DAMAGES FOR PERSONAL INJURIES IN THE CASE OF A PLAINTIFF FULLY AWARE OF HIS PLIGHT

SHARMAN v. *EVANS*

Introduction

The High Court in *Sharman* v. *Evans*[1] has made a significant contribution to the principles applicable to the assessment of damages in actions for personal injuries. The importance of this decision is best appreciated against the background of the landmark decision of the same court in *Skelton* v. *Collins.*[2]

The plaintiff in *Skelton* v. *Collins* had been rendered unconscious by the accident and was expected to remain so until his death, estimated to be within six months of the date of the trial. Regarding the principles applicable to the assessment of loss of earning capacity, the High Court repudiated the approach adopted by English courts in cases such as *Oliver* v. *Ashman*[3] where compensation was held payable only for the years remaining after the accident. The High Court held that loss of earning capacity was to be assessed on the basis of *pre-accident* life expectancy, which took account of the years by which the plaintiff's life had been shortened.[4]

The decision in *Skelton* v. *Collins* also clarified the principles to be employed in the assessment of non-pecuniary loss. Under the head of damage known as "loss of amenities of life", English courts[5] had adopted an objective test independent of the victim's actual sense of loss which resulted in a substantial award although he never appreciated his loss at all. The High Court laid down the principle that "loss of amenities" contained both objective and subjective elements: what the plaintiff has actually lost and his degree of awareness of that loss.[6] The plaintiff in *Skelton* v. *Collins*, being permanently unconscious, was accordingly compensated only for an objective assessment of his "loss of amenities of life".

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1 (1977) 13 A.L.R. 57.
2 (1966) 115 C.L.R. 94.
3 [1962] 2 Q.B. 210.
4 *Skelton* v. *Collins, supra* n. 2 at 121.
5 J. G. Fleming, *The Law of Torts* (5th ed. 1977) p. 223 n. 45.
6 *Skelton* v. *Collins, supra* n. 2 at 113.

The High Court in *Sharman* v. *Evans* dealt in detail with the method of analysis to be employed in the assessment of damages for personal injuries. The principles involved in the assessment of lost earning capacity were further clarified by a division of pre-accident life expectancy into the periods of post-accident life expectancy and the "lost years"; the appropriate deductions in each period were then determined. In addition the principle of a bilateral approach to non-pecuniary loss enunciated in *Skelton* v. *Collins* was applied to the case of a plaintiff fully aware of her plight.

Furthermore the High Court significantly elaborated on principles which did not arise for consideration in *Skelton* v. *Collins*. Firstly, arising from the fact that the plaintiff had a post-accident life expectancy of more than twenty years, the High Court considered the relevant criteria on which to base an award for future outgoing expenditure. Also specifically considered was a question of whether the plaintiff was to be compensated for the cost of a lifetime spent in a hospital equipped for the care of persons so incapacitated or, at very much greater cost, in her own home. The High Court utilised the principle of "the reasonable requirements of the respondent", *per* Barwick, C.J. in *Arthur Robinson (Grafton) Pty. Ltd.* v. *Carter*,[7] to decide this question. The cost of the more expensive alternative was matched against likely health benefits to the plaintiff in order to decide which alternative it was "reasonable" that the defendant should bear.

The High Court in *Sharman* v. *Evans* also dealt in detail with the inter-relationship of the various heads of damage, both pecuniary and non-pecuniary, and how this affects the overall amount awarded.

The Facts

In December 1971, June Evans, then aged 20, was catastrophically injured in a motor vehicle accident. She became a quadriplegic; she lost the ability to speak and was afflicted with trauma induced epilepsy, as well as suffering continual pain in her right shoulder. Although she lost some intellectual capacity due to brain stem damage, she remained intelligent and fully aware of the extent of her injuries and her consequent incapacity.

At the trial before his Honour, Mr. Justice Sheppard, she was awarded $300,547.50. The defendant's appeal to the New South Wales Court of Appeal was, by majority, dismissed. The defendant appealed to the High Court.

Judgments

Barwick, C.J. and Gibbs and Stephen, JJ form the majority in this case in upholding the defendant's appeal against the sum awarded by the trial judge. Jacobs and Murphy, JJ. were of the opinion that the appeal should be dismissed.

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[7] (1968) 122 C.L.R. 649.

