

CANADA / JUDGMENT

Stannard et al. v. Kidner

[1973] SCR 493

COURT

Supreme Court of Canada

DECIDED

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Stannard et al. v. Kidner

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Date

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Report

[1973] SCR 493

Judges

Martland, Ronald; Ritchie, Roland Almon; Hall, Emmett Matthew; Spence, Wishart Flett; Laskin, Bora

On appeal from

Alberta

Subjects

Torts

Decision Content

Supreme Court of Canada

Stannard et al. v. Kidner, [1973] S.C.R. 493

Date: 1973-01-31

Martin Cable Stannard and John Joseph Blouin (Plaintiffs) Appellants;

and

Leroy Douglas Kidner (Defendant) Respondent.

1972: October 17, 18; 1973: January 31.

Present: Martland, Ritchie, Hall, Spence and Laskin JJ.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA, APPELLATE DIVISION

Damages—Injuries sustained in automobile accident—Awards by trial judge reduced by provincial appellate Court—Appeal against quantum of damages as varied—Applicable principles.

Damages were awarded to the first appellant (S) in the amount of \$45,000 and to the second appellant (B) in the amount of \$28,000 as compensation for the injuries which they respectively sustained in an automobile accident. On appeal to the Alberta Appellate Division, that Court found that the damages were so inordinately high as to be out of all proportion to the injuries and reduced S's award to \$30,000 inclusive of special damages and that of B to \$15,000 also inclusive of special damages.

Held (Hall and Laskin JJ. dissenting as to the appeal of the first appellant): The appeal should be dismissed.

Per Martland, Ritchie and Spence JJ.: The authorities clearly indicate that when an appeal is from a judgment of a provincial appellate court which has the effect of either increasing or decreasing the assessment of damages by a trial judge, this Court will only interfere if it is satisfied that the Court appealed from has acted on some wrong principle of law or that its award is unreasonable having regard to the evidence and that it will be slow to act on the latter ground and will only do so under exceptional circumstances.

In the present case the finding of the Appellate Division that the damages awarded at trial were inordinately high, based as it was on a careful consideration of all the evidence, did not disclose the application of any wrong principle of law and there were no such exceptional circumstances as to warrant the interference of this Court in the award.

Per Hall and Laskin JJ., dissenting in part: The Appellate Division did not find or suggest that the trial judge applied any wrong principle. It acted on its own view of the evidence that the two appellants having made "extremely good recoveries" the figures of \$45,000 and \$28,000 were "out of all proportion to the injuries". The Court did not hold that the trial judge had taken into account some irrelevant factor or had left out in his consideration some relevant factor. Its judgment was a mere substitution of awards for those made by the trial judge. Such a substitution could be justified only on the basis that the amounts awarded by the trial judge were so inordinately high as to be a wholly erroneous estimate of the damage.

There was a distinct difference between the recovery made by B as compared to that made by S, and equally important there was a marked difference in the ultimate condition and prospects of the latter. The amount awarded by the Appellate Division to B should not be interfered with. However, the Appellate Division was not on any basis entitled to reduce the amount originally awarded to S. That amount was not too high by any standard.

[Gorman v. Hertz Drive Yourself Stations of Ontario Ltd. et al., [1966] S.C.R. 13; Pratt v. Beaman, [1930] S.C.R. 284; Hanes v. Kennedy, [1941] S.C.R. 384; Lang et al. v. Pollard et al., [1957] S.C.R. 858; Lehnert v. Stein, [1963] S.C.R. 38; Widrig v. Stazer et al., [1964] S.C.R. 376; Vana v. Tosta et al., [1968] S.C.R. 71, referred to.]

APPEAL from a judgment of the Supreme Court of Alberta, Appellate Division, varying a judgment of Manning J. Appeal dismissed, Hall and Laskin JJ., dissenting in part.

A.F. Moir, Q.C., for the plaintiffs, appellants.

J.B. Feehan, for the defendant, respondent.

The judgment of Martland, Ritchie and Spence JJ. was delivered by RITCHIE J.—This is an appeal from a judgment of the Appellate Division of the Supreme Court of Alberta whereby that Court varied the damages awarded by Mr. Justice Manning to each of the appellants as compensation for the injuries which they respectively sustained in an automobile accident.

The appellant Blouin's injuries consisted of a fractured left thigh bone and severe ligament damage in the left knee. He underwent an operation for the leg fracture which involved inserting a metal rod down the centre of the shaft which was subsequently removed and he was discharged from hospital within 20 days after the accident. The residual permanent partial disability was described by his doctor (Dr. Colter) as:

- (a) the shortening of his left leg 1¼ to 1½ inches; and
- (b) ligament instability in left knee which in certain twisting movements, running, squatting, etc., leaves a little wobble in the knee and if unprotected is going to hurt a bit.

The accident occurred on January 4, 1968, and in the spring of the following year, Blouin was examined by Dr. Colter who gave the following evidence as to his condition at that time:

Q. So, is it fair to say, then, that the pin removal in April had pretty well eliminated the pain from the left hip area?

