet embarked on any career, and so there is no figure for net annual loss at the date of trial. There is no scale on which I can weigh the injuries of this girl for compensation. I am therefore reduced to a pure guess-work for the circumstances of this kind of case defy anything like a precise arithmetical calculation. I therefore have to take everything into consideration in granting the plaintiff a lump sum, which I consider commensurate enough in the circumstances of her case."

The learned judge then highlighted certain "salient points" in the medical evidence and then continued:

> "I realise in the circumstances, I have to award a lump sum once and for all, which will be considered reasonable and in doing so I have to take into account all the above considerations."

It should be noted that in the first passage the learned judge said that he had to consider "the plaintiff's future or prospective loss of earning." He also said that he had to take "everything into consideration in granting the plaintiff a lump sum." In the second passage the learned judge said that in making a once for all lump sum award he had to take into account "all the above considerations." It seems quite clear to me that one of the "above considerations" the judge was referring to in

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the second passage was the very first "consideration" he mentioned at the beginning of the first passage i.e. "future or prospective loss of earnings." Therefore, when the two passages are read together, I am left in no doubt that the learned judge took "future or prospective loss of earnings" into consideration in assessing general damages.

I don't think that there is any dispute that the evidence in this case does not warrant the award of any damages in respect of "future or prospective loss of earnings." Since the judge, in my view, took that head of damages into consideration in making his awards, in my judgment, he thereby erred.

The principles governing an appellate court in appeals against award of damages are well-settled. In Idrissa Conteh v. Abdul J. Kamara (supra) this court said inter alia:-

> "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."

See also Flint v. Lovell (1935) 1 K.B. 354 C.A. per Greer L.J. at p. 360; and Owen v. Sykes (1936) 1 K.B. 192 C.A. per Greer L.J. at p. 198.

In my judgment the learned judge gave weight to matters that ought not to have affected his mind. He thereby misapprehended the facts, resulting in his making an erroneous estimate of the damages to which the respondent is entitled. In those circumstances, this court has the power and the duty to correct the error by interfering with the award of damages.

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It is therefore necessary to consider the quantum of general damages to which the respondent is entitled. As stated earlier, the learned judge did not give a breakdown of his award. It is therefore impossible to know the amount that he awarded under the various heads. So this court is left to spectulate. As I said in the course of my judgment in Idrissa Conteh v. Abdul J. Kamara (supra) a judge in this jurisdiction is not obliged to state the amount awarded under each head. There is no rule of court requiring him to do so. But as a matter of practice some judges in this jurisdiction have done so in the past. And that practice is commo in other Commonwealth jurisdictions. It would be desirable if judges in this jurisdiction endeavour to apportion their awards of general damages for personal injuries between the various accepted heads. Such a practice would have immense advantages. Firstly, it would contribute to the desirable objective of attaining some measure of standardisation in the assessment of general damages for personal injuries. It is eminently desirable that as far as possible comparable injuries should be compensated by comparable awards. See H. West & Sons Ltd. v. Shepherd (1964) A.C. 326 per Lord Morris at p. 346. Secondly, it would certainly assist other judges engaged in the same task (of assessing general damages) if judges apportioned their awards between the various heads. Thirdly, it would assist the appellate courts to know how the judge arrived at the overall figure. Thereby the Appellate Court would be spared the bother of speculating as to what amount the judge awarded in respect of each head of damages.

The principles applicable in making assessment of general damages in personal injury cases were stated by this Court in Idrissa Conteh v. Abdul J. Kamara (supra). Put briefly, they are that the damages awarded should be a fair and reasonable compensation for the damage suffered and that perfect compensation is not possible or permissible. In this connection it is relevant to recall the words of Lord Pearce in H. West & Sons Ltd. v. Shepherd (supra). He said inter alia at pp. 368 - 369:-

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"It would be lamentable if the trial of a personal injury claim put a premium on protestations of misery and if a long face was the only safe passport to a large award."

On the question of quantum of damages, learned counsel on both sides cited a number of English decisions on what they considered to be comparable cases. I do not consider those decisions helpful. It became obvious during argument before us that there is a dearth of comparable local cases - reported and unreported. That may have accounted for the learned judge's difficulties in arriving at a fair and reasonable figure.

Applying the above stated principles, and taking all the circumstances into consideration, I would assess general damages for pain and suffering and loss of amenities at Le15,000. I consider that overall figure a fair and reasonable compensation and indeed a generous estimate. I would therefore reduce the general damages to Le15,000.

I would allow the appeal and reduce the general damages to Le15,000.

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Hon.Mr.Justice E. Livesay Luke

Chief Justice

17/12/81

HARDING, J.S.C.:

This appeal is against the Judgment of the Court of Appeal dated 23rd April, 1980, dismissing an Appeal from the judgment of Kutubu J. (as he then was) sitting in the Bo High Court, dated 27th February, 1978 on the quantum of general damages awarded to the Respondent/Plaintiff for personal injuries sustained as a result of the negligent driving by the Appellant's servant or agent of a motor vehicle owned by the Appellant.

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The Respondent is a school girl, and at the time of the accident, 17th July, 1975, was aged about 13 years. On 11th May, 1977, through her next friend Samuel Koroma, she instituted proceedings claiming damages for negligence. The Appellant did not file a defence to the action and so an Interlocutory Judgment in default was entered on 21st July, 1977. As a result of application being made the damages were ordered to be assessed by the taking of oral evidence. After hearing evidence from Samuel Koroma who tendered two Medical Reports and from Dr.Frazer Specialist Gynaecologist and Obstetrician, and from the Responder herself, the trial Judge awarded Le135.50 special damages and Le.25,000/00 general damages.

An appeal against this award of general damages having been rejected by the Court of Appeal, the Appellant has now come befor this Court.

It was contended by Counsel (for the Appellant) that the amount awarded was "not assessed with moderation, is excessive and punitive, and should have been reduced by the Court of Appeal so as to make it a fair and reasonable compensation for the injuries suffered in the light of previous awards in comparable cases, and to secure some measure of uniformity thereby".

Counsel for the Respondent on the other hand submitted that there were only two issues for determination before this Court, firstly, whether the trial Judge acted on a wrong principle of law or misapprehended the facts or made a wholly erroneous estimate of the damages to which the Respondent was entitled, and secondly whether the Court of Appeal was wrong in refusing to reduce the award of the trial Judge who sat without a Jury.

The rule is that an appeal against the decision of a Judge upon the quantum of damages will not be allowed unless either (i) the Judge has applied a wrong principle of law; or (ii) the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage.

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The principles on which an appellate Court will so interfere have been laid down in a long line of cases both English as well as local and if I may here mention a few - FLINT v LOVELL (1935) 1 K.B. 354, OWEN vs. SYKES (1936) 1 K.B. 192; DAVIS vs POWELL DUFFRYN ASSOCIATED COLLIERIES LTD. (1942) A.C. 601; LASAWARRACK vs RAFFA BROTHERS & THE NORTHERN ASSURANCE CO. LTD. (1962) S.L.L.R. 196 and IDRISSA CONTEH vs ABDUL J. KAMARA S.C. Civ. App. No.2 of 79.

