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1978/2

ROYAL COURT (INFERIOR NUMBER)

Before: Sir Frank Ereaud, Bailiff  
Jurat R.E. Le Cornu,  
Jurat The Hon. J.A.G. Coutanche

Guardian ad litem of  
Jane Mary Hovel-Thurlow-Cumming-Bruce, Plaintiff,  
and  
Stella Margaret Anderton, Defendant.

Advocate C.M.B. Thacker for the plaintiff  
Advocate K. Hooper Valpy for the defendant.

On 29th July, 1973, the plaintiff, then aged 16 years, was a passenger in the front seat of a car being driven by the defendant along La Grande Route de Saint Martin in the parish of St. Saviour. The car moved towards the off-side of the road and collided with another vehicle travelling in the opposite direction. The plaintiff now claims damages for the injuries which she sustained in the collision.

The defendant admits liability and this judgment is therefore confined to the issue of damages.

The plaintiff claims that she received the following injuries:

- (a) Laceration of the forehead.
- (b) A blow to the right knee.
- (c) A lesion of the greater trochanter causing trochanteric bursitis.
- (d) A blow to the head.
- (e) Nervous shock.

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The defendant admits that the plaintiff suffered, and is entitled to be compensated for, all the injuries claimed, except nervous shock.

The history of the case is as follows. At the date of the accident the plaintiff was a healthy school-girl just two weeks short of her seventeenth birthday. In the collision the plaintiff was thrown forward and hit her forehead on the windscreen; her knee hit the dashboard. She was not rendered unconscious and indeed was able to run from the car, which she feared might catch fire. She was taken to the General Hospital where eight to ten stitches were inserted in the lacerations to her forehead, and elastoplast was placed on the broken skin of her knee. She was not detained, and she returned to the house where she was staying on holiday in the Island and spent two days in bed there. She then returned by air to London. At that time she was limping and had the use of a wheelchair at Heathrow Airport. From London she went to her home at Salisbury, and attended at Salisbury Hospital, where the stitches were removed from the lacerations on her forehead. Her knee showed some effusion of fluid, but there was no bony injury. She was able to walk, but limped. Her knee completely cleared up after about six weeks, although during that period it gave her some pain, she could not walk far, and she found it more comfortable to put her foot up on a foot-stool.

The plaintiff returned to school in September 1973. She had previously done well academically and had gained ten 'O' levels at Grade 1. In September 1973 she was half-way through her studies for 'A' levels in four subjects. Her teachers expected her to go to University, and she hoped to read History of Art at the Courtauld Institute. Although she had previously found her work easy, on return to school in September she found it difficult to

concentrate and her memory was not as good as it had been. After a few weeks she was advised to give up, first, one subject and then a second, but she still could not manage her academic work. Furthermore, she found that she was bursting into tears for no reason, something that she had never experienced before, and she suffered from slight headaches. Her family doctor, whom she consulted in October, 1973, prescribed anti-depressant pills. Eventually he advised her to leave school, which she did at half-term, that is to say, in about early November, 1973.

She then took up cookery lessons, but dropped them after a short period. After Christmas, 1973, she spent two months in Italy, and then, returning to London, she did the season as a debutante, which she would not have done had she remained at school. In September, at the end of the season, she did a secretarial course and for the past two and three-quarter years has been secretary to a Member of Parliament at Westminster.

We now deal with the injuries in detail.

1. Laceration of the forehead.

This has left two small scars high up on the forehead which are not noticeable in the ordinary way. The plaintiff has in any case adopted an attractive hair style which hides them, and to her credit she told us most frankly that they did not worry her and that she did not regard them as a cosmetic disability, and would not do so even if she were to adopt a different hair-style which did not cover them.

2. Blow to the right knee.

According to Mr. Anthony Hall, F.R.C.S., the blow must have been quite hard, but it did not cause bony injury and although the plaintiff suffered pain and discomfort from the severe bruising for some six weeks her knee cleared up at the end of that time.