A. Yes, yes...

Q. By that time, of course, the knee pain had largely disappeared, as well?

A. Well, partly. Largely so, I have here.

Q. Largely so?

A. Yes.

Q. Now, he indicated to you—you found him much better, generally at that time, did you?

A. Oh, yes, yes, he was. Q. And he indicated to you that he was able to run?

A. Yes.

Q. And participate in sports, Doctor?

A. Yes.

Q. I think you said that he indicated he could do most everything he could do before, is that what you said, Doctor?

A. Yes.

The appellant Stannard suffered more serious injuries. The lower half of his right knee cap was fractured and fragmented and there was a compound fracture of the right leg below the knee. In addition to this he sustained a serious comminuted fracture of the pelvis both in front and rear and the left hip was 3 or 4 inches out of place. He was hospitalized for more than 5 months during which time his fractured leg was straightened and aligned and continued efforts were made to bring his pelvis into alignment. In June 1968 a bone graft was done on the right leg and when he was finally discharged from hospital on June 22nd, he was still wearing a cast on that leg which was not removed until August 7th. When Dr. Colter examined Stannard in April 1969, he found that he was still suffering some pain in his right knee and left groin and had a slight limp, although it did not prevent him from doing light work. The same doctor examined him on May 3, 1971, a week before the trial, and at that time he was working steadily as a cook's helper which required him to be on his feet all day, and although the pain continued, it was not sufficiently bad to prevent him from attending to his duties. He said that he was able to run although not in a normal manner. In assessing his disability Dr. Colter said, in part:

Q. Doctor, with this displaced hip joint, which he has at the present time, what effect will that have on his movements?

A. Well, it throws it out of alignment a bit. The hip joint is no longer in the same place as it was before. I suppose, crudely, you could compare it to a car whose frame is knocked out of line, so that the two sides, perhaps, goes slightly different directions.

I think this accounts for a great deal of his difficulty in running normally. He said he just doesn't seem to be in gear, the rhythm is wrong. It would also, quite likely, put a strain on the old areas of injury in the front and in the back. But mostly, I would think in the back, and put quite a strain on this sacroiliac joint.

Q. In respect to the tibia, would there be—would it be straight or would there be an angulation in that area?

A. There is slight angulation here, which I felt was probably important at one time, but which seems to be giving him no problems, at all. X-rays of the right tibia show a solidly united fracture, with minimum lateral angulation. This, I think, was no more than two or three degrees and wouldn't really constitute much of a problem.

Q. Now, Doctor, from your experience with this patient and through having seen him on May 3rd, are you in a position to assess his disability?

A. I've arrived at an assessment. I've done this twice, but I guess I better go through the latest one, shall I? I based this on, really, two remaining problems. One, a rather minor loss of knee bend on the right side, which will probably prevent him from kneeling or—not kneeling, I'm sorry, squatting on that joint. And this will be, I think, at this point, we can say this is permanent, and I'd assess that about 2% of total. And the major disability, I've based on his badly disrupted pelvis. He is still having considerable pain at both these areas of injury. He has marked tenderness, and its present over both the sacroiliac joint and the symphysis pubis. Neither of these really are boney injuries. The symphysis is separated through a gristly area, and there is always a very slight amount of movement there. I think the rotation that he has is going to continue to give him pain in this area. The left sacroiliac joint was completely disrupted, has been fairly well reduced, and is now solidly healed. But, again, I think there are stresses being applied there, because of the rotation and upward angulation of the whole left side of his pelvis, and I think, again, after close to three years with the tenderness that he has there, that I think this will certainly persist, and may increase. So, I've given an assessment for this pelvic disruption of 10% of total, which would give an overall in the area of 12% of total disability.

Q. Doctor, you indicated the difficulties with the pelvis area may increase in the future?

A. I think he may have some trouble. I think he probably will have more trouble with this sacroiliac joint as the years go by.

At the trial Mr. Justice Manning awarded damages as follows:

The appellant Stannard—special damages and general damages in the total sum of \$45,000.

The appellant Blouin—special damages and general damages in the total sum of \$28,000.

The amount of special damage claimed is specified in the factum of the appellants as follows:

Special damages of the Appellant Blouin were admitted in the sum of \$2,370.00 for medical and hospital expenses, and his loss of wages to the time of taking the rehabilitation course were in the sum of \$2,576.00 and the course of two years of education paid for by the Workmen's Compensation Board were in the sum of \$2,791.20.

As a result of the accident, the Appellant M.C. Stannard sustained medical expenses of \$5,745.70 and he sustained loss of wages in the sum of \$4,720.92 up till the time he could return to work. There does not appear to be any serious dispute about these figures and although the learned trial judge makes mention of cost in the neighbourhood of \$4,000 incurred by the Workmen's Compensation Board in respect of the retraining course provided for the appellant Blouin, it is not possible to say with certainty that he included this item in his assessment. The learned trial judge's assessment was based exclusively on the evidence of Dr. Colter of whom he said:

I have followed Dr. Colter's evidence. The reason I have done that is this, that he saw these two gentlemen as patients of his, and he arrived at his conclusions after seeing these two gentlemen many times. It didn't seem to me that he was in any way prejudiced in their favour and I felt that he was in a far better position to assess their disabilities than anybody else and I accepted his evidence in total.

