FIRST DIVISIONAL COURT. MARCH 19TH, 1920.

PELL v. TORONTO AND YORK RADIAL R.W. CO.

Damages—Personal Injuries—Negligence of Street Railway Company—Collision—Quantum of Damages Assessed by Jury—Motion for New Assessment on Ground of Excess.

Appeal by the defendants from the judgment of SUTHERLAND, J., upon the findings of a jury, in an action for damages for injury sustained by the plaintiff, while a passenger in a car of the defendants, by reason of a collision of the car with a truck. The plaintiff lost part of one leg in consequence of the collision, and was awarded $10,000 damages and costs.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, JJ.A.

I. F. Hellmuth, K.C., and W. Lawr, for the appellants.

J. M. Godfrey, for the plaintiff, respondent.

MEREDITH, C.J.O., reading the judgment of the Court, said that the only question was as to the damages. The respondent was injured in a railway accident with the result that his right leg had to be amputated about 4½ inches below the knee. Before the accident, his occupation was that of a lather, and his average earnings amounted to $6 for every working day; his age was 37; and, according to his testimony, he was unable to do any manual labour. He suffered pain from the time of the accident, the 19th July, 1919, down to the time of the trial, and suffers pain in damp weather.

The damages were large, but not so large as to warrant the Court in sending the case down for another assessment by a jury. It is a very serious thing for the respondent to have been deprived of part of his right leg and to be compelled to go through life in that condition. His actual loss up to the present time had been considerable. Then there was the pain and suffering and the permanent lessening of his earning power. While $10,000 was a large sum, its purchasing power was much less than it was under conditions that existed before the war. It was the function of the jury to estimate the damages, and it was impossible to say that the amount they had awarded was so large that no 12 reasonable men could have awarded it.

Appeal dismissed with costs.