

O. Trecker
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PAPUA NEW GUINEA

A

IN THE NATIONAL)
COURT OF JUSTICE)

CORAM : Wilson, J.
Wednesday,
11th October, 1978.

BETWEEN : ROKAN BAYAVA

Plaintiff

AND : MINISANG WANKIAR

First Defendant

AND : LUFA LOCAL GOVERNMENT COUNCIL

Second Defendant

(W.S. No. 614 of 1977)

Damages - loss of expectation of life - deceased a healthy
married man - the conventional sum is a moderate sum in
Papua New Guinea - quantum - whether fall in value of money
to be taken into account - K1500 in lieu of K800 - Law
Reform (Miscellaneous Provisions) Act 1962 s.17.

McLean v. Carmichael (1969-70 P.&N.G.L.R. 333 considered
Yorkshire Electricity Board v. Naylor (1968) A.C. 529 applied.

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1978
July 19
and 24
August 8
GOROKA
EASTERN
HIGHLANDS
PROVINCE

WILSON

This is an inquiry as to the amount of damages the plaintiff is entitled to recover under a judgment against the defendants in respect of the death of her husband, Koseve Hobande, who died in a road accident near Goroka on the 25th October 1972. The plaintiff is the customary personal representative of the deceased. The road accident was caused by the negligence of the defendants. The action is brought under Part V of the Law Reform (Miscellaneous Provisions) Act 1962 (see in particular s.17).

The damages the plaintiff is entitled to in this action are damages for the loss of expectation of life of the deceased. The history of claims for loss of expectation of life was set out by Frost J. (as he then was) in McLean v. Carmichael (1) and in that case (and following Benham v. Gambling (2)) the "reasonable" figure to be paid by way of damages for the "loss of a measure of prospective happiness" was assessed at the "very moderate figure" of \$800. That decision represents the law in this country regarding the principles to be applied in determining a loss of expectation of life of this kind and it is authoritative to that extent. But regarding quantum it was not suggested that it could never be varied. In the years following 1970 the conventional sum in Papua New Guinea was \$800 or K800 in the modern currency. But for the evidence produced in this case and for the argument so forcibly put to me by Miss Lyons, for the plaintiff, I could well have found myself assessing damages in this otherwise quite unexceptional case in accordance with that norm.

(1) (1969-70) P.&N.G.L.R. 333

(2) (1941) A.C. 157

At the hearing the plaintiff called Mr Michael Francis Emerson, the senior research economist with the Bank of Papua New Guinea on secondment from the Reserve Bank of Australia. He produced a statement in which he calculated the decline in the purchasing power of the kina between 1970 and 1978 by reference to the consumer price index, the only measure presently available for measuring inflation rates and changes in the standard of living. His evidence, which I scrutinised very carefully and which I accept, was that the purchasing power of the kina had almost halved in those eight years. His evidence was that the current level of income required to maintain the purchasing power of K800 determined in July 1970 would be K1525. It is clear to me that what was appropriate in 1970 is no longer appropriate today. In terms of money the award of 1970 (in McLean v. Carmichael (supra) (3)) would not represent a fair award in terms of money if given today.

I also accept the additional evidence to the effect that the deceased was at the time of his death a healthy married man who was in no sense "a tribesman living in a remote valley" (see McLean v. Carmichael (supra) (4))

The principle was established in England in 1967 that a fall in the value of money may be taken into account so as to lead to an increase in the conventional sum to be awarded - Yorkshire Electricity Board v. Naylor (5). As that decision of the House of Lords was the leading authority on this aspect of the law immediately before Independence Day and as that decision is not inconsistent with any of the laws or customs referred to in Sch. 2.2(1)(a)(b) and (c) of the Constitution and as I have no reason to apprehend that that principle is inapplicable or inappropriate to the circumstances of this country at this time, the rule of common law must be applied as part of the underlying law (Sch. 2.2(1)) and I so apply it in this case.

I accordingly take into account the fall in the value of money as testified to by the expert economist who was called by the plaintiff, and I assess the plaintiff's damages for the loss of expectation of life of the deceased at K1500.

Solicitor for the Plaintiff : Public Solicitor, M. Kapi
Counsel : C. Lyons

(3) (1969-70)P.&N.G.L.R. 333 (5) (1968) A.C. 529
(4) (1969-70)P.&N.G.L.R. 333
at 340