The Appellate Division took the view that the damages awarded at trial were so inordinately high as to be out of all proportion to the injuries and in allowing the appeals, that Court reduced the damages in the case of the appellant Blouin to \$15,000 and in the case of the appellant Stannard to \$30,000.

A number of leading cases dealing with the practice of this Court in reviewing damage awards made by provincial Courts of appeal which have varied the assessment made by a judge sitting alone, have been collected in the reasons for judgment of my brother Spence in *Gorman v. Hertz Drive Yourself Stations of Ontario Ltd. et al.*[1], at pp. 17 to 19, and I refer to the following authorities which are there cited: *Pratt v. Beaman*[2], *Hanes v. Kennedy*[3], *Lang et al. v. Pollard et al.*[4], *Lehnert v. Stein*[5], *Widrig v. Strazer et al.*[6] To these authorities there should now be added the case of *Vana v. Tosta et al.*[7] In my view these cases clearly indicate that when the appeal is from a judgment of a provincial appellate court which has the effect of either increasing or decreasing the assessment of damages made by a trial judge, this Court will only interfere if it is satisfied that the Court appealed from has acted on some wrong principle of law or that its award is unreasonable having regard to the evidence and that it will be slow to act on the latter ground and will only do so under exceptional circumstances. In the *Gorman* case, *supra*, the majority of the Court restored the award made at trial on the ground that in the special circumstances of that case the Court of Appeal was not justified in making the reassessment which they did. In *Widrig v. Strazer*, *supra*, on the other hand, the finding of the trial judge was restored on the ground that there were errors in principle on the part of the Court of Appeal in reducing the amount of the damages.

In the present case the reasons for allowing the appeal are succinctly stated in the first three paragraphs of the judgment rendered by the Chief Justice on behalf of the Appellate Division as follows:

We have given careful consideration to all of the evidence and the thorough arguments of counsel. There is no doubt that these men have suffered substantial injuries but it appears to us that they have made extremely good recoveries, due probably to a great extent to the able services of Dr. Colter.

We are of the view that the damages awarded are inordinately high or, as Lord Denning expressed it in *McCarthy v. Coldair Ltd.* (1951) 2 Times L.R. 1226 at p. 1229, that the figures of \$28,000 and \$45,000 are "out of all proportion to the injuries". In coming to these conclusions we have taken into account the measure of permanent disability respectively suffered by the two respondents.

This finding of the Appellate Division that the damages awarded at trial were inordinately high, based as it was on a careful consideration of all the evidence, does not disclose the application of any wrong principle of law and in my view there are no such exceptional circumstances as to warrant the interference of this Court in the award.

It appears to me that the language used by Anglin J., speaking on behalf of this Court in *Pratt v. Beaman*, supra, is directly applicable to the circumstances of this case. This language was adopted by Cartwright J., (as he then was) speaking for himself and Taschereau J. (as he then was) in *Lang v. Pollard*, supra, and the following passage from that judgment was expressly adopted by Hall J., giving the unanimous judgment of this Court in *Widrig v. Strazer*, supra, where he said, at pp. 388-389:

Unless there was error of principle on the part of the Court of Appeal, this Court will not interfere with an amount allowed for damages by the court of last resort in a province. I adopt what Cartwright J., speaking for himself and Taschereau J. (as he then was) said in *Lang* and *Joseph v. Pollard and Murphy*:

“Under these circumstances where no error of principle and no misapprehension of any feature of the evidence is indicated I think that the rule which we should follow is that stated by Anglin J., as he then was, giving the unanimous judgment of the Court, in Pratt v. Beaman, [1930] S.C.R. 284 at 287:

‘The second ground of appeal is that the damages allowed for pain and suffering by the trial judge, \$1,500, should not have been reduced, as they were on appeal, to \$500. While, if we were the first appellate court, we might have been disposed not to interfere with the assessment of these damages by the Superior Court, it is the well established practice of this court not to interfere with an amount allowed for damages, such as these, by the court of last resort in a province. That court is, as a general rule, in a much better position than we can be to determine a proper allowance having regard to local environment. It is, of course, impossible to say that the Court of King’s Bench erred in principle in reducing these damages.’

This decision was followed in the unanimous judgment of this Court, delivered by Kerwin J., as he then was, in *Hanes et al. v. Kennedy et al.*, [1941] S.C.R. 384 at 387.

The principle appears to me to be equally applicable whether the first appellate Court has increased or decreased the general damages awarded at the trial.”

This passage was also adopted by Spence J., in *Gorman v. Hertz*, supra, at p. 18.

Having regard to the practice thus established and as I can find no error in principle in the judgment appealed from, I do not think this to be a case in which this Court should interfere with the assessment of damages made by the Appellate Division even if “we might have been disposed not to interfere with the assessment of these damages” by the trial judge had we been the first appellate court.

For all these reasons I would dismiss this appeal with costs.

