Privy Council Appeal No. 3 of 1980

Leon Stewart Paul and Another – – – – *Appellants*

v.

Anthony Howard Rendell – – – – – – *Respondent*

FROM

THE FULL COURT OF THE SUPREME COURT OF SOUTH AUSTRALIA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH APRIL 1981

Present at the Hearing:

LORD DIPLOCK
LORD RUSSELL OF KILLOWEN
LORD KEITH OF KINKEL
LORD BRIDGE OF HARWICH
SIR JOHN MEGAW

[*Delivered by* LORD DIPLOCK]

The subject-matter of this appeal and cross-appeal from the Full Court of the Supreme Court of South Australia is limited to the quantum of damage recoverable by the plaintiff for personal injuries which he sustained as a result of a traffic accident on 1 March, 1975, caused by the admitted negligence of the defendants. The plaintiff's injuries were severe; one of them at least, an injury to his arm, resulted in a permanent disability which would continue to cause him pain and would reduce his earning capacity on the labour market. He was aged 30 at the time of the trial and his working life, it was assumed, would have continued for 35 years if he had not been injured in the accident. The trial judge made an award of damages totalling $141,664, made up of (1) $4,260 special damages, including loss of earnings up to the date of trial; (2) $70,000 for future loss of earnings; (3) $50,000 for past and future pain and physical disabilities and (4) $17,404 by way of interest from the date of writ to the date of judgment on the whole amount of the capital sum awarded.

The defendants appealed to the Full Court from this award. The Full Court, although holding that the judge of trial had gone wrong in law in two respects both of which favoured the plaintiff, nevertheless dismissed the defendants' appeal but substituted for the total damages awarded by the judge a figure which, although the component sums were different, was greater than the judge's award by about 1% only, *viz.* $143,110. It is from that award that the defendants now appeal to their Lordships' Board by leave of the Full Court granted as of right. The plaintiff cross-appeals by special leave granted by this Board itself.

Although would-be appellants from an award of damages for personal injuries made by the Supreme Court of an Australian State in running-down cases have an option to appeal to the Judicial Committee of the Privy Council instead of to the High Court of Australia, this is an option that is rarely exercised—and rightly so, for as is well-known, the general levels of awards of damages for personal injuries vary considerably as between one country and another and, even apart from this, the factors that are relevant to the assessment of future economic loss, such as the availability of assistance to overcome the handicaps of disability and prospects of employment for disabled persons, are dependent upon local conditions with which Australian judges and in particular those who sit in the Supreme Court of the State from which the appeal is brought, are much more familiar than members of their Lordships' Board could ever hope to be.

The assessment of damages in actions for personal injuries is not a science. A judgment as to what constitutes proper compensation in money terms for pain, suffering or deprivation of amenities of life, can only be intuitive, and the assessment of future economic loss involves a double exercise in the art of prophesying not only what the future holds for the injured plaintiff but also what the future would have held for him if he had not been injured. What matters to the parties, however, to the plaintiff and to the insurer of the defendant alike, is the total sum awarded. Neither party is concerned how the assessor of the compensation has rationalised his intuitive assessment of the total amount that the plaintiff ought to recover by apportioning it between the various components, past and future, economic and non-economic loss, and interest on each class of loss, which he has taken into consideration before arriving at his final award.

So long as juries continued to be the assessors of damages they were not called upon to rationalise their hunches; but judges are, and this has given rise to a considerable body of case law in the various State Supreme Courts and in the High Court of Australia about the principles to be applied where the use of particular mathematical formulae form steps in the process by which the judge has sought to justify his choice of a particular figure for one of the components into which he has broken down his total award. This is particularly so with those components that represent future economic loss and interest on loss sustained before the date of judgment. But while it is possible to lay down principles for the choice of the formula and its parameters (in its accurate sense of constants in a mathematical equation)—the choice of figures for the variables is within the discretion of the assessing judge. By adjusting one or other of these factors he can make the formula work out at whatever figure he feels intuitively to be correct. It is in their Lordships' view a matter of considerable significance to which they should pay deference that both the single judge and the Full Court came to the same conclusion, *viz.* that the plaintiff should receive a total sum of approximately $142,000 by way of compensation, although the parameters used by each in the formulae for assessing the components for future economic loss and for interest to be added to the award were not the same.

