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IN THE SUPREME COURT OF NEW ZEALAND
NORTHERN DISTRICT
AUCKLAND REGISTRY

A. No. 770/69

No Special
Consideration

BETWEEN ROBERT STININATO of
Auckland, Professional Boxer

Plaintiff

A N D ARMoured FREIGHTWAYS LIMITED
a duly incorporated company
having its registered office
at Wellington and carrying on
business as security
specialists and transit
service

Defendant

Hearing: 25th May, 1971.

Counsel: Plaintiff in person.
Vautier for Defendant.

Judgment: 27th May, 1971.

JUDGMENT OF HENRY, J.

Plaintiff suffered an accident on February 24th, 1969. Liability has been admitted so the sole question is the assessment of damages. Plaintiff conducted his own case and he was the only witness who gave evidence in support of his case. The claim is for \$10,000 general damages and \$256.08 special damages. Special damages are admitted so the Court is called upon to assess general damages. By paragraph 4 of the amended Statement of Claim Plaintiff stated as follows:-

- " 4. That as a result of the said negligence of the Defendant the Plaintiff suffered injuries to his cervical spinal column; he endured great pain and suffering and still endures pain and suffering; he suffers severe pains at the back of his neck; his arms, hands and fingers suffered numbness; he will suffer permanently from his neck and the cervical spinal column and there will be restriction of movement; he was unable to carry out certain boxing contracts and lost monies which he would have otherwise earned; he incurred hospital, medical and travelling expenses and he had to pay monies for repairs on his car.

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151

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Plaintiff is a professional boxer but he has not held a licence to fight in New Zealand at any time material to this action. He is an American citizen who has married a New Zealander. He wishes to remain in New Zealand although he is desirous, as he said in evidence, of getting professional engagements overseas. Some Pacific countries recognise the New Zealand ban on granting Plaintiff a licence and he is unable to fight in those countries. Fiji is open to him. Considerable reference was made to the likelihood of engagements in Italy and I will return to this later.

The only clear evidence of what treatment Plaintiff received is in the evidence of Mr. Allan Macdonald, an orthopaedic surgeon who was called as the only witness for the defence. He said:-

" Did he give a description of the accident on 24th February, 1969, when he was in this big Studebaker car? Yes. He was a front seat passenger in the Studebaker which was run into from behind by another car, he thought a Volkswagon, when his car was stationary at traffic lights. He went to Auckland Hospital and from there was transferred to Middlemore Hospital, where he arrived early in the morning. What was the history at Auckland Hospital? He was taken there at 12.30 a.m. on the 25th. There was no mention of him having been rendered unconscious, but they state he was suffering from whiplash type of injury to his neck which was stiff, sore and tender. He was transferred to Middlemore Hospital. What did he tell you about what happened there? He said he was an in-patient there for some days and given a neck collar to wear. What did you find from the notes? The notes said he was kept in bed with his head between sandbags when he was first admitted, but on the next day it is noted no plastic collar, discharged. What happened to him next? He was seen in the outpatients department at the clinic and was given treatment in the rehabilitation centre. Over what period would that have been? He was sent as an outpatient on 11.3.69 complaining of some aching around the right shoulder region, and numbness in part of the arm, and he was finally discharged on 25.3.69 from the Rehabilitation Centre. Did he have any complaints at that stage? The note made there on 21st March was to the effect that the stiffness and pain were claimed by the patient to be practically nil. He had a full range of movements, pain in his shoulder had left him. He still complained of some parasthesia, a feeling of numbness occasionally in the tips of some fingers in his left hand. He was discharged on 25th March. "

Plaintiff said his only occupation is that of a professional boxer.

He has undertaken other work but gave very little detail. However, that work is unimportant since the claim is really for loss resulting from an inability to carry out professional engagements. His earnings either as a boxer or otherwise have not been disclosed. So far as can be seen his professional engagements will mean his travelling overseas, ~~in~~ with countries such as Australia, Tonga and New Caledonia at least excluded.

Plaintiff tendered three letters from Mr. Dewey Fragetta of New York - an International Boxing Agent. These letters are dated February 28th, 1970, September 19th, 1970, and March 29th, 1971. The action was commenced on September 25th, 1969. Mr. Fragetta is, according to a letter, a "dear friend". Two of the letters are replies to Plaintiff's then solicitor so their value is not easy to assess in the absence of the letter sent. They refer to possibilities of bouts particularly in Italy. I will return to this topic later.

