

NANCY B. SONGER and DAVID M. SONGER, Plaintiffs

v.

**Trust Territory of the Pacific Islands, Ponape Transportation
Authority, KALESTIN JACK, EDWARD E. JOHNSTON,
High Commissioner of the Trust Territory of the
Pacific Islands, and LEO FALCAM, District
Administrator, Ponape District,
Defendants**

Civil Action No. 37-75

Trial Division of the High Court

Ponape District

September 3, 1976

Action for personal injuries, grounded in negligence. The Trial Division of the High Court, Brown, Associate Justice, held that driver who turned left at intersection directly into path of oncoming vehicle was negligent.

1. Torts—Negligence—Evidentiary Standards

Plaintiff seeking to recover in personal injury negligence action had to prove by a preponderance of the evidence that defendant was negligent, that the negligence proximately caused accident, that the injuries proximately resulted therefrom, and the amount of damages sustained.

2. Torts—Negligence—Contributory Negligence

Defendant pleading affirmative defense of contributory negligence must prove by a preponderance of the evidence that plaintiff was negligent and that such negligence proximately caused or contributed to accident and injuries sustained.

3. Negligence—Generally

Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, and is in essence the failure to use ordinary or reasonable care, such care being that which persons of ordinary prudence would use to avoid injury to themselves or others.

4. Negligence—Particular Cases

Truck driver who made left turn at intersection directly into the path of motorcyclist's oncoming vehicle was negligent.

5. Negligence—Proximate Cause

A proximate cause of an injury is one which in natural and continuous sequence produces the injury and without which the injury would not have occurred.

6. Agency—Liability of Principal

Where truck driver who caused accident in which plaintiff was injured was negligent, his negligence was the proximate cause of the accident and injuries, he was an agent of a part of the territorial government, and he was acting within the scope and course of the agency, truck driver's liability was imputed to the department for which he worked and to the government.

7. Torts—Damages—Particular Cases

Motorcyclist injured when truck driver negligently turned left at intersection into her path as she entered intersection was entitled to reasonable damages for medical care, and supplies, loss of earnings and earning capacity, damage to the motorcycle, and pain discomfort, fears, anxiety and other mental and emotional distress, past and future, proximately caused by the injuries.

8. Torts—Damages—Assessing Damages

Generally, bills for medical care required by injuries caused by another's negligence do not alone suffice to establish the reasonableness of the bills and there must be some other evidence of reasonableness of the bills before they may be considered in assessing damages; but the rule will not always be applied where there is some showing of the nature or extent of the injury or of the medical services rendered.

9. Torts—Damages—Loss of Earnings

In personal injury negligence action, loss of past and future earnings could not be awarded where plaintiff was an unpaid missionary, there was no credible evidence that any employment opportunities were offered, and the evidence as to earnings and earning capacity was so vague and inconclusive that any award would necessarily be based on pure conjecture.

10. Torts—Damages—Before and After Value

Plaintiff seeking compensation for negligent damage to her property must prove by a preponderance of the evidence either the difference in the fair market value of the property immediately before and immediately after the accident, or the cost of repairing the property so as to restore its fair market value to that which it was immediately before the accident, at a cost less than the difference in the before and after value.

11. Torts—Damages—Pain and Suffering

In awarding damages for pain, discomfort, fears, anxiety and other mental and emotional distress of which injuries caused by negligence are a proximate cause, court must exercise calm and reasonable judgment and fix damages which are just and reasonable in the light of the evidence; there is no definite standard prescribed by law.

12. Torts—Damages—Loss of Consortium

Husband of plaintiff negligently injured by defendant was entitled to damages for loss of companionship, comfort, affection, society, solace, moral support, enjoyment of sexual relations, and physical assistance in the operation and maintenance of the home.

<i>Interpreter:</i>	HERBERT A. GALLEN
<i>Reporter:</i>	NONE
<i>Counsel for Plaintiffs:</i>	DOUGLAS F. CUSHNIE, Esq. of ARRIOLA & CUSHNIE
<i>Counsel for Defendants:</i>	MINOR POUNDS, Esq.

BROWN, Associate Justice

This action arises out of a collision between a motorbike and a truck which occurred on October 30, 1973 in Kolonia, Ponape District. In that accident, Plaintiff, Nancy B. Songer, sustained injuries and now seeks general and special damages. Her husband, Plaintiff David M. Songer, seeks damages for the loss of his wife's services.