3. A lesion of the greater trochanter causing trochanteric bursitis.

This is an inflammation of the bursa over the hip caused, in this case, either by the direct blow to the knee, resulting in an indirect injury to the hip, or by the plaintiff having limped for a period after the accident. However it was caused, the defendant agreed that it was the result of the accident.

The plaintiff told us that she first noticed an ache in her right hip some six weeks after the accident as soon as the bruising to her right knee had cleared up, and she claimed that the condition had remained about the same ever since. In winter it is often a gnawing ache and although it occasionally clears up she is usually conscious of it. In summer the ache is less bad, and sometimes ceases altogether, but it starts again if she takes too much exercise. The condition does not affect her work, but it does restrict her life-style in a number of ways. She used to walk a lot but now feels discomfort if she walks more than a mile, and so she now resorts to public transport more often. Walking over rough ground causes discomfort. She can drive a car for comparatively short distances, but not on long journeys. She still bathes in the sea, but now finds the breast stroke painful because of the hip movement involved. She likes dancing and accepts invitations to dances, but her hip aches if she dances for too long and she cannot do reels. She can no longer ski. Riding causes discomfort and she cannot go hunting or jumping. Her condition does not interfere with her sleeping, but she does not sleep on her right side and she needs a hot water bottle to ease the ache. The condition is aggravated by any activity which requires prolonged standing, excessive exercise or undue movement of her right hip, and by cold or damp, and by consumption of alcohol. She feels that she has over the years learned to cope better with the effects of the condition.

Under guidance from her doctor, the plaintiff tried for three years or so various treatments, such as heat treatment, Brufen pills, Hydrocortisone injections and ultra sound, but none of these gave more than temporary relief, and she is not now receiving any treatment, except that she occasionally takes Brufen if she intends to indulge in an activity requiring special exertion.

The plaintiff was referred by Dr. Goldman to Mr. D. Churchill-Davidson, F.R.C.S., a Consultant Orthopaedic Surgeon, who saw her in June, 1975, and to Mr. A.J. Hall, F.R.C.S., also a Consultant Orthopaedic Surgeon, who saw her in June, 1976, and again in August, 1977. She was also seen, on behalf of the defendant, by Mr. D.H. Sandell, F.R.C.S., a Consultant Surgeon, in February, 1977, and again in August, 1977, when he made a joint examination with Mr. Hall.

Dr. Goldman, Mr. Churchill-Davidson and Mr. Sandell did not give evidence, but their reports were before us and the plaintiff was cross-examined on them. These reports included statements alleged to have been made to their authors by the plaintiff, and the results of their examination. The plaintiff agreed with most of the contents of the reports, but she did not accept that she had ever said that the condition began considerably later than she told us in her evidence, nor did she agree with the statements in Mr. Sandell's first report that she was completely free from symptoms in the summer, that in the winter she suffered from only a "slight ache" and that the interference with her normal life was only "minimal". As the authors of those reports did not give evidence and therefore could not be questioned on them, we must accept those denials, whilst taking into account, however, the evidence of Mr. Hall, who was a witness, and the view which we have formed of the evidence of the plaintiff herself.

Mr. Hall first saw the plaintiff in June, 1976. The account which she gave to him of her condition and the restriction which it imposed on her activities was similar to that given to us. He found that she could walk without a limp and was able to stand, hop on one leg and squat, but he concluded by saying that "she still has considerable limitation of physical activities caused by the pain in her hip". He advised further treatment, which she had.

He saw her again in August, 1977, when he found that there had been no appreciable change since his previous report. His report continued:

"She still has a dull ache in the region of the left (sic) hip which is worse after exercise. Recently she had to walk for about one hour after which the pain was more painful for about 10 days. She finds that resting the leg on a stool helps and she finds that the limit of walking is about half an hour after which the pain becomes worse. Her symptoms are improved in warm weather, this summer she has had intermittent pain throughout. She no longer rides or skis. She avoids lying on the right side and if she drives her car for more than two hours her hip becomes painful".

Commenting on his report, Mr. Hall expressed the view that the constant element in the ache complained of was "slight", but that it was aggravated by exercise.

