

IN THE COURT OF APPEAL OF SYDNEY
CIVIL APPEAL NO. 15 OF 1987

FRANCIS DIALOO.....APPELLANT
versus
FRANK DONTRE.....RESPONDENT

Nathan for appellant
Heron for respondent

JUDGMENT OF MUSTAFA, P.

This is an appeal by Francis Dialoo against the quantum of damages awarded him arising from a motor vehicle accident. On the material day the appellant was driving a motor vehicle, in which were his wife and a minor child, and his vehicle came into collision with a motor vehicle driven by the respondent. The incident occurred on 26th August, 1984. The appellant and his wife together with the minor child filed a suit in the Supreme Court for damages for injuries sustained due to the collision. The appellant claimed loss and damages under three heads

- (a) Loss and damage owing to permanent impairment and disability - Rs 75,000
- (b) Temporary disability Pain and suffering - Rs 25,000
- (c) Moral damages - Rs 10,000

The wife and child each claimed damages only for temporary disability and pain, assessed respectively at Rs.50,000 and Rs. 25,000.

The Supreme Court (Ahmed, J.) found that the respondent was solely to blame for the collision, and awarded the appellant a single sum of Rs.30,000/=, and awarded the wife and child Rs.12,000, and Rs.4,000 respectively. Only the appellant is appealing from that judgment, on quantum.

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The injuries suffered by the appellant were serious. The appellant was aged 24 at the material time and was employed as a heavy vehicle driver. He suffered

- (1) dislocation of right hip - hip joint was fractured - the fracture has now mended.
- (2) Loss of 9 central teeth and chipping of a tenth tooth - the teeth are still awaiting replacement
- (5) Deep laceration of the lip and chin - marks of injury are still visible.
- (4) Fractured sternum - this has now mended.

The appellant was hospitalised for 7 weeks and is still attending as an out-patient for his injuries. He has suffered disfigurement owing to the lip and chin laceration. The appellant stated that he used to suffer from asthma but that had been cured; however his asthmatic attacks seemed to be returning and according to medical opinion this was possible because of the inhalation treatment given to the appellant. As a result of the injury to his right hip the medical opinion is that he may get arthritis of his right hip in the course of the next 10 to 15 years. The injuries had caused him severe pain. He had to use crutches but discontinued using them after 3 months. He can no longer drive heavy vehicles, he is now driving light ones. His total disability was estimated by the doctor to be 15% of normal working capacity.

Mr. Nathan for the appellant has attacked the global sum of Rs.30,000 awarded as manifestly inadequate. He submitted that the trial judge had also failed to sufficiently consider the psychological, physical and mental effect of these injuries on the appellant.

Mr. Karan for the respondent contended that the trial judge had taken into consideration all the relevant factors and his award should not be interfered with.

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I think, as a rule, an appeal court would be disinclined to disturb an award of damages made by a trial judge unless the court is satisfied that the trial judge had acted on some wrong principle of law, or that the sum awarded is manifestly so high or low as to amount to an erroneous estimate of the damage suffered by the plaintiff, see Flint v. Lovell (1935) 1K.B. 354.

In this case I have carefully considered the injuries suffered by the appellant and my reaction to the total sum awarded is that it is far too low, and would indicate that the trial judge had made an entirely erroneous estimate of the damage suffered by the appellant. I take into consideration the disfigurement suffered, the likelihood of an arthritis attack on his right hip and the possible re-activation of his asthmatic attack. It is true that the trial judge had these factors in mind, but I think he did not give them sufficient weight.

I would increase the damages awarded to Rs.50,000 under the three heads as follows:

(a)	loss and damage due to permanent disability and impairment	-	25,000
(b)	temporary disability pain and suffering	-	15,000
(c)	moral damages	-	10,000
			<u>50,000</u>

The appellant has been successful in his appeal and he will have his costs of the appeal.

Dated at _____ this _____ day of _____ 1988.

A. Mustafa
President.

*Read in Open Court
19th July 1988.*

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IN THE SEYCHELLES COURT OF APPEAL

Francois Dialoo

Appellant

v/s

Frank Bonte

Respondent

Civil Appeal No.15 pf 1987

Judgment of Goburdhun J.A

The appellant along with two others brought an action before the Supreme Court claiming damages from the respondent for loss, pain and suffering sustained by them in a road accident in which the motor-vehicles of the appellant and the respondent were involved.

The learned trial judge found the respondent liable and awarded the appellant R30,000 as damages.

The appeal is against quantum only.

In assessing damages the main factors to be taken into consideration are age, the injuries sustained, pain and suffering endured and diminution in the future earning capacity of the plaintiff.

The main injuries sustained by the appellant were:

1. Dislocation of the right hip with acetabular fracture.
2. Loss of nine central teeth and chipping of a tenth.
3. A deep laceration of the lip and chin.
4. Fractured sternum.

The medical report reads as follows: "He required a leg manipulation 27/8/85 when it was noted that the hip was unstable and he was treated with traction to his right leg.

He suffered and post operative attack of asthma and chest infection, possibly due to inhalation. Four tooth roots were removed by Mr Watt - Dental Surgeon on 17/8/85.


On 1/10/85 he had a major operation by Dr Coste to stabilize his right hip. By 12/10/85 his operation wound had healed and he was

discharged from hospital."

"For the future he may get arthritis of his right hip in 10-15 years time and taking all these factors into account I would estimate his total disability to be in the region of 15% of normal working capacity."


The Appellant is 24. He stayed 7 weeks in hospital. He has scars on his chin, leg and right hip. His facial appearance has changed as a result of the injuries sustained by him. A piece of metal had to be introduced in his body. The injuries sustained by the appellant were serious and he must have experienced considerable pain during the time he was under treatment in hospital.

Taking into consideration all the facts of the case I find the global/ sum awarded to the appellant to be manifestly inadequate. I consider a more realistic assessment of the global damages suffered by the appellant would be R50,000. I accordingly allow the appeal and amend the judgment of the trial judge by deleting the figures R30,000 and R46,000 appearing therein and substituting them by the figures Rs50,000 and R66,000 respectively. The respondent to pay the costs of this appeal.


Justice of Appeal

Supreme Court
Victoria

June 1988

*Read out in open Court
19th July 1988*

(C.J.)

IN THE SUPREME COURT OF SEYCHELLES

Civil Appeal No. 15 of 1987

François DIALOO

v.

Frank BONTE

I have read the judgment of my brother Judges and I agree that the appeal should be allowed.

The Appellant should receive Rs 50,000 and Rs 66,000 instead of Rs 30,000 and Rs 46,000.

The Respondent shall pay the costs of this appeal.

(del. 5 Aug 88)

Judgment read in open Court
19th July 1988

Order of the Court.

R. 50,000 to appellant
R. 12,000 to wife
R. 4,000 to child.

Costs of this appeal to the appellant.

(Signature)
C.S.J.
19-7-88