Plaintiff's evidence on the material matters is as follows:-

- " I also take a fight in Fiji after my accident and I have been told from one of the doctors that he think that I was O.K., but I had a bit of trouble in my right hand, and he said a little bit of work-out would be all right. I went to Fiji and fought there and found I couldn't use my right hand, only my left hand. "
- " You also claim \$10,000 because you can't box? Yes. My claim is that I lost my fights which I can prove here from my booking agency. This is my damages, and my agents in New York state what I have lost. I have a family here and I can't do any other work but box. "
- " I do have a family here in New Zealand and this is what I do. I don't have any other job. I do a bit of casual work, heavy lifting and stuff to keep me fit, but this is my regular job I do. "
- " My agent was a booking agency and he did book fights for me, so that is the evidence I have from New York. I was hurt and it did prevent me from making money overseas and other places. "

This evidence is not supported by any medical evidence to show that any medical condition resulting from the accident is now

evident. It is to be noted that any failure in Fiji to use his right hand ought to be evident to a boxing expert - such as a referee - and there seems to be no reason why evidence of such should not be available - on commission if need be. It is not clear when Plaintiff came to New Zealand, nor does the Court have his boxing history up to that time and the time between his arrival in New Zealand and the date of the accident.

Mr. Macdonald's evidence was as follows:-

" When you saw him in November, what did he say? When I saw him he told me that his only complaints were that he got a pain in his neck now and then but he said it goes away. His fingers, the ring and the little finger, tips, of left hand, were numbed sometimes. He went back into training in April. I asked if he had done any boxing and he said he had done some road work and shadow boxing but he hadn't done any sparring. On examination I found him to be a tall, lithe, beautifully built and magnificently muscled man. The only abnormality which he claimed to me at that time was that he says he gets an occasional feeling of tingling on the palmar surface of the tips of the pads of the middle ring and little fingers. He did not claim to suffer from any weakness or loss of strength in any parts of his arms or neck.

What did you find on examination of his neck? He had a completely free and uninterrupted range of movement in his neck in forward flexion, extension, lateral flexion and rotation, and he told me when I asked him that he did not feel any pain when these movements were carried out to their full extent. Movements of the shoulder, elbow, wrist and hand were normal. There was no wasting of the upper arm or forearm. I measured his arms and I thought there might have been a difference of 1/8th of an inch in circumference, but in well muscled arms that is an insignificant difference, and furthermore it was in his right arm and not his left. He is left handed. His deep tendon reflexes were normal and there was no sensory loss that I could discover in examination anywhere on his arms or fingers.

What did the x-rays reveal? The Middlemore Hospital records of x-rays are reported on as being quite negative and I could see nothing wrong with them. Dr. Abbott in his examination of 12th November, 1969, found that the spine, the cervical spine in the neck was satisfactory to the lordosis. The alignment of the vertebrae was normal. He reported seeing a minor irregularity in some sclerosis in the upper third cervical vertebrae which he says could be due to a minor fracture. The vertebrae and disc spaces were otherwise normal. There were some anatomical abnormalities in the spine lower down, not caused by injury.

So far as injury that may be caused, is it possible to say when that occurred? No it would not. I have looked at those films again myself and any difference in the upper border of the third cervical vertebrae is something you have to look for very closely indeed to see whether it is there or not.

You wouldn't be surprised if there had been some injury or not? I would not. Any conclusions as to whether he had any remaining disability from this accident? I really did not think that he had suffered any genuine permanent disability because of this accident. I thought that he could continue to work in an ordinary labouring type of capacity and I thought that he could if he was inclined to do so fight again as a professional boxer. "

Assessing the probabilities as best I can on the evidence it is my conclusion that Plaintiff has not shown that the accident has caused him any permanent injury, nor that he was, except for a short period, unable to pursue his professional career. In the circumstances in which the letters from Mr. Fragetta were obtained and in view of his clear friendship with Plaintiff, I am not prepared to accept them as having any weight. They are general in terms and are obviously so worded as to help Plaintiff as a friend. They are unacceptable in the circumstances of this case without cross-examination, at least to the extent that that may be done on a commission. Moreover, the evidence now before the Court does not prove a continuing inability to fight as a result of the accident, so this also considerably reduces any value they might otherwise have.

For the immediate and clear effects of the accident which are undisputed and are clear from the records, I consider that Plaintiff should be awarded the sum of \$500. The consequent interruption to his training schedule and the probability of some loss therefrom is not easy to assess. Also I think that for a time Plaintiff felt some uncertainty about his condition. No particular loss has been proved, but the Court must do the best it can. The condition did not last long and I am satisfied he was, after a reasonably short time, able to pursue his professional career. The range of figures on this difficult and uncertain topic seem to me to be between \$750 to \$1,000. The uncertainty is not that of Plaintiff but the result of the injury, so I think I should take the higher figure. General damages will therefore

be fixed at \$1,500, which, together with agreed special damages, makes a total of \$1,756.08. The entry of judgment and the question of costs are reserved.

Solicitors:

M. H. Vautier, Auckland, for Defendant.