The second report of Mr. Sandell, with which Mr. Hall agreed and which was prepared after a joint examination of the plaintiff with Mr. Hall, was, as regards her condition, in similar terms to the report of Mr. Hall.

Mr. Hall agreed with the statement in Mr. Sandell's report that there was in this case, as in all cases of claims for damages, a compensation element, that is to say, a tendency by the plaintiff to magnify the condition, and that tendency would remain until the question of compensation had been settled. The plaintiff did not accept that she had exaggerated her symptoms, but Mr. Hall was satisfied that she had, although he emphasised that she had not done

so intentionally; it was a natural and unconscious exaggeration. It was not possible to quantify its extent.

Mr. Hall further told us that the plaintiff's disability was a condition and not a disease. It would not, therefore, get worse, but on the other hand he did not agree with Mr. Sandell that it would in due course get better of its own accord. The plaintiff had tried the whole range of conservative treatment without any permanent relief. The only procedure which had not been tried was to excise the bursa. That operation had a fifty per cent chance of success, but if it failed the plaintiff's condition would not be made worse. He had in fact placed her on his National Health Service list but he would not carry out the operation until all litigation had finished.

We are satisfied that the plaintiff gave her evidence very honestly, and that she has not consciously exaggerated her condition, which we accept began some six weeks after the accident.

We do not agree that the condition is trivial or that it amounts to only a very minimal interference with her daily and Social life. We accept that she is conscious of the ache for much of the time and that although she has adapted as well as she can, she is constantly aware of the restrictions which the condition imposes on the life-style which she is entitled to enjoy. In particular, there are several leisure and social activities in which she either cannot indulge at all or can indulge only in the knowledge that they may well temporarily aggravate the condition. We think that this is a not inconsiderable interference in the pleasures of life which a young person such as the plaintiff is entitled to experience.

As to the future, we accept that once this litigation has finished she may feel a marginal improvement, and of course there is a fifty per cent chance of a cure if she decides to have the operation.

If she does not, or if the operation is unsuccessful, then the condition will be permanent, although as she gets older the restrictions may not prove so irksome.

Finally, we accept that the condition will not deteriorate, so that there will be no loss of earning ability, and that her marriage prospects are not affected.

4. A blow to the head and nervous shock.

We find it convenient to take these together. We have already described how the plaintiff was advised to leave school and how she developed a habit of bursting into tears for no reason, for which she was prescribed anti-depressant pills. That nervous trouble cleared up after a year, but not before it had been aggravated by an incident when she saw two cars collide, which caused her to have hysterics.

In his report, Dr. Goldman stated that the depression and lack of concentration which the plaintiff experienced was due to concussion which she suffered in the accident. The plaintiff told us, however, that she had been referred to a neurologist, who found no evidence of concussion.

We accept that the plaintiff suffered from a degree of nervous shock which lasted for over a year, and was due either to the to the head or to the shock of the accident or to both. for the plaintiff asked us to award damages not only for the into tears but also for her inability to complete her education the consequent lack of high academic qualifications. We have to the conclusion that there is insufficient evidence before us enable us to award damages under that latter head. The accident have been part of the cause, but we are not satisfied that it was only cause. The victim of an accident must, as far as possible mitigate his loss, and it was not explained to us why it was ne



for the plaintiff to leave school permanently rather than, for example, to take a holiday for the rest of the term and then return after the Christmas holidays. Without evidence from Dr. Goldman or a member of the school staff we feel that this alleged consequence of the accident is too remote to enable us to take it into account in our calculation of the damages to be awarded.

In calculating the proper award of general damages, we take into account the injuries suffered under 1, 2 and 4 above, but our major consideration must, of course, be the trochanteric bursitis. The condition has already lasted some four and a half years at an early stage in the plaintiff's life. As to the future the prognosis is not capable of any precision. On a pessimistic view the plaintiff may have to endure the condition for the rest of her life. On an optimistic view, if she has the operation and it is successful the condition will cease in perhaps a year or less. The figure awarded must be calculated, therefore, on a reasonable balance between optimism and pessimism.

We think that the proper figure for general damages in this case should be Three thousand pounds.