4 pages.

89/224

In the Royal Court of Jersey

2nd May, 1990. 61A.

Before the Judicial Greffier.

BETWEEN Joseph Raphael Barreto by his Curator John Gerald Patrick Wheeler PLAINTIFF

AND David Louis Sanguy DEFENDANT

Advocate J.G.P. Wheeler for the Plaintiff.
Advocate J.G. White for the Defendant.

This judgment relates solely to the application by the plaintiff for the trial of the above action to proceed upon the basis of separate trials of the issues of liability (including contributory negligence) and damages.

The action is one for personal injuries arising out of an accident which occurred on 10th May, 1988 in Plat Douet Road, St. Clement. The plaintiff has alleged that the defendant drove his motor vehicle negligently and the defendant has denied this and has pleaded further or alternatively that the accident was caused wholly or in part by the plaintiff's contributory negligence.

The allegations of injuries suffered by the plaintiff indicate very severe injuries including severe head injuries and further allege that the plaintiff is confined to a wheel chair and will require nursing care in a hospital or nursing home for a number of years.

There was no submission from either advocate to the effect that I did not have the power to make the order. It was clear to me that the Greffier has a power under Rule 6/19 to refer separate issues to the Court before setting down for hearing, a power under Rule 6/21(2) for separating issues on the making of an order setting down for hearing and further a power under Rule 7/5 to adjourn a trial or hearing of an action on such terms, if any, as he thinks fit. The application before me was worded in such a way as to be within the terms of Rule 7/5 in seeking that the matter of quantum should be adjourned to a later date for trial. Although when the action was set down on the hearing list no specific order was made to separate the issues it has been the practice of the Judicial Greffier in the past to make no such specific order upon the basis that the lawyers will normally agree between them the method of trial of various issues. In the eventuality of disagreement the lawyers are able to bring the matter back before the Greffier and the Greffier has the power to deal with the matter under Rule 6/21(2) and under Rule 7/5 or alternatively by virtue of the inherent jurisdiction of the Court to determine procedure where there is no specific provision in the Rules.

There was no dispute between the advocates as to the legal principles involved and these are clearly set out in section 33/4/7 on page 539 of volume 1 of "the white book 1988". I quote from the third paragraph of that section -

"while the normal procedure should still be that liability and damages should be tried together, the Court should be ready to order separate trials of the issues of liability and damages whenever it is just and convenient to do so". The criteria for determining when it is just and

convenient to do so are set out in the same paragraph and include the following principles which I quote from section 33/4/7:-

(a) an order for the separate trials of the issues of liability and damages will only be made if there is a clear line of demarcation between these issues on the pleadings, and not where they interact upon each other;

(b) where the issue of liability is separate and distinct for the issue of damages, litigants should take advantage of the facilities which are afforded of having the question of liability decided as a preliminary issue before the issue of damages;

(c) this is especially so where the issue of damages is detailed and complicated;

(d) in actions for damages for personal damages, the issue of liability may be ordered to be tried before the issue of damages where there is an element of uncertainty about the plaintiff's future or where no firm prognosis is possible until some years after the accident;

(e) in considering whether to order the separate trial of the issue of liability before damages, regard will be had to the benefits that will thereby accrue to the parties, e.g. an earlier determination on the liability while the facts were fresher in everyone's memory, as against the hardship or prejudice that might thereby be occasioned to them.

In this case it is clear that there is a clear line of demarcation between the issues of liability and damages in the pleadings and that they do not interact upon each other. It is clear that the issue of liability is separate and distinct from the issue of damages. It is clear that the issue of damages will be detailed and complicated. Advocate White argued that there was no evidence before me as to whether there was an element of uncertainty about the plaintiff's future or as to whether no firm prognosis was possible until some years after the accident. I considered adjourning the hearing in order to obtain medical evidence thereon but decided that the nature of the case and the seriousness of the injuries was evident from the plaintiff's pleadings. The defendant had not denied these pleadings but simply indicated that they were not admitted. I was satisfied that with injuries as serious as those alleged there would certainly remain a great deal of uncertainty about the plaintiff's future and that a firm prognosis would be difficult for some time to come. It appeared to me to be in the interests of justice that the trial of the issue of liability should proceed as soon as possible whilst the facts were as fresh as possible in the memory of the witnesses.

The case of Coenen v. Payne (1974) 1 W.L.R. 984; (1974) 2 All (E.R. 1109 C.A.) was cited by Advocate Wheeler. In that case a further principle arises namely that often it helps the judge to assess the credibility of the plaintiff if he can hear what the plaintiff has to say not only about his accident but also about his injuries and financial loss. In this case this was not a relevant consideration as it was clear that the plaintiff was not going to be able to give evidence in relation to the accident. In the Coenen case the Court was clearly also influenced by the fact that the length of the trial in relation to the issue of quantum was estimated to be

considerably longer than that in relation to the issue of liability. The estimates are in fact contained in paragraph H on page 1110 of the record of the judgment in 2 All England Reports. I found similarities between the present action and the Coenen and if anything the case for a separation of the issues was stronger in this case than in Coenen.

The principle that it may be desirable for parties to agree that the issue of liability in an action should be tried first and separately from the issue of quantum was approved in passing by the Court of Appeal in the case of Todman and Black (1980) 1 C.A. 196 which is recorded on page 255 of Jersey Judgments for 1980.

Having concluded that the normal procedure should not apply in this case and that the issues ought to be tried separately and having exercised my discretion to so order, I concluded that as the application of the plaintiff had been unsuccessfully resisted by the defendant in this regard, the defendant ought properly to bear the costs in relation to this summons and I accordingly ordered taxed costs.

B. Ian L. Perrot

Judicial Greffier.

O.&LeC. (JGW)
M.V.&Co. (JGPW)

AUTHORITIES.

Royal Court Rules, 1982, as amended: R. 6/19,21(2); 7/5.

R.S.C. ('88 Ed'n): 33/4/7; p.539.

Coenen -v- Payne (1974) 1 WLR 984; (1974) 2 All E.R. 1109 C.A.

Todman -v- Black (1980) JJ 255.