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78

IN THE SUPREME COURT OF THE
TERRITORY OF PAPUA AND NEW GUINEA

NOEL CLEMENT CARROL v.JOHN EUSTACE

JUDGMENT OF HIS HONOUR MR. JUSTICE E.B. BIGNOLD,
DELIVERED AT 9 am on FRIDAY, 25TH NOVEMBER 1955.

In this case the Plaintiff Noel Clement Carroll, a builder, was at the material time, the 19th September 1954, the owner of an Armstrong-Holland Cement Mixer, which he had hired out at the rate of £3/-/- a day for each and every working day.

At the close of business on the 17th day of September 1954, the cement mixing machine was in good running order and was in the yard at Burke's job, where the builder was pouring foundations.

When the machine was shut down by Mr. Boughton on the afternoon of Friday, the 17th September 1954, he has described how after washing the mixer out he locked the door to the motor by placing the locking bar in position, but at 8 a.m. on the following Monday he found the machine capsized on its motor with the towing bar almost perpendicular.

He discovered on righting it that some parts had been broken, namely, the carburettor bowl, a petrol tap and a piece of iron from the magneto. The doors were also injured. A piece of half inch iron piping was lying nearby.

It is in respect of this damage that the Plaintiff proceeds against the Defendant John Eustace and for the loss incidental to this damage a claim is added for exemplary damages, because it is part of the Plaintiff's case that the damage to the motor was occasioned by the deliberate action of the Defendant and it is suggested that the iron pipe found under the machine was used by the Defendant to destroy parts of the machine.

The damage has now been admitted to have been done by the Defendant through backing into the mixer with his truck; although it is plain he failed to tell the Plaintiff of this (and I do not believe he had any intention of so doing) - on the contrary, not only did he fail to admit this to the Plaintiff but the evidence satisfies me that he denied having anything to do with the mixer and tried to pass the blame to others.

The Plaintiff has endeavoured to prove the deliberate destruction of parts of the engine by the evidence of Luk Poy Wai and others, Luk Poy Wai on the night of the 19th September 1954, saw certain things, given in evidence, from the upstairs window of his house but, after carefully reading his evidence, I am satisfied that what he heard and saw is consistent with the account given by the Defendant and that the damage itself could be accounted for by the

heavy fall of the mixer capsizing.

Mr. Boughton gave it, as his opinion, that the damage could not have been occasioned to the mixer in the way described by the Defendant, but on the whole evidence I can not find on the facts before me any deliberate or malicious injury to the mixer.

In my view the Defendant should pay for the damage to the mixer and for the loss naturally following that damage.

The evidence satisfies me that Mr. Carter's account is excessive and I reduce the account to £21/-/-, but it should be made clear that it should not be inferred from this that the account was inflated by reason of the fact that Mr. Carroll was expecting to be reimbursed.

| | | |
|---|---|---|
| Carter's Account | ..... | £21. 0. 0 |
| New parts | ..... | 13. 7. 1 |
| Loss profit | ..... | 21. 0. 0 |
| | Total .... | £55. 7. 1 |

I accept the figure of £3/-/- a day as the proper rate of hire for the mixer, but the late arrival of the parts had no relation to the loss of profit as the machine has for some five weeks been in possession of the Police.

In respect of the loss of profit I allow seven working days at £3/-/- a day, i.e. £21/-/-.

The Court disallows the claim for exemplary damages, though the conduct of the Defendant reflects no credit upon him. He will have to pay the costs of and incidental to the proceedings which will be allowed on the lowest scale.

It is ordered that the sum of £50/-/- paid into Court be paid out to the Plaintiff in satisfaction of his costs when determined and the balance, if any, in reduction of the verdict.

If the Defendant, an unsatisfactory witness, had acted reasonably it is most likely there would have been no litigation.

(Sgd) E.B. BIGNOLD