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NEW TRIAL FOR INSUFFICIENT DAMAGES.

ENGLISH HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, JUNE 20, 1879.

Phillips v. South-Western Railway Company.

A plaintiff complaining of a personal injury is entitled to compensation for the pain undergone, the effects on the health according to degree and probable duration, the incidental expenses, and the pecuniary loss; and if it appear that a jury must have omitted to take into account any of these heads of damages, and that the verdict is, under the circumstances, unreasonably small, it is competent to a court to order a new trial at the instance of the plaintiff, although there be no misdirection by the judge, nor mistake or misconduct on the part of the jury.

This was an action for damages caused by personal injuries resulting from an accident on the defendants' railway, tried before Field, J., and a special jury, of the city of London, at the beginning of April, 1879.

The plaintiff was a London physician, who, in December 1877, when at the age of forty-six, was so injured whilst travelling on the defendants' line, as to be utterly incapacitated, both physically and mentally, from pursuing his profession; and his life, according to the medical evidence, must in a very short time be lost in consequence.

The average of his net professional income for the ten years preceding the accident, after large deductions for the expense of making the income, was £5,000 a year. The medical attendance upon the plaintiff had been gratuitous, but it was estimated that £1,000 was the expense incurred before the trial by reason of the accident. The plaintiff was in the enjoyment of a private income of £3,500 a year.

The jury found a verdict for the plaintiff on the question of the defendants' negligence, and assessed the damages at £7,000.

A rule *nisi* for a new trial had been obtained on the plaintiff's behalf on the grounds that the judge had misdirected the jury in saying that they were not to attempt to give the plaintiff an equivalent for the injury he had suffered, and that the damages were insufficient.

Ballantine, Serg't and *Dugdale*, for the railway company, showed cause against the rule, citing *Forsdike and Wife* v. *Stone*, L. R., 3 C. P. 607; *Falvey* v. *Stanford* L. R. 10 Q. B. 54; *Rowley* v. *London and North-Western Railway Co.*, L. R., 8 Ex. 221; Mayne on Damages, 447; *Armytage* v. *Haley*, 4 Q. B. 917; *Hayward* v. *Newton*, 2 Str. 940; *Rendall* v. *Hayward*, 5 Bing. N. C. 424; *Kelly* v. *Sherlock*, L. R., 1 Q. B. 686.

The *Attorney-General* (Sir John Holker, Q.C.), *Pope*, Q.C., and *A. L. Smith*, supported the rule, citing *Pym* v. *Great-Northern Railway Co.*, 2 B. & S. 768, 769.

Cockburn, C. J., delivered the judgment of himself and Lopes, J. This was an action brought by the plaintiff to recover damages for injuries suffered, when travelling on the defendants' railway, through the negligence of their servants. A verdict having passed for the plaintiff, with £7,000 damages, an application is made in this court for a new trial, on behalf of the plaintiff, on the ground of the insufficiency of the damages, as well as on that of misdirection, as having led to an insufficient assessment of damages; and we are of opinion that the rule for a new trial must be made absolute; not, indeed, on the ground of misdirection, for we are unable to find any misdirection, the learned judge having in effect left the question of damages to the jury, with a due caution as to the limit of compensation, though we think it might have been more explicit as to the elements of damages. It is extremely difficult to lay down any precise rule as to the measure of damages in cases of personal injury like the present. No doubt, as a general rule, where injury is caused by the wrongful or negligent act of another, the compensation should be commensurate to the injury sustained. But there are personal injuries for which no amount of pecuniary damages would afford adequate compensation: while, on the other hand, the attempt to award full compensation in damages might be attended with ruinous consequences to defendants, who cannot always, even by the utmost care, protect themselves against the carelessness of persons in their employ. Generally speaking, we agree with the rule as laid down by Brett, J., in