Pursuant to motion, the action was dismissed as to Defendants Edward E. Johnston, High Commissioner of

the Trust Territory, and Leo Falcam, District Administrator, Ponape District. The case then proceeded to trial against each and all of the other named Defendants.

At trial, it was stipulated that at all times pertinent to this case, Defendant, Ponape Transportation Authority, was a part of the government of the Trust Territory of the Pacific Islands, that Defendant, Kalestin Jack, was an employee of Ponape Transportation Authority, and that he was acting within the course and scope of that employment.

The facts of the case are simple. Nancy Songer was operating a Honda Motorbike along the main road of Kolonia coming from the area of the weather station in the direction of the old Spanish Wall. Kalestin Jack was driving a Ponape Transportation Authority dump truck in the opposite direction. Upon reaching the intersection where the offices of the Community Action Agency were located, Mr. Kalestin made a left turn without signalling, passed into the lane then being used by Mrs. Songer, and the Motorbike collided with the truck.

As a direct and proximate result of the accident, Mrs. Songer sustained bodily injuries which required her hospitalization in Ponape and in Hawaii where she had been medically evacuated. Her final recuperation was in the State of Texas.

No useful purpose would be served in discussing Mrs. Songer's injuries in lengthy detail. It is sufficient to note that her primary, most painful, and most disabling injuries were fractures of the mandible which required the wiring together of her jaws for a period of several weeks, a fracture of the zygoma (the cheek bone), a fracture of the left palate, compound fractures of the left tibia and fibula, and a contusion of the brain.

Her recovery apparently has been good except for a small area of non-disabling hyposthesia over the left tibia, and a slight, but permanent limitation of motion of the left foot.

It was brought out by way of medical testimony received through a deposition that some six months prior to the accident out of which this case arises, Mrs. Songer had multiple joint complaints involving the left jaw, the left hip, and the left leg. No specific treatment was given, nor was any specific diagnosis made.

[1, 2] At this juncture, the questions of liability and injuries will be discussed. For Plaintiffs to recover, they must prove by a preponderance of the evidence four separate elements: (1) that Kalestin Jack was negligent; (2) that that negligence proximately caused the accident; (3) that injuries proximately resulted therefrom; and (4) the amount of damages sustained. Defendants pleaded the affirmative defense of contributory negligence and therefore had the burden of establishing by a preponderance of the evidence that Mrs. Songer was negligent and that her negligence proximately caused or contributed to the accident and to the injuries she sustained.

[3, 4] Negligence is the doing of something which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, under circumstances similar to those shown by the evidence. In essence, it is the failure to use ordinary or reasonable care; and ordinary or reasonable care is that care which persons of ordinary prudence would use in order to avoid injury to themselves or others. *Fouch v. Werner*, 279 P. 183 (Cal. App.). By making a left turn directly into the path of Mrs. Songer, Defendant, Kalestin Jack, was negligent. He failed to comply with the provisions of 83 TTC sec. 351 which provides, in part:

. . . The driver of a vehicle within an intersection intending to turn to the left shall yield to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard . . .

[5, 6] A proximate cause of an injury is a cause which, in natural and continuous sequence, produces the injury, and without which the injury would not have occurred. *Merrill v. Los Angeles G. & E. Co.*, 111 P. 534 (Cal.); *Catlin v. Union Oil Co.*, 161 P. 29. Like negligence, proximate cause generally is held to be a question for the trier of fact. *Fennessey v. Pac. G. & E. Co.*, 124 P.2d 51 (Cal.); *Parker v. San Francisco*, 323 P.2d 108 (Cal. App.). This Court finds that the proximate cause of Mrs. Songer's injuries, which have already been described, was the negligence of Defendant, Kalestin Jack. Since the latter admittedly was the agent of Ponape Transportation Authority, a part of the government of the Trust Territory of the Pacific Islands, and was acting within the course and scope of that agency, his liability is imputed to those last named defendants. *Johnston v. Long*, 181 P.2d 645 (Cal.).

In considering all of the evidence brought before it, the Court finds that Defendants failed to establish by a preponderance of the evidence that Mrs. Songer was contributorily negligent.

The final matter to be disposed of is the question of damages. As has been stated above, the amount of damages sustained by each plaintiff is one of the elements of the case that must be established by a preponderance of the evidence. It is as necessary that Plaintiffs prove the amount of the loss as the fact of the loss. *Osage Oil & Ref. Co. v. Chandler*, 287 F. 848 (CA 2).