Where, as in the present case, the plaintiff's disability is permanent, it is, their Lordships are informed, the common practice in Australia to use actuarial tables for calculating the present capital value of future annual economic loss resulting from the reduction in the plaintiff's annual earnings which the judge considers that he will suffer for the remainder of his working life. From this figure as a starting point the judge makes such adjustments as he thinks appropriate. Some adjustment downwards would be needed to take account of all those contingencies such as unemployment, ill-health, or any other disability

short of premature death, for which allowance is not made in the actuarial tables but which might have deprived the plaintiff of his earning power or reduced it below the figure adopted for the purpose of the actuarial calculation. Some adjustment upwards might be needed to allow for any prospect that the plaintiff might have had of being promoted to a more highly paid post if he had not sustained the injury for which the damages are being awarded.

In the instant case, the evidence before the learned judge was that the plaintiff's pre-accident gross pay was $180 and his net pay $133 per week. The judge was provided with actuarial evidence in the form of two certificates which covered various assumptions as to what the plaintiff's net loss of future earnings would be. He said that he accepted this evidence and that in his view the capital sum resulting from this calculation did not require adjustment since any reduction of that sum to take account of future contingencies which might have affected the plaintiff's future earning-power if he had not been injured was cancelled out by an upward adjustment to take account of his lost prospects of advancement.

At the time of the trial, courts in Australia accepted the principle that had been laid down by the House of Lords in *British Transport Commission* v. *Gourley* [1956] A.C. 185, so one knows that the learned judge was dealing with the net amount of future wages lost, not with the gross before deduction of income tax. The only actuarial evidence before him was prepared upon this basis and did allow for income tax upon the interest element in the annual payments of the notional annuity. If the judge accepted it, the result of this way of calculating the capital sum depended not only on the interest rate adopted but also upon two variable factors: the assumptions made by the judge as to (1) the *net* loss of future earning power, and (2) the *gross* amount of any income from residual earning power. The judge did not explain what rate of interest he used nor what his assumptions as to these variable factors were, except that he had assumed that the plaintiff would sustain no loss of earnings for the first twelve months after the trial. Apart from this, however, it is not possible to deduce from the judge's total award of $70,000 for loss of future earning power what assumptions he made for either of these factors during the remaining thirty-four years of the plaintiff's working life.

After the learned judge's judgment had been given, the High Court of Australia in *Atlas Tiles Ltd.* v. *Briers* (1978) 52 A.L.J.R. 707, by a majority of three to two, ruled that the Australian courts should reject the principle laid down in *Gourley's* case and should base their estimates of future economic loss upon gross earnings before deduction of income tax. This decision was binding upon the Full Court by the time the defendants' appeal from the judgment of the single judge was heard by them. The actuarial evidence that had been before the single judge was not appropriate to this revised method of assessment. Since it was based upon loss of net earnings after deduction of income tax, it had allowed for the deduction of income tax on the interest element in the notional annuity which was assumed to replace the lost future earnings. The Full Court, in their Lordships' view quite rightly, regarded actuarial calculations as no more than rough and ready guides to what is proper compensation for future economic loss, particularly where there is residual earning capacity. The Court was aware that in order to allow for the likelihood of inflation continuing in the future, a rate of interest of not more than 5% should be used for the purpose of calculating the capital value of the annuity; but as the lowest rate of interest for calculating capital value of annuities that had been used in the actuarial evidence before the single judge was 5·5%, the Full Court used this to calculate the capital value of an annuity for 35

years of $180 per week, representing the whole of the plaintiff's gross pre-accident earnings. This gave a figure of $141,660, which the Full Court reduced to $132,000 to take account of the gross wages that, upon the trial judge's findings, the plaintiff would continue to earn in his current employment during the next twelve months. This figure, used by the Full Court as a starting point only, did not allow for any residual earning capacity or for the risks that unemployment, illness or other disability would have reduced his future earning capacity if he had not been injured in the accident. The Full Court was of opinion that the single judge had underestimated these risks and overestimated the plaintiff's future prospects of advancement when he treated the latter as cancelling out the former. To allow for residual earning capacity and for these risks the Full Court reduced the figure of $132,000 to $80,000. This works out as a reduction of very nearly 40%. What proportion of the reduction was on account of residual earning capacity and what was attributable to the risk of reduced earning capacity if the plaintiff had not been injured, the judgment of the Full Court did not disclose. Presumably they did not dissect it into the two components to which they had referred. So the figure at which the Full Court arrived was $10,000 more than the $70,000 that the single judge had awarded for future economic loss.