The judgment of Hall and Laskin JJ. was delivered by

HALL J. (dissenting in part)—In January 1968 the appellants Stannard and Blouin were employees of Imperial Oil Enterprises Ltd. doing seismic work. On January 4, 1968, Stannard was driving the geophysical truck used in their work with Blouin as a passenger. That vehicle was involved in a collision with a motor vehicle being driven by the respondent Kidner. Both Stannard and Blouin sustained serious injuries. They brought action against Kidner which was tried by Manning J. Liability was not contested, the trial was limited to the quantum of damages recoverable. Blouin was awarded \$28,000 and Stannard \$45,000. Regarding Blouin, Manning J. said:

There was some reference to the pain and the suffering that he endured. I have no doubt he was very uncomfortable for a lot of time, but it does appear that from the time of the accident until he got to the hospital, when he was given some help, he was unconscious. Consequently he did not actually endure any suffering during that time. That doesn't mean he didn't have a lot of discomfort at a later time, but during that period he didn't feel anything.

I have in mind the fact that he had two operations, the original operation which was performed as soon as practicable after the accident, and later on when the nail had to be removed from the bone in his leg. It was from four to six months before he could put the full amount of his weight on his leg.

It would appear that he has and will have some pain and some aching from the disability that he has suffered. He has said that his leg aches when he is tired and I accept his evidence.

His knee is unstable, but his doctor, Dr. Colter, feels that there is very little danger of arthritis in his knee. He has an unstable knee and he has a shortened leg, and from that the doctor thinks he has a disability of seven percent. Fortunately for him he is taking a course at NAIT. He seems to be temperamentally suited to that sort of thing, and he is going to have a retraining and an opportunity of engaging in new work, which we all hope will be satisfactory to him and remunerative to him. The total cost of that would appear to be in the neighbourhood of \$4,000.

Now taking into consideration these matters in particular, together with all other aspects of the evidence, which I had a chance to review last night and again since the noon adjournment following the argument of counsel, I assess his total damages in the sum of \$28,000, that is special and general damages in total.

and as to Stannard he said: With regard to Mr. Stannard, he seems to have been left with more trouble than Mr. Blouin has.

In the accident his pelvis was injured, it was separated in one place and it was fractured, and finally it has been badly disrupted in the manner in which it has healed. He like Mr. Blouin has had to have two operations, the original operation and then a bone graft which took place later on, and he suffers a good deal of discomfort. The evidence of Dr. Colter is to the effect that there is a danger, a very serious danger, that he will suffer increasing discomfort as time goes on because of the danger of arthritis developing in his hip. He tells us now, and I accept his evidence in this matter, that, by way of illustration of his difficulties, when he goes to a dance and dances a

couple of dances he has some aching in his hip the following day. Dr. Colter has estimated his permanent disability at twelve percent.

He and Mr. Blouin also, I omitted to say this about Mr. Blouin, have lost some of the enjoyment of life, a good deal of it, because of a number of things which they used to engage in and got enjoyment from, which they are now unable to take part in and will be unable to take part in to any extent in the future. I should have referred to this head of damages when I was discussing Mr. Blouin's claim because it is an important part of his damage claim.

I assess Mr. Stannard's total damages, including both special damages and general damages, in the sum of \$45,000.

I might add this with regard to the medical evidence, that we had the benefit of the opinions of three well qualified and competent members of the medical profession who specialize in this particular field. I have followed Dr. Colter's evidence. The reason I have done that is this, that he saw these two gentlemen as patients of his, and he arrived at his conclusions after seeing these two gentlemen many times. It didn't seem to me that he was in any way prejudiced in their favour and I felt that he was in a far better position to assess their disabilities than anybody else and I accepted his evidence in total. I want to emphasize this, however, that my decision to act on the opinions of Dr. Colter should not be considered as any reflection upon the actions and opinions of the other gentlemen who gave evidence.

Kidner appealed to the Appellate Division of the Supreme Court of Alberta. That Court reduced Blouin's award to \$15,000 inclusive of special damages and Stannard's to \$30,000 also inclusive of special damages. In so doing, the Chief Justice of Alberta, speaking for the Court, said:

We have given careful consideration to all of the evidence and the thorough arguments of counsel. There is no doubt that these men have suffered substantial injuries but it appears to us that they have made extremely good recoveries, due probably to a great extent to the able services of Dr. Colter.

We are of the view that the damages awarded are inordinately high or, as Lord Denning expressed it in *McCarthy v. Coldair Ltd.* (1951) 2 Times L.R. 1226 at p. 1229, that the figures of \$28,000 and \$45,000 are "out of all proportion to the injuries."

In coming to these conclusions we have taken into account the measure of permanent disability respectively suffered by the two respondents.

The appeals are, therefore, allowed with costs and the damages are reduced:

- (a) in the case of Blouin to \$15,000 inclusive of special damages;
- (b) in the case of Stannard to \$30,000 inclusive of special damages.

Both Blouin and Stannard have appealed to this Court to restore the judgment of Manning J.

My brother Ritchie has reviewed the jurisprudence of this Court as to altering damage awards made by provincial courts of appeal which have varied the assessment made by a trial judge sitting without a jury. There are, as my brother Ritchie has pointed out, two separate circumstances under which this Court will interfere in an award made by an appellate court where that court has varied the trial judge's award. They are: (1) when the appellate court has acted on some wrong principle of law; and (2) when the award is unreasonable having regard to the evidence, with the caution that this Court be slow to act except under exceptional circumstances. An appellate court does not have an unfettered right to vary the award of a trial judge. It may do so only under certain conditions. Those conditions are clearly spelled out by Viscount Simon in *Nance v. British Columbia Electric Railway Co. Ltd.*[8], at p. 613, as follows:

Whether the assessment of damages be by a judge or a jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case at first instance. Even if the tribunal of first instance was a judge sitting alone, then, before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage (*Flint v. Lovell* [1935] 1 K.B. 354, approved by the House of Lords in *Davies v. Powell Duffryn Associated Collieries, Ltd.* [1942] A.C. 601).

