

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL No. 244 of 1966

BEFORE: The Hon. Mr. Justice Shelley, Presiding
The Hon. Mr. Justice Fox J.A.
The Hon. Mr. Justice Smith J.A. (ag.)

RUPERT DIEDRICK ET AL DEFENDANTS-APPELLANTS

v.

CARL LISTER BLAIR PLAINTIFF-RESPONDENT

Mr. R.H. Williams for Appellants.

Mr. N. Hill and Mr. J. Leo-Rhynie for the Respondent.

4th, 5th June 1970; 24th July, 1970

SHELLEY J.A.

This is an appeal from assessment of damages by the learned Registrar of the Supreme Court.

The sum awarded was £3,553.10.3 (\$7,107.2) being general damages £3,400 (\$6,800) and special damages £153.10.3 (\$307.2). Of the £3,400 (\$6,800) awarded for general damages £2,400 (\$4,800) was awarded for prospective loss of earnings. By so indicating the learned Registrar deliberately departed from practice; he said "At the hearing a great deal of argument centred around this question and on consideration of the evidence I came to the conclusion that damages should be awarded under this head. I find that but for his disablement the plaintiff would have gone into the 'Contracting business' and that this was not merely an optimistic hope."

The appeal is mainly concerned with the award for loss of prospective earnings, no objection is taken to the special damages awarded or that portion of general damages (\$2,000) which was presumedly for pain and suffering.

The plaintiff-respondent is a retired Public Works Department area supervisor. After 33 1/3 years of service building bridges, houses etc he went on 1 year's pre-retirement leave in April 1961. He was then aged 55 years. He had a leave passage concession. He was not well from mid 1961-62 but at the time of the hearing in July 1966

he was enjoying a reasonably healthy life. In 1962 he was appointed a member of a Commission of Enquiry which submitted its report in April or May 1963. On 30th March 1964 he suffered among other injuries, a comminuted fracture of the lower pole of the right patella resulting in his surgeon's opinion in a 15% permanent partial disability of his right lower limb. He is liable to get 'arthritic' changes in the joint at a later stage. It is this injury which is most relevant to the appeal.

The grounds of appeal are:-

- (1) That the sum for which Judgment was entered for the Plaintiff was manifestly excessive and out of all proportion to the injury and loss suffered by the Plaintiff.
- (2) That there was no evidence or no sufficient evidence to justify any award, or alternatively to justify the award of £2,400 for prospective loss of earnings.

I do not agree that there was no sufficient evidence to justify any award for prospective loss of earnings. The plaintiff, whose evidence was not contradicted, said he had "intended to go into construction." He had £4,000 capital to go into the venture; he "had a guarantee available"; he had planned starting in 1965. True enough up to the time he received his injury he had not "taken any steps toward enquiring in contracting business." Having regard to the evidence referred to above this appears to mean enquiring into contracts; this however was not necessarily an indication that he probably would not take up contracting; after all a passage paid trip was available to him; why shouldn't he take it before starting a business which as he indicated might so tie him up as to prevent him taking advantage of it? As a result of his injury he is unable to climb ladders, no doubt something which a building contractor must do; he has difficulty walking on uneven ground; his knee gives out if he walks for long. In my opinion there was evidence upon which the learned Registrar could find as he did, that but for his disablement the plaintiff would have gone into the contracting business.

I now deal with the quantum of the award. The plaintiff was experienced in the field. He retired from government employment at a salary of £1800 per annum; in the course of his duties as area supervisor he gave out contracting work for roads, culverts and bridges; he knew the

"mechanics of the scheme;" he saw many fellows who worked under him get jobs for £80,000; he said 20% profit of contract would be reasonable; there was good demand for contractors, and there is always a lot of work going on; he intended seeking work from Public Works Department and elsewhere; with his contacts he was of opinion he would get contracts; he estimated he would make £3000 per year net with his capital of £4,000. He said he had recently (to the hearing) bought a farm of 30 acres from which he expected to earn about £1,500, I suppose per year.

Starting his business at the age of 59 years it seems to me he could be reasonably expected to carry on for 6 years; given 6 years the award works out at £400 per year; given 4 years it works out at £600 per year. Could the higher figure on the facts of this case be regarded as inordinately high? I do not think so. In arriving at that conclusion I have taken into account the possibility of his earning £1,500 per year from his farm. If I were assessing the damages making allowance for the advantages of a lump sum and various contingencies I perhaps would not have gone as high as £600 per year although I do not think it could be said to be inordinately high, but on the other hand I think I would certainly have thought 6 years working life reasonable and £400 per year a moderate figure.

I think the total award is fair and reasonable. I would not disturb it.

FOX J.A.

I agree.

SMITH J.A. (ag.)

I agree.

SHELLEY J.A.

The appeal is dismissed with Costs to the respondent to be taxed or agreed.