The Full Court did not disturb the single judge's figure of $50,000 for non-economic loss; but they did disturb his award of interest upon the whole of this amount for the period between the issue of the writ and judgment. The award of interest on non-economic loss in South Australian law is discretionary; and here again between the dates of trial and hearing of the appeal there had been a change in practice as to the way in which interest on non-economic loss was calculated. The decision of the High Court in *Fire and All Risks Insurance Co. Ltd.* v. *Callinan* (1978) 52 A.L.J.R. 637 had held that it was a proper exercise of that discretion to dissect the amount awarded for non-economic loss into detriments suffered before and those to be suffered after the date of judgment and to allow interest on the former only. The Full Court of the Supreme Court of South Australia in *Paull* v. *Cloede* (1979) 21 S.A.S.R. 526 had held that where a substantial part of the detriment would be suffered after the date of judgment interest ought not to be awarded on that part. The single judge in the instant case had not dissected his total award of $50,000 into pre- and post-judgment detriments, although plainly a substantial part of them would be suffered in the future. At the hearing of the appeal in the Full Court counsel for the parties agreed that it should be apportioned as to $30,000 to pre-judgment detriments and as to $20,000 to post-judgment detriments. The elimination of interest on the latter sum results in a reduction of the total award by $10,600. This cancels out the increase by $10,000 in the component of the award for future economic loss.

The judgment of the Full Court which resulted in the very minor alteration, from $141,664 to $143,110, in the total damages that had been awarded by the single judge was delivered on 25 October, 1979, and leave to appeal to this Board was granted to the defendants on 6 December, 1979. Before the parties' cases were lodged with the Privy Council a full bench of the High Court of Australia in *Cullen* v. *Trappell* (1980) 54 A.L.J.R. 295, had reconsidered its decision in the *Atlas Tiles* case and by a majority of four to three had reverted to the principle laid down in *Gourley's* case of basing assessments of loss of future earnings upon net earnings after deduction of tax. So when the matter came before their Lordships, Australian law was in this respect once more the same as English law, and the parties were the victims of yet another change of law occurring while they were en route to an appellate court.

Their Lordships would emphasise that the ultimate question they have to answer in this appeal is: Is the total award of damages in the sum of approximately $142,000 arrived at by both the single judge and the Full Court, but as the result of using different mathematical formulae, so obviously wrong that this Board, who do not share the familiarity of South Australian judges with South Australian conditions, ought to interfere with it?

Their Lordships can deal briefly with the question of interest on that part of the award of $50,000 for non-economic loss which was apportioned to post-judgment detriments. The plaintiff in his cross-appeal attacked the Full Court's disallowance of this interest and in the defendant's appeal it was also relied upon by the plaintiff as a ground for upholding the total sum awarded by the Full Court in its judgment.

The question of discretion to dissect awards for uneconomic loss into amounts attributable to pre-judgment and post-judgment detriments was also mentioned in the majority judgment of the High Court in *Cullen* v. *Trappell* where it was explained that the *Fire and All Risks Insurance* case when properly understood did not compel a judge to undertake such a dissection in every case—a task that in some cases might be difficult. He had a discretion to do so in those cases where he thought it to be appropriate. Owing to the state of the law at the time of trial the single judge in allowing interest on the whole amount of $50,000 did not realise that he had any discretion and so did not purport to exercise it. The Full Court did exercise the discretion; the apportionment of the full amount between pre-judgment and post-judgment detriments was one agreed by counsel. There is no ground on which their Lordships could interfere with the way in which the discretion was exercised by the Full Court.

The major attack before their Lordships' Board was directed by both parties against the computation of $80,000 as representing future economic loss, the defendants saying it was too high, the plaintiff claiming that it was too low. In support of their rival contentions both parties sought to enlighten or bemuse the Board with elaborate and detailed calculations based upon actuarial formulae; those proffered by the defendants being less complex than those relied on by the plaintiff; but the former left out income tax on the investment income which is treated in the formulae as replacing the lost earnings.

There is an initial difficulty as to what the plaintiff's pre-accident net earnings were before one even comes to use it as a factor in the calculations. The only evidence was that his pay was $180 gross per week and $133 net. If the gross figure is correct and the only deduction from it was income tax, the net would be $144·69; so if the net figure of $133 is correct as well as the gross of $180, there must have been some other deductions amounting to $11.69. Whether these were in respect of liabilities to which he would still be subject, whether he was employed whole-time or part-time or not at all, remains a mystery. Since his pre-accident net wage is one of the parameters in each of the equations used by both parties, one starts off with a margin of error of some 9%.