During the course of their judgment Gibbs and Stephen, JJ. dealt in detail with the principles involved in the assessment of damages. The Chief Justice, was, however, in disagreement in a number of areas of principle. Although Jacobs, J. dissented as to the result of the appeal, he fully agreed with Gibbs and Stephen, JJ. on matters of principle, only dissenting as to the adequacy of the sum awarded.

Murphy, J. dissented on the ground that the award reflected substantial under-assessment of the major economic and non-economic heads of damage.

Gibbs and Stephen, JJ.: Method of Assessment of Total Award

Their Honours dealt first with the criticism directed at the method of assessment adopted by the trial judge. They regarded as misconceived criticism of both (i) the separate examination of the conventional heads of damage, and (ii) the ascertainment of an appropriate sum under each head of damages followed by a process of deduction from it. In fact "so long as courts are careful to avoid the risk inherent in such a procedure, of compensating twice over for the one detriment, there seems no better way of applying processes of reasoning and the realistic and methodical evaluation of probabilities to the task of assessing compensation".[8]

In so saying their Honours rejected by inference the view of Barwick, C.J. in *Arthur Robinson (Grafton) Pty. Ltd.* v. *Carter* and adhered to by the Chief Justice in this case,[9] that the technique of mathematically calculating sums for different heads and then adding such to reach a total sum should not be followed; rather, the verdict as a single global sum should be juxtaposed to the condition of the plaintiff which has resulted from the injury and its propriety then considered by the appellate court.

Heads of Damage: (I) Economic Loss

A. *Future Outgoing Expenditure*

Gibbs and Stephen, JJ. saw the appropriate criterion for the determination of this head of damage as being "the reasonable requirements of the respondent"[10] as expressed by Barwick, C.J. in *Arthur Robinson (Grafton) Pty. Ltd.* v. *Carter*.[11] It is noteworthy that the use of this concept as a yardstick for the determination of damages under this head is of comparatively recent origin; it was not utilised in the landmark decision of *Skelton* v. *Collins*, nor does Fleming's *Law of Torts*[12] make reference to it.

What then is meant by "reasonableness"? Does the concept embody some idea of foreseeability, or is the term used in the commonly understood sense of fairness? It would seem that "reasonableness" means fair-

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[8] *Sharman* v. *Evans, supra* n. 1 at 64-65.
[9] *Id.* 66.
[10] *Sharman* v. *Evans, supra* n. 1 at 65-66.
[11] *Arthur Robinson (Grafton) Pty. Ltd.* v. *Carter, supra* n. 7 at 661.
[12] *Supra* n. 5.

ness since Gibbs and Stephen, JJ. use a "cost-benefit analysis" to balance the interests of plaintiff and defendant. Their Honours considered that the "touchstone of reasonableness in the case of the cost of providing nursing and medical care for the plaintiff in the future is, no doubt, cost matched against health benefits to the plaintiff".[13]

It being clear that the plaintiff would require care for the rest of her life, Gibbs and Stephen, JJ. considered the question of where the plaintiff was to be cared for in the future — either in a hospital equipped for the care of persons so incapacitated, or, at very much greater cost in her own home? They noted that the determination of that question would directly affect the extent of nursing and medical expenses to be compensated for, as well as substantially bear upon the extent of her loss of amenities and enjoyment of life.[14]

In line with the above principle, their Honours specifically instanced that

> . . . if cost is very great and benefits to health slight or speculative the cost-involving treatment will clearly be unreasonable, the more so if there is available an alternative and relatively inexpensive mode of treatment affording equal or only slightly lesser benefits.[15]

On the evidence available Gibbs and Stephen, JJ. concluded that this in fact was the case, for any benefit that the plaintiff might derive from being cared for at home was not a benefit to her physical or mental condition but entirely one of amenity.

Barwick, C.J. was of the opinion that the cost of providing premises at her mother's home was "quite disproportionate to any causal connection" with the defendant's negligence.[16] Although couched in different terms, Barwick, C.J. would not seem to be disagreeing in principle with the approach of Gibbs and Stephen, JJ.

Gibbs and Stephen, JJ. emphasised an inter-relationship between the economic head of damage with the loss of amenities of life. Since the plaintiff was not to be awarded the cost of providing such facilities at her mother's house under the head of economic damage on the basis of it being unreasonable, she should be awarded an increased sum for loss of amenities of life. This sum was to cover the cost of periodic visits to the mother's house to alleviate the distress induced by a lifetime of institutional care.[17]

B. *Lost Earning Capacity*

Division between post-accident life expectancy and "lost years"

Gibbs and Stephen, JJ. left aside temporarily the question of compensation for loss of earning capacity during the "lost years", that is, the years by which the plaintiff's life expectancy has been shortened, and

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[13] *Sharman* v. *Evans, supra* n. 1 at 66.
[14] *Id.* 65.
[15] *Id.* 67.
[16] *Id.* 60.
[17] *Id.* 67.

firstly examined the lost earning capacity up to the post-accident expected time of death.

