

ROYAL COURT
(Samedi Division)

190.

17th October, 1996.

Before: The Deputy Bailiff, with Jurats Herbert
and Potter.

Between Rex Robert Wright Plaintiff
And (1) Rockway Limited
(2) Adam Lisowski
(3) Brian Thorn
(4) G. Garments Limited Defendants

Application by the Plaintiff for assessment
of quantum of damages.

Advocate R.J. Michel for the Plaintiff
The Defendants did not appear and were not represented.

JUDGMENT

THE DEPUTY BAILIFF: We have rehearsed in our earlier judgments the background to the accident that occurred in Bangkok on the vessel Michel Adam.

5 Whilst working on the vessel, the Plaintiff actively encouraged by one of the Defendants operated a pneumatic gun, using oxygen rather than a small air compressor. He expressed reservations but was encouraged to continue using it.

10 The gun exploded and the Plaintiff suffered very severe injuries. We have seen the detailed Affidavit of Mr. Wright where he counters, in our view, effectively, the statements made on discovery and filed by the Defendants, where they allege that Mr. Wright was, to some extent, the author of his own misfortune.

15 The Defendants, as is now well established, have declined to take any part in the latter proceedings of this action, including the

assessment of damages and interest which we have dealt with this morning.

5 On 10th June, the Court having followed all due process, pronounced interlocutory judgments against the First Defendant, for damages to be assessed and adjourned the assessment of those damages to another day and it is today that we are sitting on that matter. Similarly, judgment was obtained against the Third Defendant on 15th October, 1993, and the Second and Fourth Defendants on the 24th February, 1996.

10 The Plaintiff suffered, as we have said, very severe injuries. These essentially were the linear fracture of the right temporal bone and greater wing of the right sphenoid bone; a fracture of the lateral wall of the right orbit and fracture of the right zygoma; fracture of every wall of both maxillary sinuses and blood in the paranasal sinuses; 15 fracture of the right speno-maxim fissure; fracture of the nasal bone and deviation of nasal septum to the left side; comminuted fracture of the mandible on both sides; endentulous upper gum and remaining three teeth at lower gum anteriorly; comminuted fracture of maxilla and upper 20 tooth sockets, bilaterally; bilateral sub-dural haematoma over both frontal regions; multiple fracture of ribs on left side; dislocation of right hand thumb; fracture of left clavicular shaft; fracture of the lower end of the right radius; fracture of the right metalcalpo-caupel; fracture of the right wrist; temporary blindness and deafness and 25 bruising, pain and shock.

We have full details of the surgery that was carried out on the Plaintiff, in detailed Affidavits from Professor Donald Liggins, a Plastic and Reconstructive Surgeon in Auckland, New Zealand and it may 30 be useful if we set out his back ground and experience.

He graduated in 1964 with a M.B., B.S. from the University of Sydney. He became a Fellow of the Royal Australasian College of Surgeons (FRACS) (by examination) in 1969 after general surgical 35 training in Sydney. In 1981 he obtained a Master of Surgery after carrying out a research thesis at Stanford University, California. He has clinical experience in Sydney, Darwin, Alice Springs, London and San Francisco. After training in Plastic Surgery in Auckland between 1971 and 1974, he started as a consultant Plastic Surgeon in 1974 and has 40 been practising since then until the present in Auckland and since 1979 he has been Associate Professor of Plastic Surgery at the University of Auckland.

45 Following the accident, the Plaintiff underwent immediate emergency surgery at a hospital in Bangkok which involved a tracheostomy, debridement of soft tissue wounds around the lips and open reduction and plating of the fractures of the right wrist. In the post-operative period, the Plaintiff developed a pulmonary infection which was related to the fractured ribs. Later he underwent further surgery in Bangkok 50 to bonegraft the missing mandible segment and this was fixed with a large metal plate. On 18th November, 1990, the Plaintiff was transferred back to New Zealand where he underwent a further series of operations including reconstructive surgery.

55 Following that reconstructive surgery performed on 18th November, 1990, the Plaintiff had virtually no lower lip or chin and this caused constant drooling of saliva from his mouth. He had to wear a bib to collect the saliva and was unable to eat and drink, except with the greatest of difficulty.

5 On 14th December, 1990 he underwent a major operation to transfer a micro vascular flat from his left forearm to help with the reconstruction of his lower lip. This helped him to retain food and drink in his mouth to a certain extent.

10 He was re-admitted to hospital on the 20th June, 1991, for further surgery to his upper jaw in the hope that this would help him to close his mouth and retain food and drink. That operation involved resection of some displaced bone from the area.

15 On 25th July, 1991, he underwent a further operation for scar revision and to deepen the solcus between the lower lip and the lower jaw. This involved a skin graft.