The defendants proffered four alternative re-calculations of the capital sum which would have been required to compensate the plaintiff if, in the calculation used by the Full Court, the net figure of $133 for pre-accident earnings had been substituted for the gross of $180 actually used by that Court. The figures arrived at in these re-calculations ranged from a low of $46,000 to a high of $59,500. All of them had three characteristics in common. They all made use, as the Full Court had, of an interest rate of 5·5%, whereas it was conceded by counsel for the defendants that it was not possible to justify any rate higher than

5%. The only reason why the Full Court had used 5·5% was because it was the lowest rate that could be found in the actuarial evidence before them. The use of a 5% interest rate would have the effect of increasing the capital sum required. Neither the Full Court nor their Lordships had any expert evidence of what that increase would be; but it is possible to deduce from the actuarial evidence that is available that the increase would be of the order of 5%.

The second common characteristic of all four calculations was that they all took as the net pre-accident wage after tax the figure of $133. By applying to this figure the discount of 40% applied by the Full Court to the capital sum appropriate to a pre-accident wage of $180, the defendants were able to reduce the estimated post-judgment residual earning power to a figure that did not exceed $78 and so fell within the tax-free zone. They treated as not being subject to any income tax the notional investment income required to make up the balance of the $133 that the plaintiff had previously earned. The defendants sought to justify this omission on the ground that there was no Australian authority that laid down any rule of thumb that allowance must be made for income tax on the notional investment income.

"Rule of thumb" may be an apt description of the Australian practice of using actuarial tables in order to produce a figure to use as a starting point for determining what is a suitable capital sum to compensate a plaintiff for future economic loss: but in their Lordships' view, if this course is adopted one must follow the logic of the method of calculation to the end, or else as a guide post it will point the wrong way. That logic requires that if the pre-accident earnings used for the purpose of calculation are net earnings after deduction of tax, the notional income from the notional investment needed to produce the notional annuity should also be treated as subject to income tax on the interest element involved, and the notional income left after deduction of that tax should alone be treated as available to replace the pre-accident net earnings. This was clearly the view of the majority of the High Court in *Cullen* v. *Trappell* where the matter is discussed at pages 298 to 300.

If one allows for income tax at 32% on the whole of the notional investment income without any allowance for the tax-free zone of $78 per week or for the fact that part of the notional income consists of return of capital, the effect is very considerable. So far as their Lordships can deduce from the calculations put before them by the parties, it has the effect of increasing the capital sum needed to produce the notional income by as much as 35%. The percentage increase is reduced if allowance is made for the tax-free zone and for the return-of-capital element in the notional income; but the amount of the reduction depends to some degree on the choice of methods used for the purpose of calculating the effect of tax and to a very large degree upon assumptions made as to the amount of any other income of the plaintiff assumed to be derived from his residual earning power or from investments other than the capital sum awarded for future economic loss.

Cumulatively, therefore, there is a large margin of error in the defendants' calculations due (1) to the use of too high an interest table, (2) to the doubt as to whether $133 or $144.69, or somewhere between the two, is the right figure for the plaintiff's pre-accident net earnings, and (3) to the failure to take any account of income tax on the notional investment income required to make up the difference between his pre-accident and post-accident net earnings. If all of them operated in favour of the plaintiff this would have the effect of raising the figures resulting from the defendant's calculations by over 50% so as to make the range lie between a low of some $70,000 and a high of over $90,000.

Counsel for the plaintiff in his turn submitted four alternative calculations of future economic loss based on the circumstances as they existed at the date of the trial, which is what their Lordships are concerned with. The capital sums arrived at in these calculations ranged between a low of $80,720 and a high of $103,000. All of these calculations were on the lines suggested by Moffitt P. in *Traecey v. Churchill* [1980] 1 N.S.W.L.R. 442, and allowed for tax on the notional income from the notional investment required to replace the plaintiff's lost pre-accident earnings. The difference between the four calculations lay in the assumptions made. In two of the calculations it was assumed that the net pre-accident wage was $133 as had been stated in the evidence; in the other two it was assumed to be $144.69, the figure arrived at by deducting income tax at the appropriate rate from a gross wage of $180 that had been stated in evidence. In each pair of calculations in which the same assumption as to the amount of net wages was made, one calculation adopted the same discounting factor of 39·3% as had been used by the Full Court to allow for residual future earning capacity and other future contingencies that might have reduced his earning power if he had not been injured in the accident; the other adopted a a lower discounting factor of 25%. This lower discounting figure was arbitrary but was said to be justified on the ground that the single judge, who had seen the plaintiff and heard him give evidence, had considered that any reduction that he might otherwise have given for future contingencies was balanced by the plaintiff's prospects of future advancement if he had not been injured. The judge had also apparently regarded the plaintiff's prospects of future employment as discouraging if his current employment came to an end, as well it might. Since in these calculations the amount of tax treated as deductible from the notional income from the notional investment that produces the annuity varies with the proportion of the total discount that is attributed to future residual earnings some allocation of the total discount has to be made between the two factors of which it takes account. In the plaintiff's calculations which adopted the Full Court's discount rate of 39·3%, the arbitrary assumption was made that 33·3% was attributable to future residual earnings and the remaining 6% to future contingencies which might have reduced the plaintiff's earning power if he had not been injured; while in the calculations based on a discount rate of 25%, 20% was attributed to residual earning power and 5% to future contingencies.