(a) *The period of post-accident life expectancy: What is to be deducted from the plaintiff's likely earning capacity?*

(i) *Deductions to avoid double compensation*

Gibbs and Stephen, JJ. recognised the inherent double compensation in awarding a sum for future institutionalised care without a deduction being made for sums which the plaintiff would certainly ordinarily have spent on her own board and lodging.[18] Their Honours approved *Shearman* v. *Folland*[19] in noting that it is "irrelevant how expensively or how frugally the plaintiff might in fact have lived had she not been injured".[20] Thus, their Honours did not examine how much of the plaintiff's estimated $70 per week income would have been used in board and lodging (as Barwick, C.J. did, *infra*). Rather they attempted a necessarily arbitrary estimation of the percentage of the hospital fees covered by board and lodging. Their Honours made an estimate of 12% of hospital fees, or $16 per week, as an appropriate deduction.[21]

(ii) *Other outgoings or "personal maintenance"?*

Gibbs and Stephen, JJ. noted that a plaintiff who suffers a total loss of earning capacity will not normally continue to incur outgoings necessary for the realisation of that capacity. Thus the cost of items such as clothing suitable for his particular employment and transportation to and from work are to be deducted. A failure to do so would be to compensate the plaintiff for a gross loss when it is only a net loss which has in fact been suffered.[22]

Gibbs and Stephen, JJ. stated that there was to be no deduction made for all outgoings the plaintiff would have spent on herself other than income producing expenditure. Indeed it is unjustifiable to regard the plaintiff as being "saved" these outgoings, such as pleasure-giving expenditure.[23] In so saying their Honours rejected the view of Windeyer, J. in *Chulcough* v. *Holley*[24] who referred to an award for the loss of earning capacity being discounted by "the ordinary costs of maintenance of a plaintiff as a person"[25] and cited Taylor, J. in *Skelton* v. *Collins* as authority.

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[18] *Id.* 68.

[19] [1950] 1 K.B. 43.

[20] *Sharman* v. *Evans*, *supra* n. 1 at 68.

[21] *Id.* 76. ". . . that this percentage represents much less than actual costs of board and lodging is to be accounted for by the surprisingly low total charges of only $20 per day, made for the all-inclusive hospital services, due perhaps to some element of government subsidy".

[22] *Id.* 68-69.

[23] *Id.* 69. Their Honours note at 70, the inter-relationship between the amount awarded for lost earning capacity and that awarded for loss of amenities. It seems that if no deduction for these other outgoings "saved" is made from the former amount, this fact should be borne in mind in assessing the award for loss of amenities.

[24] (1967) 41 A.L.J.R. 336.

[25] *Id.* 338.

Gibbs and Stephen, JJ. drew a distinction from Taylor, J.'s judgment, between the years up to the post-accident expected time of death and the "lost years".[26] In the former a deduction for full personal maintenance should not be made as Windeyer, J. did in *Chulcough* v. *Holley*. Such a full deduction for personal maintenance is only to be made according to Gibbs and Stephen, JJ. in the "lost years".[27]

Taylor, J. in *Skelton* v. *Collins* preferred to treat the question of future lost earning capacity simply on the basis of the pre-accident expected time of death. This was largely a product of two factors:

(1) his distinct rejection of the principles embodied in *Oliver* v. *Ashman* where it was held that the assessment of the plaintiff's damages should be made on the basis of *post-accident* expected time of death; and

(2) the facts themselves of *Skelton* v. *Collins* in which almost all the plaintiff's pre-accident life expectancy was to be in the form of "lost years" since he had been expected to die within six months of the original trial. Moreover for this brief period he would have had no opportunity for expenditure as he was unconscious and expected to remain so.

Accordingly, Taylor, J., specifically regarding the deductions to be made for "self-maintenance", seemed to make no distinction between the "lost years" and the period up to the post-accident expected time of death.[28] Consequently he did not consider making a clear delineation of the components comprising "self-maintenance" in the two periods.

