

**SIMEON PAERATA -v- KALENA TIMBER COMPANY LIMITED**

**High Court of Solomon Islands**

**(Palmer J.)**

Civil Case No. 24 of 1993

Hearing: 18 September 1993

Judgment: 26 November 1993

**P. Lavery for Appellant**

Respondent in person

**PALMER J:** This is an application for assessment of damages for negligence as a result of an accident in which the Plaintiff was seriously injured in January 1989. The accident occurred when the plaintiff was carrying out his normal duties in the Mare Area of New Georgia. A branch from a tree on which a different chain-saw gang had been working on, fell on to his head and right arm causing severe injury and permanent disability. The plaintiff spent a total of seven months in hospital. His left arm is virtually useless and hangs limp at his side when he was giving evidence in court. In his evidence under oath, he states that whenever he gets exposed to the sun for any length of time, he would lose consciousness, for anything up to three to five minutes. On an average, this fainting occurs about three times per month. The latest fainting occurred one week earlier when he went to the Munda market.

There have been several cases dealt with by this court which have set some guidelines for courts to follow when dealing with case of personal injury and claims for damages for negligence. (*See Longa -v- Solomon Taiyo Ltd, SILR 1980, 239; Sukumia -v- Solomon Islands Plantations Limited SILT 1982, 142; Jolly Hardware and Construction Co. Ltd -v- Suluburu, SILR 1985/1986, 87.*)

There are two cases which when combined together, have facts that are similar in my view to the facts of this case.

The first one is the case of *Liliau -v- Trading Company (Solomons) Limited (No.1) SILR 1983, 10*. That case arose out of an accident involving the vehicle of the defendant company, which the plaintiff was driving in the course of his business. As a result of the accident the plaintiff lost his right arm. The court also found that the defendant company was liable for damages for negligence.

Daly CJ reiterated the heads of damage which he had conveniently set out in the case of *Longa -v- Solomon Taiyo Ltd (1980/1981) SILR 239, at page 249*. In Liliau's case, the court was asked to assess damages under the heads (3) Economic loss in the future; (4) Inability to enjoy the usual amenities of life; (5) Pain and suffering and general inconvenience; and, (6) Disfigurement. These he referred to as general damages.

Under the head of damages of economic loss in the future, the court found that although the plaintiff had lost the opportunity of further employment with the defendant company as a driver for the job which he enjoyed, he was still offered a job by the company as a security guard for no less than the same amount of pay which he was receiving as a driver. The court took into account that the plaintiff left of his own volition, a well paid job and that accordingly this must be taken into account when assessing his future economic loss. The court noted that the plaintiff could now drive with only one arm, and also that it seemed probable that the plaintiff could make a success of the management of the family plantation. At page 24, the court concluded,:

"Assessing as best one can all these features I consider that, whilst there should be an element in the general damages to represent future economic loss it should in this case be in the nature of a notional figure which recognizes the fact that some loss on the balance of probabilities will occur, I propose to assess this figure as \$3,000.00. I should add that on the normal burden of proof it is for a party who seeks to assert a loss to establish it upon the balance of probabilities and, therefore a party who seeks more than a notional figure for further economic loss should lay the evidential basis for such a claim."

The second case in which a claim for future economic loss was made is in the case of *Longa -v- Solomon Taiyo Ltd (1980/1981) SILR 239*. The facts briefly were that the plaintiff was injured whilst fishing on a catcher boat. The hook had been taken by a shark and flew out of its mouth and landed in the plaintiff's eye, causing virtual loss of sight in that eye.

The court found that at the time of the accident the plaintiff was earning \$50.00 per month. The court found that after the accident the plaintiff did not return to fishing for fear of any further injury that may occur to his other eye. He took up various other jobs before working as a crew member on a ship for the same pay he was getting as a fisherman. He worked for 8 months and then returned to his home to help out with cattle farming, a coconut plantation and a store.

At page 21 the court made the following conclusion:

It will be observed that the Plaintiff's employment as a crew member was paid at the same rate as that with the Defendant. There was no evidence that the Plaintiff had any greater difficulty in obtaining employment after his eye injury than before. Nor was there any evidence that he stopped work as a seaman otherwise than by choice. In all the circumstances I find that it has not been established that the Plaintiff has suffered any future economic loss as a result of his injury."