This statement by Viscount Simon was adopted unanimously by this Court in *Widrig v. Strazer et al.*[9], at pp. 388-9.

The Appellate Division did not find or suggest that Manning J. applied any wrong principle. It acted on its own view of the evidence that the two appellants having made "extremely good recoveries" the figures of \$28,000 and \$45,000 were "out of all proportion to the injuries". The Court did not hold that Manning J. had taken into account some irrelevant factor or had left out in his consideration some relevant factor. Its judgment was a mere substitution of awards for those made by the trial judge. Such a substitution can be justified only on the basis that the amounts awarded by the trial judge were so inordinately high as to be a wholly erroneous estimate of the damage. The Appellate Court ought to have dealt with the two appellants as individuals rather than bracketing them together as having made "extremely good recoveries". There was, in my view, a distinct difference between the recovery made by Blouin as compared to that made by Stannard, and equally important there is a marked difference in the ultimate condition and prospects of Stannard. I am prepared to agree with my brother Ritchie that on the jurisprudence before referred to the amount awarded by the Appellate Division to Blouin should not be interfered with.

I am, however, convinced that the Appellate Division was not on any basis entitled to reduce the amount originally awarded to Stannard. It is true that Stannard made a good recovery, but the condition from which that recovery began was an extremely grave one. His injuries were described by Dr. Colter whose evidence was accepted by Manning J. and not questioned by the Appellate Division. Dr. Colter saw Stannard about eight hours after the accident. Dr. Colter had first testified regarding Blouin and had said:

A. Well, he was unconscious, by record, for a short period of time and he was in shock following this. Certainly, eight hours later when I saw him, he was, oh, in almost critical condition. Being in shock is sometimes—it sometimes reduces the amount of pain that you're feeling.

I can still remember that he was ice cold, it was a twenty or thirty below zero night, and they'd spent most of that eight hours travelling, and he was blue and felt like a lump of ice when he arrived. I would think that he would have put in a pretty miserable eight hours before I saw him.

and when questioned as to Stannard said that Stannard had arrived at the hospital in Edmonton at the same time as Blouin. His evidence was: A. Mr. Stannard also arrived in about the same condition of temperature and level of consciousness. Again, I have a note scribbled by Dr. Manning that he had been unconscious. However, when I saw him he was again alert and fairly well oriented, but, again, with not too much recollection of the events immediately around the accident, which, really, we defined as a concussion.

He was pale, dehydrated, in moderate shock. He had lacerations over his forehead and scalp, which had been sutured before coming to Edmonton. He had bruises and contusions on the right arm, shoulder, and right side of the chest. His rib cage was tender, but I couldn't really find any evidence of a fractured rib. His abdomen was fairly rigid, there was no marked tenderness on any manipulation or pressure on his pelvis. He had two different sutures in the left knee. One two inches, one four inches in length, and these had been sutured. There was also a three inch sutured wound in the middle of his left leg, below the knee. Both bones of this leg were broken.

THE COURT: Which bones?

A. This had been a compound fracture, with the bones sticking out, and the sutured wound was at the site of this compounding.

THE COURT: That's the bones below the knee?

A. Below the knee, yes, sir.

Q. Mr. WEIR: And that is of which leg, Doctor?

A. This is the right.

Q. I see.

A. There was a lot of investigation went on, but, briefly, X-rays of the skull were normal, X-rays of the pelvis—I think I should try and explain this. X-rays of the pelvis showed a fracture of the symphysis pubis, and the left sacroiliac joint. There were also comminuted fractures of the posterior iliac bone, which is a passive piece of bone, part of the wall of the pelvis. THE COURT: I don't quite follow that, Doctor, would you mind going over it again? The X-rays of the pelvis, they showed the fracture of—what is the first bone you mentioned?

A. It showed a separation of the symphysis pubis, which is the midline joint in the front.

THE COURT: A separation?

A. Yes, sir.

THE COURT: Of the front joint of the pelvis, would that be a good word for the ordinary layman?

A. Yes, it's not really a joint, it's a joint but it consists of a mass of gristle that has a little movement in it, but it's not a mobile joint in the true sense. And, secondly, he had a fracture through the left sacroiliac area.

THE COURT: That's the big bone of the pelvis, is it?

A. This is in the back and on the left side. There were many fractures of this pelvis, really. I have here that there was a comminuted fracture of the right superior ramus.

The pelvic structures are kind of like a bowl, and there are a right and left side to them. So that, in a certain type of severe injury, we have fracturing both in the front and in the back, which would then, really, loosen up one whole side from the other, and, in this case it was the left side. Each side, if you like, has a hip point socket built into it. When you break it in front, and then behind, then, literally, the whole leg, whole hip, whole half the pelvis, is free and disrupted. So, in his case, it was moved up something like three or four inches. His whole lower extremity, haunch, everything, had moved upwards, being disconnected front and back so that there is really nothing left to hold it in place.