It would seem therefore that Gibbs and Stephen, JJ. have either read this aspect into Taylor, J.'s judgment because of the peculiar fact situation of *Skelton* v. *Collins*,[29] or have taken the opportunity to declare what they believe is the correct law in an uncertain area.

As regards what is generally described as the "vicissitudes of life", Gibbs and Stephen, JJ. believed it was only significant in the area of assessment of lost earning capacity in terms of an allowance for "sickness, early death, a measure of unemployment and the like".[30] Their Honours combined the deduction for the "vicissitudes of life" with the deduction for outgoings associated with the exercise of earning capacity (*supra*) and fixed the "necessarily arbitrary" figure of $2 per week as an appropriate deduction in respect of these maters.[31]

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[26] *Sharman* v. *Evans*, *supra* n. 1 at 69.

[27] *Ibid.*

[28] *Skelton* v. *Collins*, *supra* n. 2 at 121-122. This is not to say that Taylor, J. made no distinction at all between the period up to post-accident expected time of death and the "lost years". He did not, however, make the sub-division utilised here by Gibbs and Stephen, JJ., preferring to assess lost earning capacity on the basis of pre-accident life expectancy.

[29] And they are thereby specifically setting aside the *Skelton* v. *Collins* type fact situation of the unconscious subsistence wage earner with a very short time to live.

[30] *Sharman* v. *Evans*, *supra* n. 1 at 76.

[31] *Ibid.*

(iii) *Marriage*

Since loss must depend upon the likelihood that there would have been a future exercise of that earning capacity, should a female plaintiff have her award reduced because of the prospect of marriage? Gibbs and Stephen, JJ. were of the opinion that "the whole situation must be full of critical uncertainties".[32] Their Honours accordingly disregarded the prospect of marriage as a relevant factor in the assessment of the plaintiff's future economic loss, a course which recognised "the plaintiff's retention of capacity, which would have been available to her for exercise, in case of need, despite her marriage".[33]

Thus Gibbs and Stephen, JJ. were prepared to allow $34,000 to $43,000 for lost earning capacity up to the *post-accident* expected time of death to a plaintiff who would have been by the time of the trial only earning $70 per week. In reaching this figure Gibbs and Stephen, JJ. had regard to the principle that the plaintiff is only entitled to the present value of future earnings and thus the award must be discounted for capitalization. Their Honours utilized six per cent tables to achieve this result.[34]

(b) *The lost years*

The plaintiff was to be compensated for lost earning capacity during the years now "lost" to her due to her shortened life expectancy "at least to the extent that they are years when she would otherwise have been earning income",[35] following *Skelton* v. *Collins*.[36] Their Honours discussed two possible deductions to be made from lost earning capacity in this period:

(i) a deduction for personal maintenance; and
(ii) a deduction for maintenance of dependants.

(*i*) *Personal maintenance*

Gibbs and Stephen, JJ. deducted a sum for "personal maintenance" in the years following the post-accident expected time of death.[37] By this term, their Honours seemed to mean *all* moneys which the plaintiff would have spent on herself. They quoted Jolowicz "a dead man has no personal expenses",[38] and J. C. Fleming who believes that there should be a deduction of "the plaintiff's personal expenses".[39]

(*ii*) *A deduction for the maintenance of dependants*

Gibbs and Stephen, JJ. found that at least in this case, *viz.* a personal injuries action brought by a living plaintiff, there should be no deduction for the cost of maintenance of dependants, if any, in the "lost years".[40]

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[32] *Id.* 74.
[33] *Ibid.*
[34] *Id.* 76.
[35] *Id.* 70.
[36] *Skelton* v. *Collins, supra* n. 2 at 121.
[37] *Sharman* v. *Evans, supra* n. 1 at 73.
[38] *Ibid.*
[39] *Ibid.*
[40] *Id.* 73.

Their Honours, however, left open an issue which it seemed was within their power to clarify, at least *obiter dictum*. That issue was whether deductions for the maintenance of dependants should be made in an action brought by the legal personal representative for the benefit of the deceased's estate under the Law Reform (Miscellaneous Provisions) Act, 1944-1969, when there is a concurrent action for such dependants under the Compensation to Relatives Act, 1897-1969, to avoid the risk of double compensation.