20 On the 14th October, 1991, he underwent another operation to enlarge the corners of his mouth and at a later date a further operation was performed to insert a fascial sling into the lip to tighten it. During yet another operation, the tension in this fascial sling was adjusted.

25 The full details of the surgery are set out in Professor Liggins detailed Affidavit but it may be useful if we set out in more general terms the somewhat clinical explanation of what we have gleaned from the reports.

What Professor Liggins said on 3rd June, 1992, is this:-

30 *"He has considerable facial deformity which is quite conspicuous. There is lack of symmetry of the lower part of his face, considerable scarring and the newly reconstructed lower lip is of a different colour and texture to the surrounding skin".*

35 We stop there merely to comment on the fact that Mr. Michel has asked us to consider, in assessing the general damages, the effect on a man who has to appear in public with that form of deformity now to his face.

40 *"He is unable to wear a lower denture and has considerable difficulty in eating. This is one of his greatest problems. Food tends to be lost from the corners of his mouth and for this reason he cannot eat in the company of other people or attend restaurants. He has some dribbling from saliva from his mouth during sleep especially from the left side although*
45 *in waking hours he can control this fairly well. Nevertheless, he has to carry in his pockets large numbers of tissues to assist with this. He cannot blow his nose because he can't seal his lips to get the required pressure. The food he eats has to be minced or cut up into very small segments, for this reason he no longer enjoys his food in a normal way. Swallowing can be difficult especially with pills but after a long period of difficulty he can now manage to swallow food and drink reasonably well. Mr. Wright is*
50 *naturally concerned about his appearance and describes himself as having "only half a face". He suffers from headaches which are intermittent but quite incapacitating and he has to take to his bed when they occur. He also has a number of problems relating to his ears. He has continuous*
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5 tinnitus which is very distressing to him especially at night
and prevents him from sleeping and he has to play music to
try and drown this out. His hearing acuity is impaired and
he has to turn the T.V. set up sufficiently loud so that he
annoys other people. He has had hearing tests done at
10 Middlemore Hospital and he had grommets inserted into his
ears in Bangkok. A further problem perhaps relating to his
ears is that for the first time in his life as a seaman he
has developed sea sickness. His right wrist is stiff and
weak. He cannot grip tools and he is right hand dominant".

Of course this man suffered other very severe injuries to other
parts of his body.

15 Additional surgery is apparently planned for the future to try and
improve his situation further and that will consist of removal of
mandibular plates and screws; on-lay bone grafts from iliac crest;
insertion of osseo-integrated implants; exposure of osseo-intergrated
20 implants; prosthodontic work; future soft tissue revisions, which are
not able to be finished, but may include skin grafts in buccal sulcus;
fascia lata adjustments; scar revision of face; and revision/adjustment
of previous surgery.

25 It may, perhaps, be also useful if we refer to an Affidavit of
Colin Ward Rogers which was sworn on 17th September, 1996. Mr. Rogers
had known the Plaintiff for well over twenty-five years and he says that
he had always been very active and a physically hard working person and
his ability to work harder and longer hours than Mr. Rogers and his
30 fellow workmen was always a point of some embarrassment to them. He
says he tried him in his place of work in 1995 but he said that at the
end of just one week he came to him and quietly said that he could not
handle the job and having watched Mr. Wright at work, Mr. Rogers had to
agree. He says:-

35 "All of us who have known Rex - that is the Plaintiff - these
many years are utterly convinced and steadfast in our belief
that Rex Wright would have been working hard well into his
eighties had he not sustained his horrible injuries, and I
40 would have had a first class foreman for many, many years
into the future if his right arm was not held together by
steel plates and pins".

Mr. Michel - and we must say that we have been greatly helped by
his very detailed file that he has put before us, together with his most
45 useful skeleton argument which he has amplified again in the hearing
before us this morning - is, we would point out, the Chairman of the
Jersey Criminal Injuries Compensation Board and therefore has much
practical experience of problems of this nature, and has been able to
help us tremendously in the very difficult task of assessing general
50 damages.

We would also say this. We have, on the file that is before us,
photographs of the Plaintiff as he was before the injury and very
detailed coloured photographs of the horrific injuries which he has
55 suffered, particularly to his face.

I also have to say this, so that those into whose hands this
document may come, may know of two further matters before we move on to
assess the damages which we feel should be given in this case.

Advocate Lacey of Messrs Mourant du Feu & Jeune is still on the record as the advocate to the Defendants. She has no instructions but she has, in the past, and we are certain that she has done so in these cases, passed on any information that has been sent to her by Advocate Michel, to those who are able to contact her clients. On 15th July, 1996, Mr. Michel sent Advocate Lacey a letter saying that he would be applying to the Bailiff's secretary to fix a date. On the day of that hearing, 6th August, he wrote to say that he waited a considerable time and then fixed Thursday 17th October, that is today, for the hearing of the claim limited to quantification only. He went further and on 9th October he sent Advocate Lacey the full lever arch file containing the documents and authorities which he has put before us today.