This was the situation then in his pelvis, at the time when he arrived. X-rays of the left knee were normal, X-rays of the right knee showed a fracture of the lower half of the kneecap, which involved several fracture lines, and several fragments.

An X-ray of the right tibia showed, again, a comminuted fracture involving, really, more than one fracture line, in the shaft of the tibia, and fibula.

Now, again, he spent some time in hospital before we felt that it, that he was in good enough condition to do too much with. He required some gastric suction for a few days, until his bowel sounds and bowel functions returned to normal. There was nothing really that urgent, so that it required too much in the way of definite treatment. So, on the 15th of January he was taken to the operating room.

What we did here, the right knee fracture, or kneecap fracture, this was operated on. All the loose fragments of bone in the lower half of the kneecap were removed, they were too many and too small to be able to put back. This still left him most of the kneecap. And after all these fragments were excised the tendon was reattached to the bone, and this was put in a cast.

Now, at the same time, in the operating room, his fractured leg, or tibia, was also remanipulated and straightened out to an acceptable alignment. And, also at this time some attempt was made to correct his, half his pelvis which was several inches high. And this is done simply by pulling the leg down as hard as you're capable of doing, and hoping that things come into better alignment. This was the case in Mr. Stannard.

Then, I think he went back to bed with, really, both legs in a cast, and some traction on his left leg, to try and hold the leg, or to hold our reduction of the pelvis. The muscles tend to pull it back up unless you maintain some traction on it. Following this, he did quite well. With two legs in cast, of course, he couldn't go home, and he was transferred to the Glenrose Hospital on January the 22nd, 1968, and he stayed there until May the 17th, 1968.

Standard's condition in May 1971 (the month of the trial) was described by Dr. Colter as follows:

Q. What is his present condition, Doctor?

A. Well, at this time, he told me that he had been working steadily, and was on a job that put him on his feet all day. He was having some pain in the left hip area, or actually the groin, and the sacroiliac area on the left, on exertion. Not enough trouble to stop him working.

He was complaining of mild pain in the right knee, which was the knee where the lower third of the kneecap had been removed. And also, some stiffness of this right knee, which, again, made it so that he couldn't squat down or sit on his haunches, normally.

Rough ground bothered him more than working on the level. He said he was able to run, but not in a manner he felt was normal, or not like he'd run before.

On examination, on this last date, on May the 3rd, the right knee looked pretty good. It had—the only obvious finding was a loss of flexion. This was restricted, oh, to about—these are difficult figures—125 degrees, compared to maybe 135 or 40. Well beyond a right angle, and good enough for many activities, but he couldn't get right down and squat on this leg, like on the other side. He was tender over the left symphysis pubis, the area of this old separation, and he was also tender over the left sacroiliac joint. I assessed his leg at approximately a half an inch short, compared to the other. X-rays of the right knee showed the loss of the lower end of the kneecap. There were no arthritic changes present in the knee joint, in May of 1971. An X-ray of his pelvis was done and compared with the previous X-rays we had, and there was a fracture of the left, it's in the sacroiliac area, Your Honour. It's the big mass of bone just adjacent to the sacroiliac joint. This is actually what broke at the time. Instead of the joint going the bone, immediately beside the joint, broke.

This is pushed upwards and partially dislocated on the left sacroiliac joint, and in the front there is the overriding of the symphysis pubis, which is to an extent of almost an inch. This is a rotational thing. If I may just explain again, you can move the whole thing up, as it was initially, which would give you that much shortening in your leg. Because the leg is moved further up the body, if you like. In this case, it was reduced fairly well, particularly at the back, but it gives, still, a dislocation at the front, which wouldn't give the same degree of leg length shortening, because it's sort of rotated, and the hip joint would stay at the same level.

So, he had this separation of the symphysis in the front, of a good inch, perhaps half an inch of total leg shortening, because the whole hip joint is still displaced upwards half an inch, compared to the other.

Q. Doctor, with this displaced hip joint, which he has at the present time, what effect will that have on his movements?

A. Well, it throws it out of alignment a bit. The hip joint is no longer in the same place as it was before. I suppose, crudely, you could compare it to a car whose frame is knocked out of line, so that the two sides, perhaps, goes slightly different directions. I think this accounts for a great deal of his difficulty in running normally. He said he just doesn't seem to be in gear, the rhythm is wrong. It would also, quite likely, put a strain on the old areas of injury in the front and in the back. But mostly, I would think in the back, and put quite a strain on this sacroiliac joint.

Q. In respect to the tibia, would there be—would it be straight or would there be an angulation in that area?

A. There is slight angulation here, which I felt was probably important at one time, but which seems to be giving him no problems, at all. X-rays of the right tibia show a solidly united fracture, with minimum lateral angulation. This, I think, was no more than two or three degrees and wouldn't really constitute much of a problem.

Q. Now, Doctor, from your experience with this patient and through having seen him on May 3rd, are you in a position to assess his disability?