In the case of LASAWARRACK vs RAFFA BROTHERS (supra) it was stated, at p. 197, by Bankole Jones (Ag. C.J. as he then was):-

> "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 is well established that the courts when making awards of damages should have regard to awards made by other courts comparable cases. In BIRD vs COCKING & SONS LTD. (1951) 2 T.L.R., Birkett, L.J., said:-

> "Although there is no fixed and unalterable standard, the Courts have been making these assessments for many years, and I think that they do form some guide to the kind of figure which is appropriate .... when, therefore, a particular matter comes for review, one of the questions is, how does this accord with the general run of assessments made over the years in comparable cases."

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Again, in RUSHTON vs NATIONAL COAL BOARD (1953) 1 Q.B. 495, Romer, L.J., stated, at p. 502:-

> "The only way .... in which one can achieve anything approaching a uniform standard is by considering cases which have come before the Courts in the past and seeing what amounts were awarded in circumstances so far as may be comparable with the case which the court has to decide."

It was however pointed out in WALDON vs WAR OFFICE (1956) 1 A.E.R. 108, that reference to other cases is entirely at the Judge's discretion; it should not be looked upon and treated as a precedent but merely to seek guidance, each case must be considered upon its own merits.

In SINGH vs TOONG FONG OMNIBUS CO. LTD. (1964) 3 A.E.R. 925 (an appeal to the Privy Council from Singapore) it was said that comparison should be made with cases "in the same jurisdiction or in a neighbouring locality where similar social economic and industrial conditions exist."

Having said all this I now have to consider what evidence the trial Judge had before him when he made his award. There was no dispute as to liability for negligence and also no dispute as to the amount of Le.135.50 awarded as special damages. The dispute is against the lump sum of Le.25,000/00 awarded as general damages.

There were two Medical Reports admitted, one from Mr. Forde the Surgeon Specialist who saw and treated the Respondent when she was brought to the Bo Hospital. It was dated 17th October, 1975 and reads as follows:-

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Government Hospital
Bo.
Sierra Leone,
17th October, 1975

TO WHOM IT MAY CONCERN

MEDICAL REPORT

RE CECILIA KOROMA

HISTORY:

This school girl was brought to the Bo Hospital on the 17.7.75 after allegedly being involved in a road traffic accident. On examination, she could not stand due to pain in the right hip joint and she had a number of minor abrasions. There was bony tenderness over the right pubic ramus and all movements of the right hip joint were restricted due to severe pain.

X-rays confirmed the presence of a fractured pelvis extending through the right pubic ramus at the front, and the sacro-iliac joint at the back.

TREATMENT: consisted of G.V. paint to the abrasions, analgesics, and bilaterial skin traction to the legs. On this treatment, the patient made satisfactory progress with intermittent X-ray monitoring and she was discharged from the ward on the 8.9.75 to continue treatment in the Physiotherapy Department as an out-patient.

After two weeks of physiotherapy she was reviewed in the surgical out-patient's department and found to be walking satisfactorily and without pain.

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X-rays showed the fractures to be satisfactorily healed, and the patient was therefore discharged from my care.

CONCLUSION: Cecilia Koroma was treated at the Bo hospital on the 17.7.75 following a road traffic accident in which she sustained a fractured pelvis. She received seven weeks of in-patient and a further two weeks of out-patient treatment at the end of which period she had made a satisfactory recovery from the injury. However, the contour of her pelvis has become altered as a result of her injury, and this likely to cause obstetric problems of a serious nature when she comes to child-bearing.

(Sgd.) M.C.O. Forde, BSc. MB.ChB.. FRCS.
Surgeon Specialist."

The other one was from Dr. G.B. Frazer, Senior Specialist Obstetrician and Gynaecologist who examined the Respondent on 31st March, 1977 for reassessment of residual permanent disability. It was dated 7th April, 1977 and reads as follows:-

"Dr. G.B. Frazer, MB.Ch.B., M.R.C.O.G.
Specialist Obstetrician & Gynaecologist
BO HOSPITAL
Hospital 032 637; 329
Home: 032-572

MEDICAL REPORT

RE: CECILIA KOROMA

Age 15 years Occupation: School Girl

Involved in a road traffic accident on 17.7.75 and treated at the Bo Government Hospital where she was hospitalised for a period of 7 weeks.

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X-ray on admission to hospital confirmed fracture of the pelvis involving the right pubic ramus and the saco-iliac joint.
Patient was re-examined by me on 31.3.77 for reassessment of residual permanent disability.

Clinical and Radiological examination confirmed the presence of healed fractures of the pelvis with gross deformity of the pelvis canal i.e. the birth canal.
Movement of the right hip was painful.

These injuries are permanent and as a result of the deformity of the birth canal, future full term pregnancies will have to be delivered by caesarean operation. Also, the carriage of a pregnancy will be painful to the patient as a direct result of these bony injuries to the pelvis.
There is no place for corrective surgery for these injuries either here in Sierra Leone or abroad."

(Sgd.) G. B. Frazer (Dr.)
M.B., Ch.B., M.R.C.O.G.,
F.W.A.C.S.
Senior Specialist
Obstetrician and Gynaecologist,
Bo Government Hospital."

Apart from receiving these two Medical Reports Dr. Frazer also gave oral evidence; so did the Respondent and her uncle and next friend.

The trial Judge after reviewing the medical evidence and after making an award for special damages went on to say as follows:-

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"I have now to consider Plaintiff's future or prospective loss of earnings. I realise that plaintiff is an infant still attending school and has not yet embarked on any career, and so there is no figure for net annual loss at the date of the trial. There is no scale on which I can weigh the injuries of this girl for compensation. I am therefore reduced to a pure guess work for the circumstances of this kind of case deny anything like a precise arithmetical calculation. I therefore have to take everything into consideration in granting the plaintiff a lump sum, what I consider commensurate enough in the circumstances of her case."

He then went on "to highlight a few salient points on the medical evidence" -

"The plaintiff is a girl, 15 years of age, who all things being equal has 40 years ahead of her living with pain as a result of the injuries sustained from the accident. I am satisfied that the plaintiff sustained serious personal injuries as a direct result of the accident. Plaintiff is not going to have the normal life of a woman any longer. She cannot have a normal birth; only through a caesarean operation. She said in evidence that this prospect worries her a great deal, so psychologically she has already developed an aversion to this normal method of child delivery."

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Plaintiff stated in her evidence that she would like to have many children when she gets married if at all. But in the opinion of the medical profession it is not good for any woman to undergo caesarean section more than three times in her life at the most. This consideration is therefore bound to limit the potential size of plaintiff's family to two or three permitted by this method. Plaintiff has therefore lost the joyful expectation of having a large family. What is more, even the limited number of children that may be permitted in the circumstances of her case, will not be delivered in the normal way. The doctor in his evidence said that in the case of a full time pregnancy plaintiff will have to be in pain for nine months, in addition to the prospect of oestro-arthritis setting in with its attendant pain and suffering. Plaintiff will in future have painful sexual intercourse and this to a great extent will affect her marriage prospects. She will have to live with this unpleasant feeling for the rest of her life. There will be much to be desired in her married life since both husband and wife will not have the fullest and unihibited joy of normal sexual-intercourse due to the attendant pain caused by the injury to her pelvis. Her chances of furthering her education are to some extent hampered by these injuries. It has been said that her back-ache will interfere with her studies due to pain.

