

1981/3
29th January, 1981



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Le Breton and Benest -v- Dewhurst

We are asked to determine the general damages which should be awarded to the two plaintiffs in this action as a result of the defendant's negligent driving when both plaintiffs suffered certain injuries some two and a half years ago, on the 30th June, 1978. We are grateful to counsel for first of all having told us that they had been able to settle special damages and I am to say this, that if you have not yet agreed the actual figures then there has to be a "condamnation" of some figure on special damages so we will formally award the special damages but leave it to counsel to work out, Mr. Bailhache can agree the actual figures, and let the Greffe know so that it can be recorded in the Act. Secondly, we are grateful to counsel for the careful way in which they have presented cases to us for our consideration because it is very difficult in matters of this sort to find cases on all fours and in any case, we find, looking at the cases, that the Judges had generally seen the parties and examined the injuries for themselves and can form their own opinion in addition to the medical evidence. We have done the same here so far as Mr. Le Breton is concerned.

We take first, therefore, the case of Mr. Benest. Looking at the medical reports, the last report on him indicated that residual symptoms may persist for up to two years after his accident, that is to say, the symptoms of loss of grip of his left hand, which I think is accepted by the defence in the sense that, being a stone mason, Mr. Benest certainly requires a strong left hand for the execution of the work which he has described to us. However, although Mr. Nicolle said that the residual symptoms may persist for up to two years after his accident we heard Mr. Benest tell us clearly that he only reckons he has eighty per cent of his strength and we see no reason to doubt that. Therefore it is clear to us that Mr. Benest is not yet full

the accident and one has to take account of that fact. It is mainly of course in respect of the residual wrist problem that we are making his award. We take into account also the pain he described to us, the shock of the accident and all the general matters which we must take into account and also to a limited extent, the scar, the difficulties which he had over his right upper eye lid. Fortunately those are now resolved, but we cannot ignore the fact that he has fewer, if any, eye lashes and although he has not alleged any injuries to his eye itself, he -- told us that he noticed that the dust gets into his eye rather more frequently and he has difficulty in opening his eye in the morning and we take those matters into account. We think therefore, that as far as Mr. Benest is concerned, the appropriate award to make by way of general damages is a figure of two thousand pounds.

When we come to Mr. Le Breton, we do not accept Mr. Fiott's contention that we should just multiply - - - - his award by a particular proportion compared to Mr. Benest. His case is different because his injuries are mainly external injuries to the extent that we can see them for ourselves. There were lacerations and there was scarring. It is that matter which he really relies on although it is perfectly true to say there is some suggestion, as in the case of Mr. Benest, there has been a personality change. Well we have no evidence about that, no evidence that is to say no medical evidence, because you would not expect Mr. Nicolle to deal with that matter at all, he is not that kind of surgeon, not that kind of medical man. But nevertheless it is perfectly true that Mr. Benest did tell us that he, and his wife supported him in certain ways, in which he is no longer what he was. We have taken account of that in our award, but as regards Mr. Le Breton, he and his sister have both said that whereas before he was a quiet even-tempered young man, he is now short-tempered and we take note of that, and that is something which, if permanent, can be a great handicap to him in his future life, and indeed, according to him, has already caused him the loss of one job.

Now we go on to the question of scarring. It is quite clear from the medical reports that he had considerable scarring. The question is, how far has it cleared up; has it reached the maximum recovery that is possible? If we look at the last report of Mr. Nicolle, we find that as regards the feeling of stiffness in the scar between the eyebrows which Mr. Le Breton described to us as being like a bit of cardboard, that should resolve fully. Well it does not appear to have resolved yet, and that is a year after that report was written but there is still time. Clearly the difficulty in raising the left eyebrow has remained and Mr. Nicolle admits that that is unlikely to improve further. As regards the important part of the scars on his face, particularly that above his eyebrows, which he finds disfiguring, Mr. Nicolle says that in a year's time from the date of his report, which is approximately now, that he should be left with mild pallor and scarring. That is a fairly accurate description of how we have seen Mr. Le Breton today. It is perfectly true however, as Mr. Bailhache pointed out to us, that awards in respect of cosmetic injuries, I call them that because that is what they are, there were no fractures or that kind of thing, are generally less as regards men than women. Nevertheless, we have heard Mr. Le Breton tell us how he has had difficulty dealing with the opposite sex although on the other side, Mr. Bailhache elicited from him that he has in fact had a couple of girlfriends for a short time and he has one at the moment, so he has not been totally cut off from a normal sex life of a young man, whatever that is, of a man of his age. We do not put too much importance on that item. We have looked at him and we have examined his face, as we are entitled to as Judges of this case, and ----- also taking into account of course, the time he spent in hospital which was five days and not just in and out, the two operations he has had, the pain and suffering and the psychological shock which Mr. Bailhache admitted that most people have when they undergo an unpleasant accident like this, --- we have come to the conclusion that the proper figure to award Mr. Le Breton is

ive thousand pounds and we so order.