

In the year one thousand nine hundred and eighty-six,
the sixth day of June

Before the Judicial Greffier

The executor of the will
of the late Rabah Monsouri

v

Nicholas Thomas Harvey,
principal heir of the late
Norman Harvey

On the 18th February, 1980, Mr. Rabah Monsouri, employed as a gardener by Mr. Norman Harvey, was, during the course of his employment, involved in an accident with a "Flymo" grass cutting machine, as a result of which he suffered severe injuries to his right foot.

Mr. Harvey ("the deceased") was killed in an aircraft accident in September, 1980, and so the action, commenced by Order of Justice dated the 15th February, 1983, was brought against the guardian of Nicholas Thomas Harvey, his only son and principal heir, who at that time was a minor.

The basis of the action was that Mr. Harvey, as Mr. Monsouri's employer, had failed in his duty to provide a safe system of work.

The answer filed by the guardian denied that the deceased had failed in his duty to provide a safe system of work and further alleged that Mr. Monsouri's injuries were caused as a result of his own negligence.

Mr. Monsouri himself died on the 18th August, 1983, and the action was continued by Mr. D.O. Moon, the executor of his will. Subsequently, leave was given to the executor to amend the original Order of Justice. In that amended Order of Justice, the allegation of failure on the part of the deceased to provide a safe system of work was maintained and elaborated upon and a further claim was made for holiday pay for the years 1982 and 1983 - this claim was in no way related to the accident to Mr. Monsouri.

In the amended Order of Justice, Mr. Monsouri's injuries are particularized as follows:-

1. Shock.
2. Traumatic amputation of the first, second third and fourth toes of the right foot.
3. Extensive lacerations with damage to tendon nerves and blood supply of the fifth right toe.
4. A laceration on the upper and outer surface of the right foot.
5. Formal amputation of the forepart of the right foot.
6. Deep vein thrombosis in the left leg with a pulmonary embolism.

and the special damages claimed are particularized as follows:

1. Loss of earnings from the date of the accident to the date of his return to work in June, 1980.
2. Medical expenses arising out of the accident.
3. Damage to his clothing and effects.

In addition, the amended Order of Justice claims (a) the sum of £527.10 in respect of unpaid holiday pay; and (b) general damages, interest and costs.

The action was set down for hearing on the 31st January, 1986. At that time the Court was informed that Nicholas Thomas Harvey, the deceased's son, was now of age and no longer subject to guardianship. Advocate Gould, the former guardian, told the Court that he was not instructed by Mr. Nicholas Harvey, to whom I shall hereafter refer to as "the defendant". The Court confirmed the Order of Justice in so far as the issue of liability was concerned and referred the assessment of damages to me.

On the 18th February, 1986, I made an order for substituted service on the defendant with a return date of the 7th April, 1986.

On the 7th April, Advocate P. de C. Mourant duly appeared but the defendant did not. Advocate Mourant produced to me the record of the Viscount to show that service had been effected in accordance with the terms of my order and the hearing proceeded in the absence of the defendant.

Advocate Mourant first dealt with the claim for special

damages under the heading "Loss of earnings". Mr. Monsouri was earning £87.75 per week and although the Order of Justice states that he was able to resume work in June, 1980, we do not know the precise date. Advocate Mourant therefore suggested that the 1st June be taken as being the date of Mr. Monsouri's return to work. This meant that Mr. Monsouri was off work for 14 weeks, resulting in a loss of wages of £1228.50. Advocate Mourant did not pursue the claims for special damages for medical expenses and damage to clothing and effects nor the claim for interest.

Advocate Mourant then dealt with the claim for general damages for loss of amenities and pain and suffering. He referred me to the case of Shannon v. Greenbat reported in the Current Law Year Book 1982, where the plaintiff suffered injuries to his left foot and was awarded general damages of £2,500. Although by no means on all fours with the present case, he presented it as a helpful guide as to the amount that should be awarded in this case. He invited me, in view of the absence of the defendant and of any medical reports, to take a cautious approach and suggested that even though the injuries suffered by Mr. Monsouri were clearly much more severe than those suffered by the plaintiff in the Shannon case and he had spent some time in hospital, the sum of £2,000 would be appropriate.

Advocate Mourant then went on to deal with the question of contributory negligence on the part of Mr. Monsouri as alleged in the answer. He accepted that there had been such contributory negligence and again invited me to take a cautious approach - he suggested a deduction of one third. Finally, Advocate Mourant asked for costs in the sum of £570.

Having considered all Advocate Mourant's submissions, I have decided to award the following sums, that is to say, £1,228.50 by way of special damages for loss of wages and £2,000 by way of general damages for loss of amenities and pain and suffering. I agree that a deduction of one third should be made from those sums on account of Mr. Monsouri's own negligence, thus making a net award of £2,152.33.

In addition, I award the sum of £527.10 in respect of Mr. Monsouri's claim for holiday pay and costs in the sum of £570.