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Plaintiff can no longer take part in sports; the door is shut to her forever. According to plaintiff those glooming prospects in her young age cause her great displeasure. Dr. Frazer categorically stated in his evidence and I believe him, that there is no place for corrective surgery for this girl anywhere either in Sierra Leone or abroad. Consequently, she will have to live with pain, and not as a normal woman for the rest of her life. In the light of the serious nature of plaintiff's injuries and prospective loss of a predominantly happy life, I am to consider how best money can compensate her. There is nothing which medical science can do to bring this girl back to her former position. I agree both with Dr. Frazer's prognosis and his evidence relating to the normal span of life in this part of the world. According to Dr. Frazer, all things being equal, plaintiff has 40 years more ahead of her living with pain.

I realise in the circumstances, I have to award a lump sum once for all, which will be considered reasonable and in doing so I have to take into account all the above considerations. In this regard I must also bear in mind the fall in the value of money, for our purpose the leone.

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Taking all these contingencies into consideration my duty is to award plaintiff what I consider adequate and reasonable."

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It was contended by Mr. Thomas, counsel for the Appellant that the trial Judge misapprehended the facts in assessing damages by placing undue emphasis that the Respondent could only have children by caesarean section. He referred to the case of CULLO vs ANGELL (1969) A.C. 242 where an award of £10,000 general damages was upheld notwithstanding the fact that the Court considered that it was on the high side, but in that case the plaintiff was a girl aged 5 at the date of the accident and the injuries were of a multiple nature and of greater severity than the Respondent's.

It was also argued on behalf of the Appellant that in making the award the trial Judge took into consideration loss of future or prospective earnings. For an award to be made under this head it must be based upon solid facts; there must be some evidence before the Judge to enable him arrive at firm conclusions upon (i) what would the Respondent probably have been able to earn in future, if she had not been injured and (ii) how much (if at all) has her earning capacity been reduced. There is no evidence of loss of earning capacity or of what factors and contingencies have been allowed for. In short there has been no evidence of any academic or sporting achievement or of any special feature of her pre accident activities. The trial Judge himself stated that he was "therefore reduced to pure guess work". He concluded in this regard by saying "I therefore have to take everything into consideration in granting the plaintiff a lump sum, what I consider commensurate enough in the circumstances". He did not however state what were the facts he took into consideration. Whatever, therefore, he must have awarded under this head, must be presumed to be of not very great value taking the lump sum of Le.25,000/00 as a whole.

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The Respondent stated in evidence that she "would like to get married when she leaves school ... would like to have many children say up to ten and above." Again, this is mere speculation depending on several factors and contingencies. On this aspect of her evidence the trial Judge stated that "Plaintiff has therefore lost the joyful expectation of having a large family."

The learned trial Judge in his review of the evidence did not take cognizance of the Report of Mr. Forde, the Surgeon, who examined and treated the Respondent. The Report in brief, stated that following a road accident in which she sustained a fractured pelvis she received seven weeks of in-patient and a further two weeks of out-patient treatment at the end of which period she had made a satisfactory recovery from the injury; she was found to be walking satisfactorily and without pain.

This is to be contrasted with the learned trial Judge's findings:

> "... consequently, she will have to live with pain, and not as a normal woman for the rest of her life. In the light of the serious nature of plaintiff's injuries and prospective loss of a predominantly happy life, I am to consider how best money can compensate her. There is nothing which medical science can do to bring this girl back to her former position. I agree both with Dr. Frazer's prognosis and his evidence relating to the normal span of life in this part of the world. According to Dr. Frazer, all things being equal, Plaintiff has 40 years more ahead of her living with pain."

Although we were referred to a few cases dealing with awards of general damages none of them was of local origin except one, IDRISSA CONTEH vs ABDUL J. KAMARA (Supra) which I must say is not a comparable one with the present case. I myself have not been able to come across any comparable local case to look for guidance as to the current levels of assessment but there are a few English cases (taken from MUNKMAN ON DAMAGES 5th Edition and KEMP AND KEMP Vol. 2 4th Edition) which I shall now mention but I hasten to say that in doing so I am not unmindful of the caveat in the SINGH vs TOONG FONG ONIBUS CO.LTD. case (supra) that "such cases should as a rule be those which have been determined in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist."

(i) HIZETT vs B.T.C. (Sheffield Assizes, Pearson J., Nov. 30, 1956) Girl 18, Shop Assistant. Serious distortion of pelvis, would necessitate major operation in case of child birth. Also injuries to chest and leg, scarring of thigh (6 in by 4 in). skin grafting and risk of osteo-arthritis in spine - general damages £4,500.

(ii) HARRIS vs FOWLER, (Q.B.D., Hilbery, J. Nov. 25, 1959. The Times, Nov. 27). Girl 18, Multiple fracture of pelvis, might affect prospect of marriage and child bearing, slight continuing injury of urinatory system, also backache and depression. General Damages £2,100.

(iii) BOSTOCK vs BROWN (Newcastle Assizes, Wrangham J., July 20, 1970) Girl 21. Fracture of left frontal bone with concussion, general bruises and abrassions, cuts to her face and neck requiring 60 stitches, loss of two teeth and damage to four others, fractured pelvis, injury to left heel leaving permanent and disfiguring scar. General Damages £3,250.

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In the light of all what I have stated and bearing in mind that there was no evidence of loss of expectation of life or of future or prospective earnings I would say, with respect to the learned trial Judge, that after much consideration, bearing in mind that this Court will only interfere on a pure question of quantum only if satisfied that the trial Judge's award constitutes a wholly erroneous estimate of the plaintiff's loss, that I am satisfied that the award is sufficiently excessive to justify this Court in interfering to reduce it. For my part I would reduce it to Le.15,000. To that extent I would allow the appeal.

Hon. Mr. Justice C.A. Harding
Justice of the Supreme Court
17/12/81.

TEJAN, J.S.C.:

The appellant is the owner of vehicle WR. 7116. On the 17th day of July, 1975, the respondent while travelling as a passenger in the vehicle owned by the appellant sustained personal injuries as a result of the negligent driving of the appellant's servant or agent. At the time the respondent who was a school girl, was fifteen years of age.

On the 11th day of May, 1977, the respondent through her next friend Samuel Morana Koroma instituted proceedings by the issue of a writ of summons. The writ of summons contained a statement of claim, Appearance was entered by Smythe and Co. but no defence was filed and delivered within the time prescribed by law, and on the 21st day of July, 1977 an interlocutory judgment in default of defence was signed against the appellant On the 3rd of October, 1977, the respondent moved the Court for an order to assess damages. The motion was heard by Kutubu J. as he then was, on the 7th day of October, 1977 made the following order:-

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(a) That instead of a writ of Inquiry the value and amount of damages for which interlocutory judgment was entered on the 21st day of july, 1977 be assessed by this Honourable Court by the taking of oral evidence.

(b) That the said assessment of the damages do take effect next session on a date to be communicated to the parties.

(c) That the costs of this application be the plaintiff's (now respondent).