We have no argument with the Heads of Damages, and will not go into the details of special damages except to say that we find no reason to fault the recommendations made by Advocate Michel in his detailed assessment. We asked Advocate Michel to deal in some detail with the general damages and he has given us, not only a long line of cases, but also the very useful extracts from the Guidelines for the Assessment of General Damages in Personal Injury Cases compiled by the Judicial Studies Board. The Introduction to that work says, amongst other things, matters which are perfectly clear to us but which perhaps we must set out in this Judgment as auricular proof that we have used those persuasive matters in assessing the damages. The Introduction says this:-

"The general principle according to which damages are awarded in civil litigation is that of restitutio in integrum. It is difficult to think of the case in which that principle can be applied where a plaintiff is entitled to be compensated for pain, suffering and loss of amenity resulting from physical injury. The only currency in which damages can be awarded is money, and in assessing damages in such a case practitioners in this field must conform to the standards set by their predecessors unless and until an appellate tribunal is persuaded to apply different standards".

We have considered, very carefully, the cases that are before us and we have no doubt that the correct amount for damages is the amount that Advocate Michel has suggested to us and we will set those at £100,000.

As for the claims for special damages and ancillary matters, we are going, despite an exercise in conversion which was useful, to keep those in their original currencies. We would point out in passing, that interest is claimed at one half of the Court rate as varied from time to time on each item of special damage from the date of the accident which was 29th September, 1990, until today, but it will, of course, continue until date of payment. Interest is claimed on General Damages for pain, suffering and loss of amenity at 2% from the date of service of the Order of Justice until 17th October, 1996, and that, of course, also continues until date of payment.

We will not set it out here but we will ask the Greffier to annex to this Judgment the Schedule of Damages as set out in Advocate Michel's detailed synopsis in his skeleton argument.

Mr. Michel we award you costs on a full indemnity basis, and that is a token of our feelings towards the way the defendants have acted in this case.

Schedule of Damages as set out in
Advocate R.J. Michel's synopsis.

Para no. (Plaintiff's skeletal argument).	Currency	Claim	Interest
5.1	N.Z.\$	39,547.90	11,997.45
5.2	N.Z.\$	1,084.50	329.00
5.3	N.Z.\$	20,915.50	6,345.04
5.4	U.S.\$	4,115.86	1,248.60
6.2	U.S.\$	262,943.57	79,768.24
8.1	N.Z.\$	35,410.00	n/a
8.2	N.Z.\$	6,000.00	n/a
8.3	N.Z.\$	880.00	n/a
8.4	£Stg.	100,000.00	8,323.29

	Totals	Totals (Interest)
N.Z.\$	103,837.90	18,671.49
U.S.\$	267,059.43	81,016.84
£Stg.	100,000.00	8,323.29

Authorities

- re Melton, Kemp & Kemp, The Quantum of Damages, B2-003.
- Criminal Injuries Compensation Board 26.3.1993 Butterworths Personal Injury Litigation Service IX [382].
- re Gregory 1990, Kemp & Kemp, The Quantum of Damages, C2-010.
- Ward -v- Holness, 1993 Butterworths Personal Injuries Litigation Service IX [361-370].
- Vogwell -v- Cockbill 1991, Kemp & Kemp, The Quantum of Damages, C2-007.
- Jenkinson -v- Eagle International Freight Limited. 1983, Kemp & Kemp, The Quantum of Damages, B2-008.
- Newton -v- Cunard Steamship Company Limited. 1982, Kemp & Kemp, The Quantum of Damages, B2-019.
- Sully -v- Doggett 1984 The Personal and Medical Injuries Law Letter, March 1985.
- Taylor -v- Chuck (R.V.) Transport 1963, Kemp & Kemp, The Quantum of Damages, C5-011.
- Lane -v- Rose 1987 Kemp & Kemp, The Quantum of Damages.
- Yuill -v- Dotchon 1984 Kemp & Kemp, The Quantum of Damages, C2-019.
- Dyer -v- Bannell 1965 Kemp General Damages £900 (£9,423);
- Blewitt -v- Greater London Council 1981, Kemp & Kemp, The Quantum of Damages, H4-012.
- Nicholson -v- North Manchester Health Authority 1988, The Personal and Medical Injuries Law Letter, November 1988.
- Curtis -v- London Underground 1991, Butterworths Personal Injury Litigation Service IX [1993].
- Galloway -v- Hampshire County Council 1994, Kemp & Kemp, The Quantum of Damages H2-032.
- Judicial Studies Board: Guidelines for the Assessment of General Damages in Personal Injury Cases (Blackstone Press).