Their Lordships have thus been presented with a selection of detailed calculations of capital sums, from which to choose as representing the true value at the date of trial of the future economic loss sustained by the plaintiff as a result of his injuries. They range from as little as $46,000 to as much as $103,000. That there should be so wide a variation between the results of the various calculations is a consequence of the choice of formulae to be used and of the assumptions to be made not only as to matters of past fact, *viz.* the pre-accident net earnings of the plaintiff, but, more particularly, as to matters of prophecy or judicial guesses, *viz.* what will be the net earnings of the plaintiff after judgment and what would be the likelihood on the one hand of unemployment, illness or other disability preventing him from maintaining continuously for 35 years his pre-accident earnings if he had not been injured and, on the other hand, of his being promoted to a job in a higher-paid grade of employment.

A judicial guess gains nothing in reliability by being used as a factor in a mathematical formula; the answer reached by working out the formula is still no more than a judicial guess. Neither the single judge nor the Full Court appear to have reached their conclusions as to the component to be included in total awards as representing future

economic loss by working out some detailed mathematical formula of the kind subsequently recommended by the Full Court in *Traecey v. Churchill* which their Lordships have been pressed to use; so it is not possible to know what their judicial guesses were on either of those factors that were matters of prophecy. All that their Lordships know is that the Full Court, having used a simple annuity table to find out the present value of an annuity for 35 years of an amount equal to the plaintiff's pre-accident earnings, regarded the two factors of future residual earnings and future contingencies as together justifying a reduction of about 40%. The single judge's judgment, though it states that he treated the risks of future contingencies as cancelled by the prospects of future advancement does not disclose what his judicial guess was as to the plaintiff's future residual earnings. The calculations presented to their Lordships, if they were to be used to determine the amount of the component of the total award required to compensate the plaintiff for future economic loss, would require this Board to make its own judicial guesses as to both these factors and then use them as such in the selected formula. This the Board is not qualified to do, since these factors depend so very much upon current circumstances in South Australia; but, in any event, their Lordships do not think that calculations as detailed as those which have been put before them by the parties are of assistance to them in deciding this appeal.

Apart from the wide margin of error there must be in any judicial guesses as to what will happen to the plaintiff over so long a period as 35 years and what would have happened to him in that period had he not been injured, the detailed calculations are made on the assumption, which at best is very rough and ready but is the only one available, that future inflation of Australian currency can be allowed for by using a discount rate of 4% to 5% per annum instead of such higher interest rates as are current at the date of judgment. It is also assumed for the purpose of the calculations that the fiscal policy, the rates of income tax and the boundaries between the zones at which various differential rates come into force will remain unaltered for the next 35 years. Although it is virtually certain that this will not be so there is no material on which to base some more reliable assumption.

Next it should be noted that quite apart from the unreliability in varying degrees of each and every factor in the formulae on which are based the detailed calculations recommended in *Traecey v. Churchill* for arriving at that component of the total award which represents the court's assessment of the capital sum that will fairly compensate the plaintiff for future economic loss, those calculations bear no relation to what the plaintiff will in fact do with the whole or any part of the capital sum awarded to him in compensation for his total loss, economic and non-economic, present and future: he will be free to do whatever he likes with it: to give it away, to dissipate it on pleasures, to use it to buy a house or a business, to invest it in any way he chooses. One thing is certain: he will invest no part of it in an annuity. Nor will he manage what investments he does make in such a way as to draw on capital each year for the amount that is actually necessary to exhaust the capital fund that the court has attributed to future economic loss at the end of the period for which the court has assumed that the economic loss will continue; though this is the assumption on which the provision made in the calculation for income tax upon the notional investment income is based. Yet in *Traecey v. Churchill* it was even suggested that the balance of the award, attributable to past loss, non-economic loss and interest between date of writ and date of judgment might be treated as added to the investment in the same notional annuity for the purpose of determining the tax zone into

which the plaintiff should be treated as falling when calculating the capital sum attributable to future non-economic loss. To do this, in their Lordships' view, would be to pile unreality upon unreality.