The issue of assessment of damages came before Kutubu J. as he then was, on the 29th day of November, at the Bo High Court, and after having heard evidence from the next friend, Dr. Fraser a Specialist Gynaecologist and Obstretittian and the respondent herself, the learned Judge awarded a global sum of Le.25,000 as damages.

The appellant, on the 14th day of July, 1978 filed a notice of appeal to the Court of Appeal on the following grounds.

(1) That the learned trial Judge misdirected himself in law and in fact on the question of general damages.

(2) That having regard to his findings of fact the learned trial Judge erred in law in awarding general damages which were excessive in all the circumstances.

(3) That the decision is against the weight of evidence.

The appeal was heard by S.B. ~~Davies, J.A. as he then was;~~ Warne and Turay JJ.A. The Court of Appeal delivered its judgment on the 23rd day of April, 1980 and dismissed the appeal.

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The appellant has tabled before this Court the following grounds of appeal:-

(a) That the Court of Appeal was wrong in law in refusing to reduce the trial Judge's award of general damages which amounted to an attempt to give a perfect compensation and not a fair and reasonable assessment of general damages for the injuries suffered by the Respondent.

(b) That the award of general damages is excessive in all the circumstances.

(c) That the decision is against the weight of evidence.

In arguing grounds (a) and (b), Mr. Thomas, Counsel for the appellant contended that the trial Judge misapprehended the facts and that the Court of Appeal did not advert its mind to its appellate function and that the learned Judge took into consideration loss of earning in assessing the award of damages.

Mr. Michael, Counsel for the respondent, on the other hand, submitted that the issues to be determined are (1) whether the trial Judge acted on a wrong principle of law, (2) whether the trial Judge misapprehended the facts and (3) whether the amount awarded was a wholly erroneous estimate of the damages to which the respondent was entitled.

I have now to consider the principles of law which would entitle a Court of Appeal to interfere with quantum of damages. The award of damages, being question of fact, is the function of the jury and the assessment is primarily a factual enquiry which leaves very little room for interference by the Court of Appeal, but on an appeal from a Judge trying a case without a jury is a rehearing by the Court of Appeal with regard to all question involved in the action, including quantum of damages. But the Court of Appeal will not reverse the finding of a trial Judge as to the amount of damages simply because it thinks that if it had tried the case, it would have awarded a different amount. To justify reversing the award of amount of damages, the Court of Appeal should be convinced either that the trial

Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it an entirely erroneous estimate of the damage to which the plaintiff is entitled. This principle of law is clearly demonstrated in Flint v Lovel (1934) All. E.R. Rep. 200 at 202 where Greer L.J. said:-

> "But though the established rules with regard to appeals in cases tried with juries do not apply to appeals from the decisions of Judges trying cases without the assistance of a jury, 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 the 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 damages it will generally be necessary that this Court should be convinced either that the Judge acted upon some wrong principle of law or that the amount awarded was so extremely high or so very small as to make it, in the judgment of the Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."

In the case of Owen v. Sykes (1936) 1 K.B. 192, where a trial Judge awarded a doctor the sum of Le10,000 as damages, and the Court of Appeal held that although if they had tried the case in the first instance they would probably have awarded a smaller sum as damages, but yet they would not review the finding of the trial Judge as to the amount of damages, as they were not satisfied that the trial Judge acted upon a wrong principle of

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law or that the amount awarded as damages was so high as to make it an entirely erroneous estimate of the damage to which the plaintiff was entitled.

The question of quantum of damages came before the Sierra Leone Court of Appeal in Lasawarrack v. Raffa Bros and Northern Assurance Co. Ltd. (1962) 2 S.L.L.R. 196, and Bankole-Jones Ag. P. said:-

> "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 so inordinately high or so inordinately low that it must be a wholly erroneous estimate of the damage."

In Owens v Sykes (supra) Greer L.J. said at page 197:-

> "..... 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"

The case of the African Press Ltd, v. Dr. Okechuku Ikejiari (1952 to 1955) Selected Judgments of W.A.C.A. at 186, Verity C.J. said at page 389:-

"Whether the members of the Court would, had any one of us sitting at first instance, have assessed the damages at the figure reached by the trial judge, or more or less, is beside the point. The grounds upon which a Court of Appeal will vary the damages assessed by a judge sitting without a jury have recently been discussed in Nkoku v. Zik Press Ltd. (Selected Judgments January to May 1951 at page 15) and I do not propose to discuss them here. It will suffice to say that I am unable to hold that in the present case the learned Judge applied any wrong principle or proceeded on a wrong basis in assessing the damages or that the sum found by him is so excessive as to disclose an entirely erroneous estimate of the injury suffered by the respondent."

The case of Crawford v. Erection and Engineering Services Ltd. (1953) C.A. No. 254 at page 684 Kemp and Kemp (2nd. Ed. Vol. 1). Evershed M.R. said:

".....It is, however, well established that this Court does not interfere on that ground alone, and for obvious reasons, with the award of damages of a judge of first instance. In order to justify interference by the Court, it must be shown that the damages are so excessive or so low as to indicate that some matter of fact has been wrongly included in or excluded from their computations, or putting it generally, that they are so low or so excessive as to

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> altogether unreasonable in other words that they are either inordinately high or inordinately low; and as a general rule it may, I think, safely be stated that unless the damages are going to be halved or doubled, as the case may be, the Court would not, as a general rule at any rate interfere"

In the case of Kamara v. Umarco (1970-1971) A.L.R. (S.L.) at 141, Bankole-Jones P. interfered with the award of damages, after having found that the trial Judge adverted his mind to matters which he ought not to have adverted his mind, and then came to the view "that the amount awarded was founded on a wholly erroneous estimate of the damage suffered and therefore inordinately low."

In the case of Sillah Sabally and Others v. Bojan (Civ. App. G.C.A. 15/77 and G.C.A. 2/78 (unreported) Livesey Luke C.J. said:

> "There are also matters which the learned trial judge should, in my opinion, have taken into consideration in assessing general damages but which he ignored"
>
> and he continued
>
> "In my opinion, having regard to what I have just said, the learned Judge erred not only in giving weight to the evidence that ought not to have affected his mind but in not considering matters that ought to have affected his mind."

It is necessary to consider the principles upon which the assessment of damages are based. Lord Blackburn laid down the test as to measure of damage in Livingston v. Rawyards Coal Company (1880) App. Case 25 when he said:-

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> "I do not think there is any difference of opinion as to its being a general rule that, where an injury is to be compensated for by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation."

This passage of Lord Blackburn has been cited with approval by Viscount Sankey L.C. in Banco de Portugal v. Waterlow and Sons, Ltd. (1932) A.C. 452 at 475 and by Earl Jowith in B.T.C. v. Gourley (1956) A.C. 185 at 197.

It seems to me from the authorities, that among other aspects, an award is measured (1) by the extent of the injury; (2) by the extent of the loss of happiness and (3) by the extent to which money can provide the person who has suffered, reasonable solace. But it is also clear that the Court cannot order the defendant to provide the leg or eye which the Plaintiff has lost. Mental pain and anguish which the plaintiff has suffered cannot be obliterated. For these reasons, Judges, are in general, hesitant to venture beyond the principle that the task of the Court is to award fair and reasonable compensation. Salmon L.J. in Gardner v. Dyson (1967) 1 W.L.R. 1497 at 1501 stated that "damages must be real and amount to what the ordinary reasonable man would regard as fair and sensible compensation for the injuries suffered."

