Hanada v. British Columbia Electric Railway Co.

Between
Katsumi Hanada and Yoshio Hanada, and
British Columbia Electric Railway Company Limited

[1939] B.C.J. No. 43

54 B.C.R. 118

British Columbia Court of Appeal
Victoria, British Columbia

Martin C.J.B.C., Macdonald and O'Halloran JJ.A.

Heard: May 1 and 2, 1939.
Judgment: May 16, 1939.

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1 MARTIN C.J.B.C.:-- The appeal is allowed in part as to damages, our brother MACDONALD dissenting. The Court, that is to say, my brother O'HALLORAN and myself, are of the opinion that the damages should be reduced to $10,000. We base our view upon the principle that the assessment of $15,000 is beyond reason, to use the expression that we adopted in the recent case of Funk v. Pinkerton on the 8th of November last, based upon the language used by the Supreme Court of Canada per Davis, [54 BCR Page121] J. in Warren v. Gray Goose Stage Ltd., [1938] S.C.R. 52, at p. 56; [1938] 1 D.L.R. 104, 108, viz.:

> It is quite impossible for the Court to say that the amount of the damages fixed by the jury was so large that the jury reviewing the whole of the evidence reasonably could not properly have arrived at that amount.

This Court adopted that principle in Farquharson v. B.C. Electric Ry. Co. (1910), 15 B.C.R. 280, at 284 and 288. We also adopt a most lucid exposition of the principle by that truly distinguished judge, Lord Chief Baron Palles, in the case of M'Grath v. Bourne (1876), Ir. R. 10 C.L. 160, in banco at pp. 164 and 165. I shall not read the whole passage because it is too long for the moment, but therein that great judge expounded the question with his customary lucidity and, briefly, adopted the definition of Fitzgerald, J. that

> the amount should be such that no reasonable proportion existed between it and the circumstances of the case

in other words "beyond reason" before an appellate Court will interfere with the assessment.

2 MACDONALD J.A.:-- I would not overrule the findings of fact by the learned trial judge. He found that the motorman's failure to maintain a proper look-out caused the accident. While part of the evidence of two witnesses, believed by the trial judge, in respect to the movements of two girls suggest deductions unfavourable to the respondents' case, still viewing all their evidence and that of other witnesses there is enough to fully support his findings. The indisputable physical facts also, having regard to the relative speed of the car and that of the injured three-year-old Japanese child toddling across the street, show that when the latter left the kerb to cross the street towards the track thereby giving notice of danger to an alert motorman, the latter was necessarily at such a distance from the point of impact that, had he been keeping a proper look-out, he could have stopped in time to avoid the accident. His action in not stopping was due to failure to observe the child when it commenced its journey from the kerb to the tracks.

3 We were asked to find that the damages awarded, viz., $15,000 were excessive. The child's father (a cook) earns his living by manual labour. The only other material facts are disclosed by [54 BCR Page122] the accident itself. The child's leg had to be amputated so close to the thigh that it may not be possible to use mechanical aids: except of course a crutch. We are concerned therefore with a child of parents in moderate circumstances permanently crippled by the loss of a limb.

4 The grounds upon which appellate Courts reduce damages as excessive are well known. The difficulty arises in application. In my opinion, with respect, the learned trial judge could not reasonably award that sum. I do not think it wise to award damages so excessive that if a defendant should be a man of moderate means the result might be ruinous. I do not state this as a principle, except to the extent that regard should be paid to industrial and living conditions in the Province in so far as it bears on the question of earning-power. Damages, for example, awarded by Courts in the United States in a more highly industrialized and thickly populated country would appear to be and might well be higher than awards in comparable cases in this Province. However, apart from this aspect, applying the principles laid down in the cases, I am convinced, having regard to the injuries received, the child's station in life and probable diminution of earning power, which, of course, is only partial, damages in the sum of $10,000 would afford ample recompense.

5 While the foregoing expresses my own opinion, guided, as I must be, by the decision of this Court in other cases, I do not feel free to give effect to it. In Funk v. Pinkerton (not yet reported) decided recently the plaintiff Funk, 62 years of age with a life expectancy of only 8 to 10 years (compared to 42 in this case) was awarded $19,310, as general damages by the trial judge for permanent injuries, received in a motor accident. I thought the award excessive and dissented but that judgment was not disturbed.

6 True the plaintiff in the case at Bar will not be permanently disabled but as against that aspect the plaintiff Funk had been partially paralyzed since 1918. He could not, because of his condition perform manual labour. He had employment as a clerk in a warehouse earning $70 a month and that intermittently: he could sit down while performing these duties. Because [54 BCR Page123] of that decision I would not reduce the damages in the case at Bar.

7 If nearly $20,000 should be awarded to an elderly man, partially disabled before the accident capable only of earning a small monthly sum for the remaining 5 or 10 years of his life, it cannot consistently be said that $15,000 is excessive in this case. I may venture to express the view that more moderate amounts should be awarded.

8 I would dismiss the appeal.

9 O'HALLORAN J.A.:-- I would reduce the damages from $15,000 to $10,000; the latter sum is, in my view, more appropriate to the circumstances disclosed in the evidence.

Appeal allowed in part, Macdonald, J.A. dissenting.

Solicitor for the appellant: V. Laursen.

Solicitors for the respondents: Locke, Lane & Nicholson.