HELEN TEIOLI AN INFANT SUING BY HER NEXT FRIEND AND MOTHER ALICE TEIOLI -v- DANTE TEIOLI

High Court of Solomon Islands
(Muria, CJ.)
Civil Case No. 5 of 1995

Hearing: 26th June 1995
Judgment: 12th October 1995

A. Radclyffe for Plaintiff
J. Corrin for Defendant

MURIA CJ: This action has been brought by the plaintiff suing by her next friend against the defendant, claiming damages for injuries suffered as a result of an accident caused by the negligent driving of the defendant. Liability is admitted by the defendant and so the issue in this case is one of quantum of damages only.

It is necessary, before proceeding further, to consider briefly the facts relating to the injured plaintiff in this case. The plaintiff is an infant and she was a passenger in an Isuzu 3 ton truck Reg. No. A1874 driven by the Defendant, her father, on 16 July 1992. As a result of the negligent driving of the defendant the vehicle collided with Bonege Bridge on West Guadalcanal.

As a result of the collision the plaintiff sustained severe injuries. Her left leg was severed below the knee in the accident. She also suffered a malunited fracture of her left hip. She had to undergo a number of operations as a result of injuries she suffered. According to the medical reports the plaintiff would still have to undergo treatment for her injuries, particularly, for her hip injury which will involve removal of metal implants in the left hip. She had also been fitted with an artificial leg and that would also need some medical attention for the years to come for adjustments according to the growth of the stump of her left leg. This simply means that from time to time she will have to have a change of artificial leg as she grows.

The reports on the injuries suffered by the plaintiff in this case clearly reveal that the injuries were very serious and that they have a considerable impact on the plaintiff's physical condition, now and in the future. Although it cannot be over-emphasised, I have no doubt that the change in the plaintiff's physical condition would have some measure of psychological effect on her as well. Again, there can be no doubt whatsoever that the plaintiff will lose some of the amenities of life as a result of the accident and the injuries she suffered.

For the plaintiff, it has been argued by Mr. Radclyffe that the court in awarding damages to the plaintiff in this case must recognise the present as well as the future circumstances of the plaintiff taking into account also the general standard of compensation award in this jurisdiction. Counsel conceded, however, that damages are at large and are awarded at discretion of the court.

Counsel for the plaintiff has urged the court accept the view that the amount paid by the defendant into court of $40,000.00 is inadequate to satisfy the plaintiff's claim for general damages in this case. It would appear also that Counsel has contended that even the statutory maximum of $60,000.00 under the Motor Vehicles (TP) Insurance (Amendment) Act 1983 would not reflect a fair award in the eyes of the community for an accident, as there have been claims coming before the court that are beyond $60,000.00.

Ms Corrin of Counsel for the defendant on the other hand urged the court that although the court is not bound by the amount set out in the Motor Vehicle (TP) Insurance (Amendment) Act 1983, it is nevertheless worth bearing in mind that Parliament has seen it fit to put a figure such as $60,000.00 as representing a fair award in the eyes of the community in a third party insurance claim arising out of an accident.

In the present case Counsel for the defendant conceded the claim for special damages. As to the general (non-pecuniary) damages, Counsel urged the court to reject any claim by the plaintiff for future economic loss and that the court should only consider on award that is fair in the eyes of the community for loss of amenities of life, pain and suffering and general inconvenience and disfigurement. The suggestion running through defence Counsel's argument is that the plaintiff is not entitled to anything more than that which had been paid into, that is, $40,000.00.

Admittedly, I find the question of assessment of damages to be one of the most difficult problems to fact. This is particularly so as the injured person can only be compensated in money but in reality there is no relationship between the injuries suffered and money. It is the undoubted truth that there is no money in the world that can adequately compensate the plaintiff for the loss of her leg. The court must therefore do the best it can in assessing the award and come to an amount which, though it can never be adequate in truth, is reasonable in the circumstances of this case. see *Lee -v- Mayor of Manchester [1953] C.A. No. 277* and see also the case of *The Mediana [1900] A.C. 113* where at page 116 the Earl of Halsbury L.C. remarked on the question of damages for the loss of the services of a damaged lightship as follows:

> *"Of course the whole region of inquiry into damages is one of extreme difficulty. You very often cannot even lay down any principle upon which you can give damages; nevertheless it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident. In truth, I think it would be very arguable to say that a person would be entitled to no damages for such things. What manly mind cares about pain and suffering that is past? But nevertheless the law recognises that as a topic upon which damages may be given."*

In this particular case, the plaintiff, a little girl now aged 10 but who was 7½ years old at the time of the accident, lost her left leg below the knee in the accident on 16 July 1992. She has now been fitted with an artificial leg which to a limited extent will make up for the loss. How much use that artificial limb will be to her, we cannot say but there is no doubt that it will be limited.

The court has been asked to give an award to compensate the plaintiff for the loss of amenities and loss of physical ability arising out of the disability arising out of the disability she suffered. As a starting point in the consideration of this matter, Counsel has referred to the case of *Longa -v- Solomon Taiyo Ltd (1980-1981) SILR* 239 which sets out the approach to take in a case of this nature.

In *Longa*, Daly CJ acknowledged the value of observing awards from other jurisdictions and went on to set out the various considerations to be taken into account when assessing non-pecuniary damages. These are set out at page 257 as:

(1) the need to be fair to the plaintiff as an individual;
(2) the need to be fair in the eyes of the community; and
(3) the need to be fair to the plaintiffs generally.