A. I've arrived at an assessment. I've done this twice, but I guess I better go through the latest one, shall I? I based this on, really, two remaining problems. One, a rather minor loss of knee bend on the right side, which will probably prevent him from kneeling or—not kneeling, I'm sorry, squatting on that joint. And this will be, I think, at this point, we can say this is permanent, and I'd assess that about 2% of total. And the major disability, I've based on his badly disrupted pelvis. He is still having considerable pain at both these areas of injury. He has marked tenderness, and it's present over both the sacroiliac joint and the symphysis pubis.

Neither of these really are boney injuries. The symphysis is separated through a gristly area, and there is always a very slight amount of movement there. I think the rotation that he has is going to continue to give him pain in this area. The left sacroiliac joint was completely disrupted, has been fairly well reduced, and is now solidly healed. But, again, I think there are stresses being applied there, because of the rotation and upward angulation of the whole left side of his pelvis,

and I think, again, after close to three years with the tenderness that he has there, that I think this will certainly persist, and may increase. So, I've given an assessment for this pelvic disruption of 10% of total, which would give an overall in the area of 12% of total disability.

Q. Doctor, you indicated the difficulties with the pelvis area may increase in the future?

A. I think he may have some trouble. I think he probably will have more trouble with this sacroiliac joint as the years go by.

Q. Doctor, what sort of a patient did you find Mr. Stannard to be?

A. Again, excellent patient. Not complaining nearly as much as one should with all these things. He has been no problem, at all, from that standpoint.

and on cross-examination:

Q. I think you have indicated, Doctor, that you don't expect arthritis in the future?

A. Mr. Stannard, I think he will develop further problems in the left sacroiliac joint, and these would be in the nature of arthritic changes.

On re-examination:

Q. Doctor, arising out of one point raised in cross-examination, my learned friend asked about arthritis, and you indicated that in the joint areas is where the arthritis could or would occur; and, I gather the left sacroiliac joint is an area where arthritis can occur, will probably occur?

A. Yes, this is what I feel. Q. When the arthritis occurs, could you describe to His Lordship what it is?

A. Well, it would be what we call a traumatic arthritis, which is oh, damage to that particular joint, due to alterations of its mechanics, which were caused by an injury. Anything that throws a joint out of alignment, or damages a working part, in any way, allows it to wear out faster. And this wearing out we speak of is a traumatic arthritis, when it's due to one or two, say, specific injuries. If it's due to the injuries of getting 50 years old, we call it osteoarthritis, but it's much the same.

Q. Does this frequently occur when there has been an injury in the joint, Doctor?

A. Yes, it certainly does. If you don't get the joint back to as close to perfect as you can.

Q. And you have that situation here, I gather, the left sacroiliac joint, which is not close to perfect?

A. No, the whole half pelvis is rotated. I say it's displaced an inch in the front, and perhaps half an inch in the back, and rotated as a result of this.

Q. When arthritis does occur in the joint, if it is a joint which is in constant use, how will that affect the person in, say, carrying out their daily tasks, or in their daily work?

A. Produces pain.

Q. When it's a joint which you say, such as the sacroiliac joint, would that pain be present constantly when you're up on your feet?

A. Yes, it would be present every time you put your weight on that foot, presumably.

Q. Would it be a type of a problem, that is the arthritis, one which would be progressive in nature? A. Well, I think I said, in my opinion, this is probably going to get worse.

It is important that Dr. Colter was of opinion that the arthritis would be progressive in nature. It does not require any medical evidence to appreciate the pain and crippling nature of progressive arthritis. This is what Stannard must endure as long as he lives.

Stannard's evidence as to his present condition was that he returned to work with Imperial Oil Enterprises Ltd. on January 11, 1969, as a cook's helper at Inuvik. He said:

Q. And how long did you work with them as a cook's helper?

A. Up until April and then I was—they said that there would be no further job for me, they had a job in the City for me for about six months and if I didn't want to take that there would be no further work for me.

Q. Now, as a cook's helper, how were you managing doing that work?

A. It was—I was managing okay but my legs were swelling up quite badly.

Q. And as a cook's helper would that be indoor work?

A. Yes, it would.

Q. And would it be on level ground?

A. As level as what you can get it.

Q. And you say your legs would swell up on you. What other difficulties did you have?

A. Well, on camp moves we had to ride in a bombardier, it's against the law to ride in a trailer, and the jarring from the bombardier would bother my hips. It would make it so that I had quite a bad limp.

Q. Now, in April after this job stopped, I gather, you were laid off and then re-hired by the company?

A. That's right.

Q. And you were re-hired in what capacity? A. I was re-hired as a mail boy for the field services department.

Q. And what type of work was that?

A. It was driving around the City here from one office to another. We had three offices that I went to.

Q. And how long did you work at that job?

A. For approximately six months.

Q. And then what did you do?

A. I went back to being a cook's helper again up at Inuvik.

Q. How long did you work that time?

A. I was there from the 1st of October, '69 till the 15th of April, '70.

Q. And what difficulties did you have working as a cook's helper that year?

A. I was getting along quite fine. My legs still swell up, but I wanted to see if I could get back out and do my old job again and I went back out again and there was no way.

Q. What happened when you tried to do seismic work?

A. It was walking over the rough terrain, my right leg wouldn't follow through properly, and if there was—this is a rough cut-line and there is little twigs sticking up, my right leg would be catching them all the time and tripping.

