

Rec'd. 14/10

IN THE SUPREME COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A.171/74

BETWEEN COLIN BRUCE FITZGERALD
of Helensville, an infant
(suing by his guardian ad litem
ROBERT WILLIAM FITZGERALD of
Helensville, Foreman)

PLAINTIFF

A N D BEN POVEY
of Helensville, Driver

FIRST DEFENDANT

A N D ERIC JAMES PANUI
of Waimauku, Workman

SECOND DEFENDANT

Hearing : 30 September 1977

Counsel : Mr Craddock for Plaintiff
No appearance of either Defendant

Judgment: - 6 OCT 1977

JUDGMENT OF McMULLIN, J.

This action was called before Moller J. on 19th April 1977. It was adjourned on that day for a further fixture. The circumstances in which the action was adjourned are set out in a memorandum of Moller J. dated 19th April 1977.

This morning, I had enquiries made in the precincts of the Princes Street Court, the main Supreme Court and at the Parliament Street Court. There was no appearance on behalf of either defendant. Mr Craddock for the plaintiff informed me that he also had made enquiries during the morning through his Helensville agents. Both defendants had been seen and had indicated that they were not interested in the proceedings.

I proceeded to hear the evidence of the plaintiff's mother, of Mr Walker a representative of a former employer of the plaintiff, of Dr Keith Eyre and of Mr Williams, an accountant.

Dr Eyre deposed to the truth of a number of reports which had been earlier submitted by him to plaintiff's solicitors and he also gave further evidence bringing the matter up-to-date. I think it would be idle for me, in view of the fact that this action is not defended, to make any findings of fact because they can be assimilated by a reading of the evidence and medical reports which in the nature of things are quite unchallenged.

The amount of the claim is for general damages, \$150,000, special damages \$6,494. They claim for general damages has both a medical and economic content. I am informed that on delivery of this judgment, a sum of \$15,000 will be paid by the statutory indemnifier of first defendant as owner of the vehicle which plaintiff was driving at the time of the accident. Further action may be brought in respect of another policy of insurance which may be available.

I fix the general damages at \$100,000 and award the sum to the plaintiff. I also award him special damages of \$6,494 together with costs according to scale, witnesses expense and disbursements to be fixed by the Registrar.



Messrs Holmden, Horrocks & Co., Auckland, Solicitors for Plaintiff
Messrs Knight, Brennan, Fitzpatrick & Co., by their agents
Messrs Glaister Ennor & Kiff, Auckland, Solicitors for 1st and
2nd Defendants.