Taylor, J. in *Skelton* v. *Collins* seemed to make a clear distinction between a personal injuries action brought by a living plaintiff and a "survival action" brought by the legal personal representative under the Law Reform (Miscellaneous Provisions) Act, 1944.[41] In the former case it was implicit in the words of Taylor, J. that no deduction is to be made from the amount for lost earning capacity in the lost years for the maintenance of dependants.[42] In the latter, a deduction is to be made for maintenance of dependants, if any.[43]

Gibbs and Stephen, JJ. said that Taylor, J. in *Skelton* v. *Collins* had been misunderstood in such cases as *Jackson* v. *Stothard*[44]

> . . . as requiring that not merely a plaintiff's own expenses of maintenance but also whatever he might have spent on the maintenance of his dependants should, even in the ordinary case of a claim for lost earning capacity of lost years made by a plaintiff during his lifetime, go in reduction of damages.[45]

It is perhaps doubtful whether Sheppard, J. in *Jackson* v. *Stothard* actually went as far as saying this.[46] However, it would seem that Gibbs and Stephen, JJ. were attempting to prevent any possible future misinterpretation of Taylor, J. in *Skelton* v. *Collins* based on the incorrect assumption that in *both* the cases of a personal injuries action and a "survival action" a sum for the maintenance of dependants is to be deducted.

It is unfortunate that their Honours did not go one step further and clearly distinguish between the approaches to be taken in the two actions. As a matter of logic it would seem that while there should be no deduction for the maintenance of dependants in a claim by a living plaintiff (as held by their Honours, *supra*), there must be such a deduction in the case of a "survival action" when there is a concurrent action available under the Compensation to Relatives Act, 1897-1969: since if such is not made the defendant will be exposed to the risk of double compensation, *viz*. paying for the maintenance of the dependants in both these actions.

Thus, Gibbs and Stephen, JJ. believed that to take the "lost years"

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[41] *Skelton* v. *Collins, supra* n. 2 at 114 and 121.
[42] *Id.* 121.
[43] *Id.* 114.
[44] [1973] 1 N.S.W.L.R. 292.
[45] *Sharman* v. *Evans, supra* n. 1 at 71-72.
[46] *Jackson* v. *Stothard, supra* n. 44 at 296, 297, 298.

into account necessitated increasing the award for lost earning capacity to the range of $37,000 to $45,000.[47]

It is worth noting at this point the contrast in approach between Barwick, C.J. and Gibbs and Stephen, JJ. to damages for lost earning capacity for this plaintiff, a relatively low income earner. Barwick, C.J., consistent with his approach to the method of testing the award by means of a global sum, maintained a generalised approach focusing on the likely residue of the plaintiff's income after "food, clothing and perhaps residence" are taken into account.[48] After making no attempt to segregate and place an estimated value on any of these elements, he concluded:

> . . . to allow any substantial ingredient in the total award to represent economic loss in the circumstances is to double up and fail to perceive the overlap which would exist between any allowance for economic loss and the allowance for institutional and other care and attention.[49]

Gibbs and Stephen, JJ., on the other hand, used a carefully detailed and analytical approach to determine all the factors to be deducted from expected earning capacity and placed a value on each.

The crucial difference between Barwick, C.J. and Gibbs and Stephen, JJ. would seem to be the willingness of Gibbs and Stephen, JJ. to allow a low income earner substantial damages for economic loss notwithstanding the fact that she was to be totally cared for institutionally for the rest of her life, the cost of such care having already been provided for.

Summary: Economic Loss

Major Deductions to be Made from Lost Earning Capacity:

A. *Years up to post-accident expected time of death*

1. Avoid double compensation for any sum awarded for the cost of institutional care by deducting a sum from lost earning capacity equivalent to board and lodging.
2. Other outgoings associated with the exercise of earning capacity.

B. *The "lost years"*

1. Personal maintenance.
2. No deduction, at least in a personal injuries action brought by a living plaintiff for the maintenance of dependants.
   Quarere whether such deductions should be made in an action under the Law Reform (Miscellaneous Provisions) Act 1944.

C. *Other factors to be considered*

1. Vicissitudes of life.[50]
2. Prospect of marriage.[51]
3. Capitalization of the sum for present value.[52]

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[47] *Sharman* v. *Evans, supra* n. 1 at 76.
[48] *Id.* 61.
[49] *Ibid.*
[50] *Id.* 76-77.
[51] *Id.* 74.
[52] *Id.* 76.