Q. And did you have any other difficulties?

A. It bothered my hip to ride in the bombardier and at the end of the day my hips were quite sore and so was my right leg from doing all the walking.

Q. And how long did you try this seismic work?

A. I tried it for approximately half a day.

Q. And this is what happened?

A. Yes.

Q. And you then worked as a cook's helper until the spring of 1970, was it?

A. Yes.

Q. And then what did you do? A. I was laid off for one month and they re-hired me for the core storage warehouse.

Q. And that's in Edmonton?

A. Yes, it is.

Q. And what type of work is that?

A. It's mostly on my feet all day. I have some desk work that I do, but it's on level ground moving core boxes from the back of the building up to the front of the building, and laying it out for geologists that wished to look at the core.

Q. And you have been doing that since it would be May or June of 1970?

A. Yes.

Q. And how do you manage in that job?

A. Once in a while my hips get quite stiff, my left hip gets quite stiff.

Q. And what other difficulties?

A. My right knee snaps once in a while. It's—it gives out.

Q. Any other problems?

A. No.

Q. Now, what difficulties do you have at the present time?

A. The same. My left hip aches if I sit too long or walk too much. I can't play sports.

Q. Did you take part in sports before the accident?

A. Yes, I did.

Q. What type?

A. I was fairly active in fastball.

Q. And what else?

A. I played a little bit of hockey and basketball.

Q. Can you play basketball now?

A. No, I can't.

Q. Can you skate?

A. No.

Q. Can you play fastball?

A. No, I can't. I can play it but I'm not good enough.

Q. And what difficulties do you have when you try to play fastball? A. I can't run properly, for one thing, and when there is a fly ball hit you have to make a sudden move, and my right knee will give out and sometimes my hip.

Q. And how do you find running?

A. Very difficult.

Q. Now, are you taking any medication at the present time?

A. No, I'm not.

Q. How do you find riding or driving a car?

A. I have to stop about every hundred miles and get out and walk around and limber up.

Q. Why do you have to do that?

A. My left hip starts aching and it gets—if I don't get out and walk around, it will be so stiff when I get to where I'm going, if it's much more than a hundred miles that I won't be able to walk.

Q. And could you do seismic work now, that is go over rough country?

A. No, I couldn't.

Q. Now, are there any other activities you used to take part in before the accident?

A. Yes, I used to hunt quite a bit. I have given that, well, partially up, I go out once in a while.

Q. And how do you find that going across country or over rough ground now?

A. It's still rough.

Q. What happens?

A. My right leg, to move over trees or anything like this in the bush when I'm big game hunting, it's pretty well impossible. I have to go down an old cut-line or something like that, walk in something that's fairly smooth, that has been smoothed out over the years. There is small brush building up in it again, but I can't go through the bush. Q. Now, your family have a dairy farm?

A. Yes, they do.

Q. And have you worked on the dairy farm? Did you work on it before the accident?

A. Yes, I did.

Q. And have you tried working on it since?

A. Yes, I tried working on it in May of 1970 when I was laid off. I was out doing the field work and I couldn't ride the tractor all day.

Q. What would happen?

A. My hips would get stiff and it would just start aching.

Q. And what other work did you do on the farm?

A. I tried throwing bales and I can't do that. When I make a motion with that amount of weight, my right knee hasn't got the power there and neither does my hip.

Q. And what happens?

A. And they give out on me.

Accordingly, we have here a young man who was going on 22 years of age, energetic, sports-loving with no physical disabilities and in excellent health, working and willing to work in remote areas and over difficult terrain, employed in an industry and for an employer where promotion was open to those who were ambitious and willing, who by reason of respondent's negligence is reduced to life as a cook's helper or as a messenger in a core storage warehouse or some similar low-paying occupation; now unable to participate to any satisfactory degree in sports or hunting and in a situation where promotion would appear to be unlikely. Furthermore, he has residual pain and physical disabilities. He must face and live with the almost inevitable worsening of the arthritis now present with its pain and other consequences. His special damages were agreed to at \$10,504.67 being out-of-pocket expenses \$4,758.97 and \$5,745.70 loss of wages. The \$45,000 award included this \$10,504.67 so that the net amount given for general damages was \$34,945.73. The Appellate Division did not disturb the special damage award so the amount fixed by that Court results in a net \$19,495.33 for general damages. Such an award for the injuries and damage that this young man sustained and will sustain is, in my view, inordinately low. The amount given by Manning J. was not too high by any standard.

In the result Stannard's appeal should be allowed with costs here and in the Appellate Division. Blouin's appeal should be dismissed without costs. His appeal did not add materially to the costs.

Appeal dismissed with costs, HALL and LASKIN JJ. dissenting in part.

Solicitors for the plaintiffs, appellants: Wood, Moir, Hyde & Ross, Edmonton.

Solicitors for the defendant, respondent: Feehan & Remesz, Edmonton.

[1] [1966] S.C.R. 13.

[2] [1930] S.C.R. 284 at 287.

[3] [1941] S.C.R. 384 at 387-8.

[4] [1957] S.C.R. 858 at 859.

[5] [1963] S.C.R. 38 at 45.

[6] [1964] S.C.R. 376.

[7] [1968] S.C.R. 71.

[8] [1951] A.C. 601.

[9] [1964] S.C.R. 376

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