If a comparison is to be made between the above two cases and this case, it will become obvious that in Paerata's case there is clear evidence that he has not been able to take up any job since and that he is to a large extent dependent on his close family members to look after him. At the time of hearing of his case he stated that he was staying with his sister and then with his mother at his home village.

The accused was hospitalised for seven months which goes to show to a large extent the seriousness of his injuries. Even working in the gardens seems difficult enough when it is obvious that any prolonged exposure to the sun or heat, or even hot environments, would cause the plaintiff to lose consciousness and fall to the ground. The plaintiff therefore to a certain extent has to be careful about what he does and where he goes.

The doctor's report dated the 19 July 1993 confirmed that the injury was a very serious one and that there will never be a recovery unless there was a miracle.

Using the facts in the above two cases as some guidelines for assessing the future economic loss of the plaintiff, I allow damages under this head as follows:

From January 1989 to January of 1994, a period of 5 years at \$324.34 x (12 x 5) = \$19,460.40.

As to the head of general damages, again I've found considerable assistance in the court's assessment in the case of *Liliau -v- Trading Company (Solomons) Limited (No.1)*; (1983) SILR 10.

Under the general damages head for (4) Inability to enjoy the usual amenities of life; (5) Pain and suffering and general inconvenience; (6) Disfigurement, the court made the following statements and the following award:

"In this case we are dealing with loss of an arm which is a much more serious matter to a Solomon Islander than loss of an eye. In Longa's case the evidence was that the Plaintiff had no difficulty in obtaining employment in the same work and at the same rate as that with his employer prior to the accident (see

pages 250 and 251). There was also no evidence that he was unable to enjoy the usual amenities of life (see page 258). In this case it is clear that the Plaintiff will suffer considerable general inconvenience particularly in a society where reliance upon the ability to perform manual acts in the gardens, in house building, in the plantation and in ordinary daily life is much greater than elsewhere in the world. There are, of course, none of the services and facilities which make it possible for persons elsewhere to discount their disability. In particular, as is agreed in this case, there are no facilities for the Plaintiff to obtain and maintain an artificial limb. In those circumstances this seems to me to be a case where the ratio between loss of an eye and loss of an arm in Solomon Islands should be greater than it is in England and Wales.

My award therefore for general damages under heads (4) and (6) is the sum of \$21,000.00, which together with the sum awarded under head (3) of \$3,000.00 makes a total of \$24,000.00."

The above facts are quite similar to Paerata's case. Although there has been no complete severance of the arm, the arm is virtually useless. The difference in Paerata's case is that it seems that not only was his left arm affected but it seems as if to a certain extent his brain may have been affected too. This is understandable in view of the fact that the falling branch had not only hit his arm but also his head. In Paerata's case he was knocked unconscious by the branch and then spent a total of about 7 months in hospital. In Liliau's case the arm was severed at the accident but he was conscious throughout and spent only about 14 days in hospital.

It is clear to me that Paerata's case is much more severe and serious than Liliau's. As a result of the accident Paerata has not been in any formal employment of any sort. His education is fairly limited and other prospects of any other satisfactory form of employment has not been enhanced in any way by the accident and his present condition.

The Administrative Manager of the Defendant Company has indicated that he may be able to offer Paerata some sort of work. That is a matter that should have been addressed earlier on rather than simply waiting until the court convenes to raise it in the hope of perhaps getting some sympathy. I do however take note of this suggestion and for that reason, future economic loss has only been limited to January of 1994 i.e. for a period of 5 years. There is a possibility that he could be offered a job by the company.

Taking all the above factors together I am satisfied that damages of \$26,000.00 should be awarded to Paerata under heads of damage (4), (5), and (6).

Travel expenses are allowed for \$100.00

Total amount of damages allowed therefore is \$45,560.40 less \$9,000.00, being Workmen's Compensation already paid equals \$36,560.40.

I award damages to this amount to be payable with immediate effect.

A handwritten signature in black ink, appearing to read "Palmer", with a horizontal line striking through the middle of the letters.

(A.R. Palmer)

**JUDGE**