4. Only the net loss of earning capacity is to be compensated for. Accordingly tax must be deducted. (This was assumed *sub silentio.*)

II. Non Economic Loss

A. *Shortening of Life Expectancy*

This head of damages takes regard of the loss of a measure of prospective happiness — *Skelton* v. *Collins*.[53] It is to be assessed objectively, resulting in a "conventional sum" in line with *Benham* v. *Gambling*[54] and is not compensation for "the mental distress due to the realization of the loss"[55] which instead forms part of the general damages for pain and suffering. Gibbs and Stephen, JJ. accordingly concluded that the more appropriate sum of $2,000 should be substituted for the amount of $6,000 awarded by the trial judge.[56]

Barwick, C.J. was of the opinion that nothing in the case ". . . bearing in mind other items to be the subject of compensations, calls for that nominal sum to exceed the sum of $1,250".[57]

B. *Pain and Suffering and the Loss of the Enjoyment and Amenities of Life*

1. *Inter-relationship of economic and non economic heads of damage*

Their Honours stressed that any sum awarded under this head of damage must be assessed with due regard to amounts awarded under other heads of damage which go to produce economic certainty and available funds for pleasurable activities.[58]

2. *Basic principle involved*

Their Honours implicitly recognised that the relevant criterion was the plaintiff's degree of awareness of his deprivations.[59] In *Skelton* v. *Collins* the plaintiff, who was unconscious and expected to remain so until death, received no compensation for pain and suffering and only the nominal sum of £1,000 being an objective assessment for loss of enjoyment and amenities of life.

In this case the fully conscious plaintiff, suffering continual physical pain and in all respects fully aware of her plight, was accordingly awarded a considerable sum under this head of damage.[60]

Method of Testing the Total Amount Awarded

Barwick, C.J. was of the opinion that the trial judge erred in failing to ". . . look closely at what the proposed award was capable of producing when reasonably invested and in not comparing that yield with what

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[53] *Skelton* v. *Collins, supra* n. 2 at 121.
[54] [1941] A.C. 157.
[55] *Skelton* v. *Collins, supra* n. 2 *per* Kitto, J. at 98.
[56] *Sharman* v. *Evans, supra* n. 1 at 74-75.
[57] *Id.* 61.
[58] *Id.* 75.
[59] *Id.* 74 and 77. Following the fundamental principle in *Skelton* v. *Collins.*
[60] Neither Sheppard, J. (the trial judge) nor Gibbs and Stephen, JJ. specified an amount for this head of damage; but from their analysis it would appear to have been assessed in the vicinity of $40,000.

the necessities of the respondent's condition required".[61]

However, Gibbs and Stephen, JJ. questioned the value of such a testing of the appropriateness of the amount awarded for general damages. Their Honours were of the opinion that such a means of testing in the present circumstances and when applied to a case such as this was likely to prove misleading.[62] In its stead Gibbs and Stephen, JJ. followed a process of adopting the maximum figures which on the evidence could be accepted under each head of damage. It is by this process that their Honours determined whether the amount originally awarded fell within permissible limits.[63]

The Decision

Their Honours concluded that the amount of $300,547.50 could not stand. They accordingly allowed the appeal and substituted an amount of $270,547.50 for the original award.[64]

Conclusion:

The value of the judgment of Gibbs and Stephen, JJ. in *Sharman* v. *Evans* can be seen in the following:

1. Clarification of the overall method of assessment to be used in actions for personal injuries.
2. The clear enunciation of the necessary inter-relationship of the various heads of damage.
3. Clarification of the principles involved in an assessment of lost earning capacity by the division of the relevant period, *viz.* pre-accident life expectancy (*per* Taylor, J. in *Skelton* v. *Collins*) into post-accident life expectancy and the "lost years".
4. Re-emphasis of the importance of the criterion of reasonableness in the assessment of future outgoing expenditure by the plaintiff.
5. The utilisation of principles to be employed in the assessment of non-economic heads of damage as propounded in *Skelton* v. *Collins,* specifically in the case of a conscious plaintiff suffering under the effects of catastrophic injuries.

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[61] *Sharman* v. *Evans, supra* n. 1 at 61.

[62] *Id.* 77-78. Their Honours came to this conclusion for three reasons:

(i) the high yield from the award must be measured against the effect upon costs of rapidly progressing inflation;

(ii) the inability to reduce non-economic damage to purely economic terms;

(iii) ". . . the plaintiff's quite substantial annual income will attract tax at high rates" (see at 78 of the report).

[63] *Ibid.*

[64] It should be noted that this amount included agreed special damages of $25,547.50.