After setting out the basic considerations, Daly CJ then proceeded to deal with the assessment of general damages under the heads: Loss of amenities of life, pain and suffering and general inconvenience; and disfigurement. While accepting the basic principles in *Longa's* case, it must be borne in mind that *Longa* is a case concerning a claim for damages arising out of injuries to one eye. The present case concerns a loss of one leg below the knee.

The court had the benefit of seeing the plaintiff in court. She showed the court her artificial left leg. It certainly displayed a sight totally different to that of a normal limb of a person. What else can that be called but a disfigurement.

For a Solomon Islander, a loss of a leg is in my view more serious than a loss of an eye. It would be too much of an assumption in a twilight world to suggest now that this plaintiff would be able to manage well with her future if she can pursue a career path which can be tailored to her circumstances because that really depends on a number of factors, such as, being able to successfully complete her education or being able to find the opportunity to obtain a job for a disable person in her position, or simply being able to cope with the advancement of society by her with disability and other factors. Of course, the position would be different for a person who has had a job and suffered disability thereafter as a result of an accident. In such a situation, the discussions in *Liliau -v- Trading Company (Solomons) Ltd (1983) SILR 10, Longa -v- Solomon Taiyo Ltd (1980-1981) SILR 239, Sukumia -v- SIPL (1982) SILR 142, Jolly Hardware -v- Suluburu (1985/1986) SILR 81 and Paerata -v- KTC (1993) CC24/93* on this principle of tailoring a career path to suit the circumstances of an injured person would be well worth noting.

Under the head, Loss of amenities of life, some consideration must be taken, not only of the resultant disability suffered by the plaintiff, but also of the age of the plaintiff. In *Longa* the court considered that a loss of one eye to a 22 year old Solomon Islander did not present much of an aggravating feature to the loss of amenities to Mr Longa since he had returned to his village and helped run a cattle project, a coconut plantation and a store. The court awarded $5,000.00 general damages in *Longa's* case.

In Bird -v- Cocking [1951] 2 TLR 1260 the English Court of Appeal also considered the effect of the plaintiff's age on assessment of damages for loss of amenities of life. In that case a total award of £10,000 damages to a 63 year old plaintiff was considered too high. In *Lee -v- Mayor of Manchester* (above) the plaintiff was a little girl of 5 years old. She was injured by the defendant's vehicle. She had her right leg amputated below the knee. She had several operations including some painful skin grafting leaving scars on her abdomen. She was awarded £7,000 but the Court of Appeal reduced it to £4,000. In *Paerata's* case the plaintiff was 32 years old at the time of the trial. He was awarded $26,000 for general damages.

The present plaintiff is now 10 years old and she comes from an area in the society where women are expected to play an important role in their community. They are expected to participate in physical tasks in their contributions to their family commitments. For this plaintiff, her expected contributions will be limited. Even now as she is growing up, her contributions to her share of the family tasks are limited. Indeed her participation in school activities would be limited. Thus for many more years to come, the plaintiff will have to bear all these limitations as a result of her physical disability.

As to pain and suffering and general inconvenience, the evidence before the court was that the plaintiff's left leg was severed during the accident. She had been hospitalised from 16 to 23 September 1992 and again on 16 March 1994 for 14 nights and again from 13 to 23 July 1994 for 11 nights. She has had several operations. It does not take much imagination to appreciate the pain and suffering which the plaintiff had undergone during those period, particularly at the time immediately after the accident.

In contrast with *Liliau, Longa, Sukumia, Suluburu and Paerata*, the present case concerns a plaintiff whose future economic loss cannot be ascertained whereas in those former cases future economic loss could be assessed as the plaintiffs were employed at the time of the accidents. I agree with Ms Corrin that future economic loss should not be considered in this case and I bear this in mind in assessing damages in this case.

Cases from PNG had been referred to by Counsel, such cases as *Kirai -v- State (1990) No. 821 N/Ct, Rose Terima -v- Motor Vehicles Insurance (1994) No. 1196 and David Korrolly & Others -v- Motor Vehicles Insurance (1991) N/Ct No. 941.* I am grateful to Counsel for referring these cases to the court. There is one message running through all these cases, and that is, in considering the measure of awards some sense of reasonableness of the amount to be awarded must be reached.

Special damages have been conceded in this case and I need not deal with it. The general damages is at large here and it is within the discretion of the court.

Doing the best I can and having considered the evidence and all the relevant factors I have come to the conclusion that the proper award for non-pecuniary or general damages in this case is $23,000.00

On the question of interest, Counsel for the defendant suggests that it should be assessed from the date of trial rather than from the date of issue of the writ. Under the Law Reform (Miscellaneous Provisions) Act 1934, the

court has power to order interest to be included in the sum for which judgment is given "for the whole or part of the period between the date when the cause of action arose and date of judgment."

The cause of action in this case arose on 16 July 1992 and the action was not commenced until 12 January 1995. In law there is power in the court order interest to be added onto the judgment sum with effect from 16 July 1992. However in view of the practice which this court has adopted so far, I shall order that an interest at the rate of 5% per annum be included in the judgment sum in this case from the date of issue of the Writ.

Judgment for the plaintiff accordingly with costs.

(G.J.B. Muria)
CHIEF JUSTICE