

deposit which question was alluded to in the above opinion, it may be observed that some authorities hold that where the amount deposited in a condemnation case where immediate possession of the property is required is less than the value established by the judgment, that the compensation should include an amount comparable to the legal rate of interest. See 27 Am. Jur. 2d, Eminent Domain, §§ 297, 302 and 304. However, as the trial judge in this case included interest at the rate of 6% on the amount of damages to the property which was not taken, it would appear as stated in Justice Turner's opinion that there is "no denial of fair compensation in fact." In any event, I cannot agree with appellant's contention that a different holding as to the amount of interest would affect the validity of the condemnation proceedings in this or in any action. The only effect would be to slightly increase the percentage of interest on the money deposited, and as there has been fair compensation regardless of the method of computation, I concur in the result of the judgment.

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UCHEL, et al., Appellant

v.

RDIALUL T. RENGIL, Appellee

Civil Appeal No. 49

Appellate Division of the High Court

May 10, 1969

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TURNER, *Associate Justice*

It appearing to the court that notice of appeal was filed September 27, 1968, and that no further action has since been taken by appellant; that appellant was informed in

writing April 23, 1969, that unless action was taken on or before May 9, 1969, in accordance with Appellate procedural Rule 32f(1) the appeal would be dismissed; and it appearing appellant has failed to prosecute his appeal in accordance with Rule 32, it is

Ordered that the above-entitled appeal from the Trial Division to the Appellate Division of the High Court be and hereby is dismissed.

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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--Negligence-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.