

Medico-Legal Department

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

Damages—Personal Injuries—Quantum of Damages—Injury to Knee—Conflicting Testimony as to Permanent or Temporary Disability—Assessment of Damages by Jury—Refusal to Disturb—Address of Counsel to Jury—Inflammatory Remarks—Reference to Amount Claimed in Action—Rejection of Evidence—Rule 785—No Substantial Wrong or Miscarriage—Judge's Charge—Allowance or Consideration of Sums Received by Plaintiff from Benefit and Accident Insurance.

Appeal by defendants from judgment of Mulock, C.J., in favor of plaintiff, upon the findings of a jury, for the recovery of \$2,500 damages in an action for personal injuries received by plaintiff by reason of a collision between two cars of defendants, upon one of which he was a passenger, owing, as he alleged, to the negligence of defendants.

I. F. Hellmuth, K.C., and C. A. Moss, for defendants.

J. MacGregor and H. M. East, for plaintiff.

The judgment of the Court (Osler, Garrow and Maclaren, J.J.A.) was delivered by

OSLER, J.A.:—The plaintiff sustained an injury to his knee joint owing to the negligence of defendants. The latter conceded liability, and the only question at the trial was what damages the plaintiff ought to recover. The jury awarded \$2,500, and the only questions involved in the appeal are, whether the damages are excessive, and whether certain sums which the plaintiff had received by way of accident or benefit insurance should not have been deducted or allowed for by the jury.

At the time of the accident, 23rd July, 1906, the plaintiff was employed as a freight checker on the Grand Trunk Railway, receiving wages of \$50 per month. In jumping from one of defendants' cars to avoid injury from a collision of that car with another car, he sustained an extremely severe injury to the knee joint of the left leg. He was confined to his bed for three months, and suffered much pain all the time. After that he got about on crutches, which he ceased to use after 1st June in the following year. At the time