To undertake detailed mathematical calculations in which nearly every factor is so speculative or unreliable in order to assess the capital sum to represent what is only one of several components in a total award of compensation for personal injuries, is, in their Lordships' view, not only not worth while but, worse than this, it has a tendency to mislead. To have one's attention focussed on the detailed differences between the rival calculations, as that of counsel and their Lordships' has been in the instant appeal, makes it only too easy to forget how far removed from all reality are most of the assumptions on which the calculations are based. One is in danger of becoming unable to see the wood for the trees.

The reality is that as a result of the judgment the plaintiff will have at his disposal a single capital sum to compensate him for all the loss, economic and non-economic, past and future, that he has sustained or will sustain. That is the figure that matters to the plaintiff, that is the figure that ought to strike the single judge and the Full Court as being fair in the light of their wide experience of the measure of damages that are currently being awarded in Australia in broadly comparable cases. Since anticipated loss or reduction of future earnings may be a major component in the total loss, the assessing judge ought to bear in mind that the present value of payments to be made over a number of years in the future is not the product of multiplying the amount of the annual payment by the number of years, but is some lesser sum; how much less depends upon the interest rate that is appropriate to be adopted and the length of the period of years; and he can obtain from published annuity tables a theoretical calculation of what that lesser figure is for different rates of interest and different periods, that he can use as a rough guide. So too it is desirable that he should bear in mind that the theoretical calculations on which the ordinary annuity tables are based do not take account of one of the facts of real life—the incidence of income tax upon the interest element in the annual payments of the annuity, and that some adjustment upwards may be needed for this. The theoretical adjustment resulting from assuming various tax rates to be applicable to the annual payments is capable of being set out in the form of tables, and if such tables are available the judge may find these helpful—but again as no more than a very rough guide. For, when all is said and done, the total loss sustained by the plaintiff as at the date of the trial was in reality the same before and after *Atlas Tiles* temporarily altered the current practice as to the formula used for calculating future economic loss, and remained the same before and after *Cullen* v. *Trappell* resulted in reversion to the previous practice though with a somewhat more complicated formula. So it is not surprising that the single judge and the Full Court, although constrained by higher authority as it stood at the time of the respective hearings to apply different formulae for assessing this particular component in the total loss, nevertheless reached an almost identical assessment of the total loss at about $142,000.

It would be easy for their Lordships to pick out from among the parties' various detailed calculations, one particular calculation which does not lie at either extreme of the range, as being based upon the most plausible guesses as to the appropriate figures to be adopted for each of the variables in the formula used; and in this way to rationalise the choice of any figure within a range of between $65,000 and $90,000 as the capital value at the date of trial of the plaintiff's future economic loss. But it would not be intellectually honest to do this, because, as has been said already, their Lordships' lack of knowledge of employment

prospects in South Australia for persons with qualifications comparable to those of the plaintiff, if fully fit or if partially disabled, deprives them of the ability to make an informed choice as to which guess within a relatively wide range of guesses is likely to be the nearest to being right.

Save in very exceptional circumstances, their Lordships would not feel justified in interfering with a total award of damages for personal injuries which both the single judge and the Full Court concurred in thinking was fairly assessed at about $142,000 (notwithstanding that the total was apportioned differently between the various kinds of loss) unless their Lordships were persuaded that the alteration in that figure ought to be substantial—certainly in excess of 10%. Their Lordships have not been convinced by any of the arguments or elaborate and detailed calculations of the parties that the total amount of compensation assessed by the Full Court is wrong at all, let alone that any error in it is of the order of 10% or more.

Their Lordships will humbly advise Her Majesty that this appeal and cross-appeal should both be dismissed. The defendants must pay to the plaintiff four-fifths of his costs in the appeal and cross-appeal.

313164—2 Dd 0074336 75 5/81

In the Privy Council

LEON STEWART PAUL
and ANOTHER

v.

ANTHONY HOWARD RENDELL

DELIVERED BY
LORD DIPLOCK

Printed by HER MAJESTY'S STATIONERY OFFICE
1981