[7, 8] Plaintiff, Nancy B. Songer, is entitled to the reasonable value of the medical care, services and supplies reasonably required and actually given in her treatment, and this, of course, includes both hospital and nursing care. Bills for such elements of damage were received over objection made upon the ground that no foundation had been laid as to the reasonableness or necessity of the same. It is the general rule that such bills, in and of themselves, do

not suffice to establish reasonableness, and that there must be some other evidence showing their reasonableness before they may be considered in assessing damages. *Lathy v. Wolfe*, 259 P. 470 (Cal. App.); *Linde v. Emmick*, 61 P.2d 338. But in some cases involving personal injury evidence of the amount charged for medical or hospital expenses may be considered as evidence of the reasonableness of such expenses so as to warrant a recovery therefor where there is some showing of the nature or extent of the injury sustained or of the medical or hospital services rendered. *Western Gas Constr. Co. v. Danner*, 97 F. 882 (CA 9); *Gant v. Gas Service Co.*, 135 P.2d 533 (Kan.). In this case, after considering all of the evidence, including the nature and extent of the injuries sustained, the Court is of the opinion that the ends of justice would best be served by the application of the minority view but is of the opinion that in the Trust Territory such matters must be decided upon the peculiar set of facts existing in each case. The medical expenses were substantial; the nature, duration and extent of the injuries, however, were consistent with the cost of treatment.

The same rule is applied to the claim for damages for necessary transportation and travel.

[9] Mrs. Songer also seeks damages for loss of income, and this must necessarily refer to a loss of earnings or diminution of earning capacity. At the time of the accident, both she and her husband were missionaries. They had no earnings. There was evidence that certain employment at very modest pay would have been offered but there was no credible evidence that any employment opportunities were offered. The evidence concerning earnings and earning capacity was so vague and inconclusive that any award of damages therefor would of necessity be based only upon pure conjecture. This the Court cannot properly do.

Oldenburg v. Sears, Roebuck & Co., 314 P.2d 23, 37 (Cal. App.) (hearing den.).

[10] Similarly, the question of property damage to the motorbike poses a problem. For Mrs. Songer to be entitled to compensation for damage to her property, she must prove by a preponderance of the evidence one of two things: (1) the difference in the fair market value of her property immediately before and immediately after the accident, or (2) the cost of repairing the motorbike so as to restore its fair market value as it existed immediately before the accident, at a cost less than its difference in value immediately before and immediately after the accident. *Murray v. San Leandro Rock Co.*, 245 P.2d 347 (Cal. App.). She proved neither, thus placing the Court in a position where, to award any particular sum for property damage, it would be required to engage in guessing and speculating.

Plaintiffs claim as damages reasonable compensation for property lost because of the accident. Evidence was received concerning the same, and they are entitled to be awarded the fair market value of such property as of the time of its loss. *Tatone v. Chin Bing*, 55 P.2d 933 (Cal. App.).

[11] In addition to the foregoing, Mrs. Songer is entitled to reasonable damages for any pain, discomfort, fears, anxiety and other mental and emotional distress suffered by her and of which her injuries were a proximate cause and for similar suffering reasonably certain to be experienced in the future from the same cause. Since there is no definite standard prescribed by law by which to fix reasonable compensation for pain and suffering, the Court, in making an award for pain and suffering, is required to exercise calm and reasonable judgment and fix damages that are just and reasonable in the light of the evidence.

[12] Finally, Plaintiff, David M. Songer, prays for damages for the loss of his wife's services; and he is entitled to an award of such damages to include compensation for the loss of her companionship, comfort, affection, society, solace, moral support, enjoyment of sexual relations, and physical assistance in the operation and maintenance of the home. As in all other phases of the case that pertain to damages, the compensation to which he is entitled must be reasonable and based upon the evidence. *Rodriguez v. Bethlehem Steel Corp.*, 525 P.2d 669 (Cal.).

In view of the foregoing, it is hereby adjudged that:

1. Judgment herein be, and it is in favor of Plaintiffs, and each of them, and against Defendants, and each of them, jointly and severally;
2. Plaintiff, Nancy B. Songer, be, and she is awarded damages in the amount of Fifteen Thousand (\$15,000.00) Dollars;
3. David M. Songer, be, and he is awarded damages in the amount of Two Thousand (\$2,000.00) Dollars; and
4. Each party herein shall bear his own costs.