In H. West and Sons. Ltd. v. Shepherd (1936) 2 W.L.R, 1359 at 1368 Lord Morris of Borth - Y - Gest said:-

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"The damages which are to be awarded for a test are those which so far as money can compensate will give the injured party reparation for the wrongful act and for all the natural and direct consequence of the act. The word "so far as money can compensate" point to the impossibility of equating money with human suffering or personal deprivations..... 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."

It is apparent from the authorities that no real criterion for measurement of award of damages exists, and the Court must derive guidance solely from the standard level of awards in comparable cases, and the Court of Appeal may interfere if it considers that an ward is totally inconsistent with the general level of awards. But although it is necessary to look for guidance in comparable cases, the decline in the real value of money must be taken into account. The authority for this proposition can be found in Rose v. Willey (1951) C.A. No. 221 at page 484 Kemp and Kemp (Vol. 1, 2nd. Ed.) when Cohen L.J. said:-

"..... the value of money (which it is agreed we are entitled to take into account) has changed enormously since 1937 which was the date of the decision in Heaps v. Perrite Ltd, (1937) 2 All. E.R. 60"

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Lord Norman in Glasgow Corporation v. Kelly (1951) 1 T.L.R.345 said at page 347:-

> ".....the claim is a claim for lacerated feelings and for the loss of natural support which the deceased afforded or might in future have afforded. Their Lordships in the First Division were unanimously of the opinion that the Lord Ordinary's awards were in keeping with awards which used to be made twenty or thirty years ago when the value of money was considerably higher than it is now and that the change in the value of money ought to have been taken into account. It is not necessary to repeat what was said in Sands v. Devon 145 S.C. 380. I adhere to the opinion that permanent changes in the value of money must be considered in making awards for solatium."
>
> In Sands v. Devon (supra) Lord Norman said at page 381:-
>
> "Since we must perforce measure the damage in money, we must, I think, take account of large and relatively variations in the velue of money"

Another case in which the value of money became one of the factors in considering assessment of damages is Walker v. McLean and Sons Ltd. (1979) 2 All E.R. 965. In this case, as a result of the defendants negligence, the plaintiff was injured while riding his motorcycle along an unfinished road. The trial Judge, after having taken into consideration the evidence before him, awarded the plaintiff the sum of £35,000 in respect of pain, suffering and loss of amenity of life, including loss of expectation of life. The defendant appealed against the award, contending that it was too high and out of scale with the current level

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of awards for similar cases of paraplegia.....

".....It was held that damages for non-pecuniary loss, like damages for pecuniary loss, were to be assessed by reference to the value of money at the date of trial ..... Accordingly, the amount of £35,000 awarded by the trial Judge, though higher than previous awards for similar injuries, was in all the circumstances an appropriate award, Cumming-Bruce L.J. reading the judgment of the Court said at page 970:

> "We content ourselves with the observation that his award of £35,000 under this head the judge restores a consistency with awards made before 1973 which cannot be found in many awards made since that year. This award of £35,000 should be regarded as a safe guide to the damages appropriate to such a case than the £27,500 which O'Connor J. said as appropriate in 1978.

Mr. Thomas contention was that the learned trial judge laid too much emphasis on the evidence of Dr. Frazer, and that when one considered the injuries suffered by the respondent, the amount awarded as damages was inordinately high. His next attack on the judgment was that the learned trial judge took into account loss of earnings of the respondent when there was no evidence to that effect.

The witnesses who gave evidence before the learned trial judge were the next friend Samuel Murana Koroma, Dr. Frazer and the respondent herself. The respondent who was a school girl at the time of the accident was fifteen years of age. Before the accident, she took active part in games and sports in the school. She played Volley ball, netball and participated in the general athletics of the school. After the accident, she could no longer participate in these games in which she enjoyed taking part.

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She was first examined by Dr. Forde, and the record of Dr.Forde revealed that she sustained fractures of the pelvis involving the right pubic ramus and the sacro-illiac joint apart from minor abrasions. She was later examined by Dr. Bernard Frazer, a Specialist Gynaecologist and Obstretitian on the 31st day of March, 1977. Dr. Frazer examined her clinically and radiologically, and he found the presence of healed fractures of the pelvis with gross deformity of the pelvis canal, that is, the birth canal. Clinically, the movement of the right foot was painful. Dr. Frazer's Progmosis are:-

"1. Future full terms pregnancies will have to be delivered by caesarean section operation. This will be necessitated as a result of the deformity to the pelvis caused by the fractures.

2. The carriage of the pregnancy will be painful as a direct result of the bone injuries in the pelvis. It will mean a very painful experience for a person with such injuries to carry a pregnancy for nine months. These are permanent injuries."

According to the doctor, there is nothing that can be done for the respondent anywhere in this world to correct her injuries, the injuries which the respondent has sustained would probably always be attended with a certain amount of pain and discomfort during sexual intercourse; there has been some disturbances in the sacro-illiac joint, and as a result there would probably result osteoarthritis in the future; when osteoarthritis occurs there will be roughing of the joint surface which will cause restricted movements of the joints, which invariably causes pain of various degrees, and that will disable her to a certain

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extent; she will have terrible headaches and it is possible that her menstrual periods will be more painful than before. In the opinion of Dr, Frazer, these injuries might affect her prospects of marriage, and psychologically, might cause depression to her, Dr. Frazer went on to say that medically, it is accepted that a woman who, has to be delivered by a caesarean section successively can only bear three children. It is the view of the doctor that assuming it is a full time child, the respondent cannot deliver naturally but by caesarean section. If the respondent was desirous of having many children, she had now been deprived of the pleasure of having many children; if the respondent wants to deliver a child she will be given a general anaesthetics; she will naturally need the attention of a Gynaecologist, and in this regard it will be more expensive for someone who has to deliver a child by caesarean operation than by normal delivery; when one is put under general anesthetics there is a certain amount of risk involved of life; the respondent has begun menstruation and she is now capable of child bearing; she will not be able to take part in active sports; she cannot play tennis, basket ball or run 100 yards, her studies will to a certain extent be affected when she starts getting pain from the backache and osteo-arthritis; that all things being equal her average span life is 55 years and that she has 40 years ahead of her living in pain.

This is the evidence together with the evidence of Koroma the next friend and the evidence of the respondent that was before the trial judge.

The trial judge having considered carefully the evidence and having taken into account the principles of law applicable to the award of damages, awarded the respondent a global sum of Le25,000. The Court of Appeal agreed with the findings and award of damages.

