FALEWAATH, Appellant
v.
RUBELUKAN, Appellee

Civil Appeal No. 33
Appellate Division of the High Court
July 14, 1969

Trial Court Opinion-3 T.T.R. 410

Appeal from judgment of liability for damages resulting from a motor vehicle collision. The Appellate Division of the High Court, Per Curiam, affirmed the Trial Court's judgment holding that plaintiff in action was not barred from recovery by his contributory negligence where appellant was found to have acted in reckless disregard for the safety of others but that the amount of damages caused by plaintiff's contributory negligence should be deducted from the amount recoverable and that amount of damages awarded for pain and suffering is within the discretion of the Trial Court and should not be disturbed unless clearly unreasonable or plainly excessive. Judgment affirmed.

1. Torts--Negligence-Contributory Negligence

   A ·person whose reckless disregard caused an injury is liable regardless of contributory negligence on the part of the injured party.

2. Torts--Negligtmce-Contributory Negligence

   Amount recoverable by plaintiff who was contributorily negligent should be the amount of damage suffered less that amount which is found attributable to his neglect.

3. Torts--Damages-Pain and Suffering

   Compensation for pain and suffering is an element of damage which is not capable of precise calculation.

4. Torts--Damages--Pain and Suffering

The fact that the amount of damages for pain and suffering which the court found to be reasonable is the same amount for which a plaintiff made claim is not in itself grounds for holding the determination erroneous.

5. Torts--Damages--Pain and Suffering

A determination of damages for pain and suffering is within the province of the trial court and cannot be disturbed on appeal unless clearly unreasonable or plainly excessive.

Counsel for Appellant: RAPHAEL DUBUCHUREN
Counsel for Appellee: LINUS RUUAMAU

Before BURNETT, *Associate Justice,* CLIFTON, *Temporary Judge*

PER CURIAM

By interlocutory judgment order entered December 15, 1966, defendant-appellant was found liable for property damage in the amount of $25.00 and for damages for plaintiff-appellee's personal injuries resulting from a motor vehicle collision, the amount of such personal injuries to be determined upon subsequent reopening of the trial. Thereafter the court found damages for personal injuries to be in the amount of $3,691, which included an allowance of $1,000 for pain and suffering.

Defendant contends on this appeal that there was error in finding him liable in view of plaintiff's contributory negligence, that the amount of damage is excessive because of the plaintiff's obligation to avoid aggravation of his injuries, and that the court erred in accepting the plaintiff's suggestion as to the amount to be allowed for pain and suffering.

[1] Appellant is correct in his contention that the plaintiff was guilty of contributory negligence and the trial court in its interlocutory judgment order specifically so

found. The court also found, however, that appellant had acted in reckless disregard of the safety of the plaintiff, whose contributory negligence consequently did not bar recovery, citing Sec. 482, Restatement of the Law of Torts, Vol. 2, and Am. Jur. 2d, Automobiles and Highway Traffic, § 362. Appellant has taken no issue with the court's finding with respect to his reckless disregard. There is therefore no error in the court's application of the almost universal rule of law that he is liable, regardless of contributory negligence on the part of the plaintiff.

[2] Appellant is also correct in his contention that plaintiff has an obligation to prevent aggravation of the injuries and cannot recover for any loss which is attributable to his own failure in this regard. The difficulty, insofar as apellant's position is concerned, however, is that the trial court very carefully applied that very rule of law, and excluded from its calculation of the amount recoverable by the plaintiff that amount which it found attributable to the plaintiff's neglect.

[3-5] Appellant's contention of error as to the allowance for pain and suffering is likewise without substance. As the trial court said in its opinion, compensation for pain and suffering is an element of damage which is not capable of precise calculation. The fact that the amount which the court found to be reasonable is the same amount for which the plaintiff made claim, is not in itself grounds for holding the determination erroneous. It is clear from the court's opinion that it took into consideration the periods of plaintiff's hospitalization, necessity of surgical operations and medical treatment, and the probability that further surgery would be required. Having done so, we cannot say that the amount of $1,000 is excessive. Such a determination is within the province of the trial court and cannot be disturbed on appeal unless clearly unreasonable or plainly

excessive. See *Davis v. Gambardella & Son,* 82 A.L.R.2d 673, 161 A.2d 583.

We find no error and the judgment of the trial court is affirmed.