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It has been canvassed before this Court that the learned judge was guilty of error of principle, and I certainly do not take the view that the judgment of the learned trial judge reveals any misapprehension of the effect of the evidence which was before him. It was also contended that the learned trial judge, in making the award, took into the consideration future or prospective loss of earnings. Counsel for the appellant contended that the learned trial judge took into consideration in making the award, future and prospective loss of earning. The sentence in the judgment which Mr. Thomas attached is this "I have to consider the plaintiff future or prospective loss of earnings." Mr. Thomas vigorously argued that the learned trial judge, in making the award, must have had in his mind, the future and prospective earnings of the respondent. But his argument overlooked several considerations. Immediately after the learned trial judge said he had to consider the future or prospective earnings, he said that he realised that the respondent was an infant still attending school and had not yet embarked on any career and there was no figure for net annual loss at the date of trial. This alone is clearly indicative that the learned trial judge had no intention of making provisions for future or prospective loss of earnings. With all respects to the persuasive way in which that argument was presented, I do not think that the judgment viewed as a whole will bear the interpretation put upon the sentence by Mr.Thomas. Indeed the learned trial judge said there was no scale on which he can weigh the injuries and that he was reduced to pure guesswork in the circumstances. What the learned judge was saying was, to use the words of Strentfield J. in Hawkins v. Mendip Engineering Ltd. (1966) 1W.L.R. 1341 at 1348 "whatever figure I decide upon will on any view be guesswork, and my guess is as good or bad as anybody else's."

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It is clear that the learned trial judge correctly summarised the effect of the medical evidence that was before him. He al: heard the evidence of the next friend and the respondent. He accepted their evidence. He said that he realised in the circumstances that he had to award a lump sum once and for all, which will be considered reasonable and in doing so he had to take into account all the above considerations.

It is of course, a well e$tablished principle that an appellate tribunal will not interfere on the question of mere quantum unless it is satisfied that the sum awarded constituted a wholly erroneous estimate. In this particular case, it is merely a matter of estimate since it has not been shown that the learned trial judge applied any wrong principle of law, that he misapprehended the facts, that he adverted his mind to matters which ought not to have affected his mind and that he left out of consideration something that ought to have affected his mind. The learned trial judge himself said that the circumstances of the case defied anything like a precise arithmetical calculation, I agree with the Court of Appeal that the learned trial judge took all the matters necessary into consideration before making the award of damages, and that there was no justifiable reason to disturb the award of damages which the learned trial judge awarded in the light of those considerations. To borrow the words of Scarman J. in Hawkins case (supra) "I would respectfully have thought that the trial judge's guess, so far from being as bad as anyone else's is certainly as good as, if not better than that of an appellate tribunal."

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In my opinion, the award is not only reasonable but moderate in the circumstances, and there is no justification for disturbing the award. Even if the assessment has been made upon a wrong principle of law, the appellate Court may not interfere with the amount of award if it thinks that the amount itself is correct. I would therefore dismiss the appeal.

(Sgd.) Hon. Mr. Justice O.B.R. Tejan,
Justice of the Supreme Court
17/12/81.

AWUNOR-RENNER, J.S.C.:

This is an appeal by the Defendant (hereinafter known as the Appellant) against the judgment of the Court of Appeal dated 23rd April, 1980 dismissing an appeal against the judgment of Justice Kutubu dated the 28th day of February, 1978 by which he awarded the Plaintiff (hereinafter known as the respondent) the sum of Le.25,000 by way of general damages for personal injuries caused by the negligence of the appellant. Negligence is not now in issue and this appeal in a nut shell relates only to the damages which the appellant contends are so excessive as to warrant interference by this Court. At this stage however I think that I would not be amiss to state the grounds of appeal as set out by Counsel for the Appellant which are as follows:-

(a) That the Court of Appeal was wrong in law in refusing to reduce the trial judge's award of general damages which amounted to an attempt to give a perfect compensation and not a fair and reasonable assessment of general damages for the injuries suffered by the respondent.

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(b) That the award of general damages is excessive in all the circumstances.

(c) The decision is against the weight of evidence.

The facts of the case briefly are as follows:
The respondent was a school girl aged 15 at the material time. The accident happened on the 17th July 1975 when she was travelling as a paying passenger on board the Appellant's vehicle No. WR 7116 from Freetown to Bo. As a result of the negligent driving of the appellant's servant or agent the vehicle was involved in an accident and she sustained severe personal injuries. She was first seen by a Dr. Forde, a Surgeon Specialist and admitted at the Bo Government Hospital for seven weeks. Later on in March 1977 she was seen and examined by another Doctor, George Bernard Frazer, a Specialist Gynaecologist and Obstretitian who gave evidence as follows:-

"I examined her clinically and also radiologically by that I mean X-ray examination. I found the presence of healed fractures of the pelvis with gross deformity of the pelvis canal, that is, the birth canal. Clinically the movement of the right foot was painful. My findings and those of the record I received were consistent with the plaintiff having been involved in a road accident.

My prognosis are:-

(1) Future full term pregnancies will have to be delivered by caesarean section operation. This will be necessitated as a result of the deformity to the pelvis caused by the fractures.

(2) The carriage of the pregnancy will be painful as a direct result of the bone injuries to the pelvis.

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It will mean a very painful experience for a person with such injuries to carry a pregnancy for nine months. These are permanent injuries.

There is nothing that can be done for this girl anywhere in the world to correct her injuries. These injuries which this girl has sustained would probably always be attended with a certain amount of pain and discomfort during sexual intercourse. There has been some disturbances in the sacroilliac joint. As a result of this there would probably result osteoarthritis in the future. When osteoarthritis occurs there will be roughing of the joint surface which will cause restricted movements of the joint, which inevitably causes pain of varying degrees. That will disable her to a certain extent. She will have terrible backaches and perhaps it is possible that her menstrual periods will be more painful than before. In my opinion these injuries might affect her prospects of marriage."

The Doctor went on to say that the respondent will not be able to have more than three children as she cannot deliver naturally it will all have to be by caesarean section which will involve a certain amount of risk to life when put under general anaesthetic. She will not be able to take part in active sports and that her studies too will be affected when she starts getting pain from backache. The sum total of it all was that since the life span of a male or female in this part of the world was 55 years all things being equal the respondent had 40 years ahead of her living with pain.

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As stated earlier judgment was given by the trial judge on the 28th day of February, 1978 awarding the respondent the sum of Le.25,000 as general damages. The appellant appealed to the Court of Appeal and judgment was delivered on 23rd April, 1980 disallowing the appeal and it is against that judgment that the appellant has now appealed to this Court on the grounds stated above.

During the arguments various authorities were referred to by Counsel on both sides. For the appellant. Counsel contended that the amount awarded by the trial judge was inordinately high so as to be an erroneous estimate and that the Court of Appeal should have interfered by reducing it where the trial judge has acted on a wrong principle of law, or has misapprehended the facts or has made a wholly erroneous estimate of the damage suffered. The amount he said was not fair and reasonable in the light of previous awards in comparable cases. Some measure of uniformity must be secured.

The misapprehension of facts complained of was that the learned trial judge placed undue emphasis on the fact that the respondent would only give birth by caesarean operation.

Finally Counsel argued that in granting the award of general damages, the trial judge took into account the respondent's prospective loss of future earnings and placed reliance for this on a passage in the judgment which reads as follows:-

> "I have now to consider Plaintiff's future or prospective loss of earnings, I realise that Plaintiff is an infant still attending school and has not yet embarked on any career, and so there is no figure for net annual loss at the date of the trial. There is no scale

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on which I can weigh the injuries of this girl for compensation. I am therefore reduced to a pure guess work for the circumstances of this kind of case defy anything like a precise arithmetical calculation. I therefore have to take everything into consideration in granting the Plaintiff a lump sun, which I consider commensurate enough in the circumstances of her case."

I will deal with this complaint later on.

Counsel for the respondent argued that there were only two issues before this Court, firstly whether the trial judge acted on a wrong principle of law or misapprehended the facts or made a wholly erroneous estimate of the damages to which the plaintiff was entitled to. Secondly whether the Court of Appeal was wrong in refusing to reduce the award of the trial judge who sat without a jury.

He finally ended up by saying that he thought the award to the plaintiff was fair and reasonable.

The principles upon which an Appellate Court would take into consideration and interfere with an award of damages made by a judge is stated in the well known case of FLINT .v LOVEL (1935) 1 K.B. at page 354 where Greer L.J. in his judgment had this to say.

"I think it right to say that this Court will be disinclined to reverse the finding of the 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

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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 that the amount awarded was so extremely high or so very small as to make it, in the judgment of the Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.

This statement was also approved and adopted in the House of Lords in the case of DAVIES v POWELL DUFFRYN ASSOCIATED COLLIERIES LTD. reported in (1942) A.C. at page 601 at page 616 and 617, where Lord Wright said:-

"Where however the award is that of a judge alone, the appeal is by way of a re-hearing on damages as on all other issues, but as there is generally so much room for individual choice so that the assessment of damages is more like an exercise of discretion than an ordinary act of decision, the Appellate Court is particularly slow to reverse the trial judge on a question of the amount of damages. It is difficult to lay down any precise rule which will cover all cases, but a good general guide is given by Greer L.J. in FLINT v LOVELL. In effect the Court before it interferes with an ward of damages should be satisfied that the judge has acted on wrong principles of law, or has misapprehended the facts or has for other reasons made a wholly erroneous estimate of the damage suffered. It is not enough that there is a balance of opinion or preference.

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

Other cases often relied on are the cases of OWEN v SYKES reported in (1936) 1 K.B. at page 192 where the principle as laid down in FLINT v LOVELL(supra) was applied. In GREENFIELD v LONDON & NORTH EASTERN RAILWAY CO. reported in 1944 2 A.E.R. at page 438. Mackinnon L.J. said at page 440:-

> "The principles upon which this Court reviews the assessment of damages both when they are said to be too high or too low are well known. We do not interfere because we might ourselves have given rather more or rather less, but only
>
> (a) if it appears that the judge below has omitted some relevant consideration or admitted some irrelevant consideration or
>
> (b) if we think that the amount fixed is so excessive or insufficient, as to be plainly unreasonable."

A phrase used by Viscount Simon in the case of NANCE v BRITISH COLOMBIA ELECTRIC Rly. (1951) 2 A.E.R. at page 448 was that an Appellate Court would interfere if "the amount awarded is either inordinately low or so inordinately high that it must be an wholly erroneous estimate of the damage." Let me point out that in this case the trial was by a jury and its award was rejected as excessive by Lord Simon who said inter alia:-

> "Taking all these considerations into account and basing on the the best estimate they can form their Lordships are satisfied that a jury

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could not reasonably have computed the total recoverable damage at a figure exceeding 22,500 dollars. This figure in their view falls short of the Le35,000 dollars award by a margin wide enough to justify the British Columbia Court of Appeal in rejecting the jury's figure."

At this stage a case worthy of mention which was referred to by Counsel for the Appellant is the case of RUSHTON v NATIONAL COAL BOARD reported in 1953 1 A.E.R. at page 314 in that case Counsel for the respondent had contended that an award of £10,000 was too high in all the circumstances of the case. The amount was reduced to £7,000. It was however held in that case that in awarding damages for personal injuries that although it is impossible to standardise the amounts awarded for individual cases that the Courts must bear in mind the special facts of the case under consideration, to accord with the general run of assessments made over a period of time in comparable cases. In the case of WALDON v WAR OFFICE (1956) 1 W.L.R. at page 31 Rushton's case (supra) was applied. It was held by the Court of Appeal that while a judge was entitled to hear references to previous decisions to show amounts which had been awarded by other judges in comparable cases that it was entirely within the judge's discretion whether he would permit such reference or not. In fact Parker L.J. had this to say:-

"So far as the ruling of the judge is concerned as to whether other cases ought to be looked at, I would only like to say this. In my view it would be calamitous if anything that this Court should impose an additional burden on

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judges of the first instance, and particularly on judges of Assize. It has been suggested that Counsel on either side will come armed in every case of personal injuries with reports or transcripts of other cases. I myself do not think that there is any fear of that. I think that Counsel can be trusted only to refer to other cases sparingly, bearing in mind that each case depends upon its own facts and only rarely can other cases be of real assistance to the judge. And secondly, that the discretion must always be in the judge himself to decide whether in his view the reference to such other cases would or would not assist him."

In view of the above cases referred to it seems to me therefore that before an Appellate Court would interfere with an award of damages made by the trial judge the Court must be satisfied that the award was made upon a wrong principle of law as contained in the judgment or that the trial judge made an entirely erroneous estimate or that the amount awarded was so excessively high or too low. An Appellate Court would not interfere merely for the sake of interfering. An award of damages must in all the circumstances of the case be fair and reasonable. Certain things ought to be taken into account. First the pecuniary loss if any sustained or finally the physical capacity of enjoying life. In short restitutio intergrum in its ordinary sense is impossible. In the case of GARDNER v DYSON (1967) 1 W.L.R. at page 1497 and at page 1501, Salmon L.J. said

"Damages must be real and amount to what the ordinary, reasonable man would regard as fair and sensible compensation for the injuries suffered."

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In the case of FLETCHER v AUTOCAR & TRANSPORTERS LTD. reported in (1968) 2 W.L.R. at page 743, the Plaintiff a chartered Surveyor had sustained severe injuries in an accident. The judge assessed damages under four heads: special damages £10,477.9.6, Loss of future earnings at £32,000, additional expenses caused by the injuries at £14,000 and damages for pain suffering and loss of amenities of life at £10000. He rejected the defendant's contention that if the total of the four assessments was an exceptionally high or daunting figure then the total figure should be revised, and he awarded the total figure in damages of £66,447.9.6.

On appeal Lord Denning M.R. had this to say at page 749:-

> "In the second place, I think that the judge was wrong to take each of the items separately and then just add them up at the end. The items are not separate heads of compensation. They are only aids to arriving at a fair and reasonable compensation."

At this stage I think it will be convenient for me to deal with one more issue raised by Counsel for the Appellant. He had argued that the learned trial judge had taken into account the respondent's prospective loss of future earnings when there was no evidence to support this. The paragraph complained of has been stated supra in full by me.

I do not think that it can be construed as stated by Counsel for the Appellant. In my view I think that the trial judge considered the question of loss of future earnings and then rejected it. My own construction of the paragraph is that he was saying that the appellant was not entitled to any award as regards prospective loss of future earnings because the

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appellate was still attending school and had not yet embarked on a career and so there was no figure for net annual loss at the date of trial. He continued by saying that "there is no scale on which I can weigh the injuries of this girl for compensation" emphasis mine. ... "I am therefore reduced to pure guess work for the circumstances of this kind of case defy anything like a precise arithmetical calculation. I therefore have to take everything into consideration in granting the plaintiff a lump sum which I consider commensurate in all the circumstances of her case."

After commenting on all the injuries sustained by her, he continued to say:-

> "In the light of the serious nature of the plaintiff's injuries and prospective loss of a predominantly happy life, I am to consider how best money can compensate her ... I realise in the circumstances, I have to award a lump sum once and for all, which will be considered reasonable."

As a result of this the judge awarded the plaintiff a lump sum of Le.25,000.

Let me say here and now that the judge was perfectly right in awarding a lump sum. He was entirely within his rights to do so. He need not award separate sums for each head. Since only if he has broken down his global award and specified the amount given for each item for pecuniary and non pecuniary losses will the appellant entertain some hope of success. See the case of FLETCHER v AUTOCAR & TRANSPORTERS (supra) and also the case of BILLINGHAM v HUGHES & ANOTHER reported in 1949 1 A.E.R. at page 684.

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Having specified above the various principles upon which an appellate Court would interfere, I now turn to the present case. I do not think that the trial judge misapprehended the facts or missapplied any wrong principles of law or considered irrelevant matters. I have already stated above my own construction of Counsel for the appellant's complaint that the judge in awarding a lump sum took into consideration the loss prospective future earnings. In fact in this case the judge never stated how much he was awarding for the various heads of general damage. I do not also think that the trial judge put more emphasis on the fact that the Respondent would only give birth by caesarean operation. I think all he did was to narrate the medical evidence in relation to the injuries sustained. As regards the submission put forward by Counsel for the appellant that the trial judge had made an entirely erroneous estimate of the damage suffered and that the damages awarded was so extremely high. One must look at what the judge said as regards the injuries sustained by the respondent, her loss of amenities and the prospective loss of a predominantly happy life and come to the conclusion that the amount awarded was fair and reasonable in all the circumstances of the case.

There is no doubt that the injuries on the whole as stated above are serious. It affects the respondent's whole future and her womanhood, starting from painful periods, painful intercourse, painful pregnancy, chirl birth and other injuries apart for the rest of her life. The appellant was only fifteen years old at the time the accident took place. Her future as regards all the injuries sustained appears to me to be quite bleak. I therefore feel that the amount of Le.25,000 awarded her was not excessive.

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As a result of the views which I have expressed I am of t opinion that the appeal should be dismissed and the judgment c the Court of Appeal affirmed. Appeal dismissed. Costs to be taxed in favour of the respondent.

Hon.Mrs.Justice A.V.A.Awunor-Renner
Justice of the Supreme Court
17/12/81.

DURING, J.A.:

The Appellant has appealed to this Court on the ground th the award of Le25,000 made to the Respondent by way of general damage is excessive.

It is well established on what principles an Appellate Court will interfere with an award of general damages where th award is made by a Judge sitting alone in a long line of cases both local and English. I need not refer to the long line of cases some of which have been referred to in the respective Judgment of my learned brothers.

My learned brothers have stated in their Judgments the injuries which on the evidence in the Court of first instance the Respondent suffered, reviewed the evidence of the Specialis Gynaecologist who gave evidence and his prognosis. The learnec Trial Judge found that the Respondent's injuries were serious and he accepted both the evidence of the Respondent and the Specialist and stated that he had to "take everything into consideration when awarding a lump sum". The learned Trial Jud considered the loss of amenities of life, what is sometimes called a diminution in the pleasure of living. In my view the learned Trial Judge made a proper review of the evidence before him and did not take into consideration any unwarranted fact in coming to a conclusion as to what amount he would award.

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In the case COOKSON v KNOWLES (H.L.) 1978 2 W.L.R. 978 at 988 Lord Salmon said inter alia:-

> "There is one matter that I should like to emphasis, namely that in my view it is impossible to lay down any principles of law which will govern the assessment of damages for all time. We can only lay down broad guidelines for assessing damages in cases where the facts are similar to those of the instant cases and when economic factors remain similar to those now prevailing."

In my view in assessing general damages regard has to be had as to the socio-economic factors prevailing at the time of assessment for example fall in value of money and as Sellers L.J. said in WARD vs JAMES [1965] 1 All E.R. 563 at p. 576:-

> "We have come in recent years to realise that the award of damages in personal injury cases is basically a conventional figure derived from experience and from awards in comparable cases."

Our Courts in considering comparable cases should consider those in our Society in my opinion.

In the case ALIMU JALLOH vs WONDE SAMURA an Infant suing by father and next friend Foday Samura Civ. App. 30/73 Court of Appeal, Judgment delivered 8th March, 1974 unreported, the Appellant appealed against an award of Le.15,000 made by the High Court as general damages for personal injuries. Counsel for the Appellant in the Court of Appeal argued that the trial Judge ought not to have awarded a global sum of general damages and that the award was excessive. The Court Tejan, Agnes Macaulay then JJ.A. and During J.A. said inter alia:-

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"In our view though it may be desirable for a trial Judge sitting alone to itemise the damages in certain personal injury cases it is not absolutely necessary and failure by the trial Judge to do so as in this case will not necessarily justify reversing the assessment of damages by the trial Judge.

In the case THE SIERRA LEONE SYNDICATE LTD. vs AMADU CONTEH referred to in the judgment of Ames P. in ARTHUR MASSALAY vs THERESA BECKLEY 1960-61 Sierra Leone Law Reports Vol. 1, the Court of Appeal for Sierra Leone and the Gambia said that in assessing general damages in cases of personal injury the Court should do so as if "Sierra Leone was the only country in the world" and then proceeded on "a matter of assessing damages in that case by a search for a comparable injury in England to see how much the English Court has 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 judgment should be reduced owing to different circumstances prevailing in Sierra Leone."

In the case ARTHUR MASSALY vs THERSA BECKLEY referred to above Ames P. in dealing with what he described as "a misunderstanding" as to what was meant in Conteh's case when the

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existing Court of Appeal said that the matter should be considered as though Sierra Leone were the only country in the world said:-

"It seems to me to be common sense. It only referred to General Damages."

In that case Ames P. is reported to have said obiter:-

"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 condition" 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 in England. They start and end in England.

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

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We hold the view that the method suggested by Ames P. in the case Arthur Massalay vs Theresa Beckley mentioned supra, to wit "to start and end in Sierra Leone" is the proper method the Court below should adopt in assessing the amount to be awarded as General Damages for personal injuries. Our Courts should not in such matter take an excursion to England, United States of America, Australia, India any Commonwealth country or any where else to find out what would have been awarded in comparable cases.

In our view the Damages awarded could not in any way be regarded as excessive."

Learned Counsel for the Appellant argued that the learned Trial ~~Judge~~ in making ~~the lump~~ sum awarded wrongly made an award for loss of future earnings. My learned brother, Awunor-Renner, JSC ~~has~~ in a very lucid and succint manner dealt with the submission which in my opinion is untenable. There is nothing in the Judgment of the learned Trial Judge direct or from which it could be inferred that he made a guess as to what the loss of future earnings would be or what figure he would fix any loss of future earnings or that he made such an award.

I would dismiss this Appeal with costs.

Hon. Mr. Justice Ken E.O. During
Justice of Appeal
17/12/81.