Soakai v Taulua, Minister of Police and Government of Tonga

Supreme Court
Hill J
Civil Cases 163, 164, 165/1982

Police - civil liability - police liable in negligence for incorrectly informing motorist that she could not drive motor vehicle

Police - civil liability - police liable in tort for officer who slaps arrested person

Police - offier in charge of police station for purposes of s22 Police Act is the officer in charge of that part of the police station where routine police work connected with the public is carried on.

Torts - negligence - liability of police in negligence for incorrectly informing motorist that he or she cannot drive motor vehicle

Torts - negligence - plaintiff must show that damage has been caused by negligent act

Torts - battery - civil liability for slapping arrested person

Torts - damages for physical injury not reduced by provocation by plaintiff

Traffic offences - s16 Motor Traffic Act does not provide that licence of motorist shall be suspended unless he is charged - issue of notice of intended prosecution not sufficient.

Lata Soakai, who had been involved in a traffic accident, sued the police for negligence because they had incorrectly directed her that she could not drive her vehicle away from the police station after she had been issued with a notice of intended prosecution.

She also sued the police for assault, because a police officer slapped her after she threw her writing pad at him when he was arresting her, and for false imprisonment because she was placed in the cells before being released.

HELD:
Dismissing her first and third claims, and upholding her second claim:

(1) Section 16 Motor Traffic Act provides that the licence of a motorist is

suspended when he or she is charged with an offence, but not when a notice of intended prosecution for an offence is issued, so it was incorrect for the police to direct a motorist not to drive away when they had issued a notice of intended prosecution;

(2) The police would be liable for incorrectly telling a motorist that he or she could not drive a vehicle, but in this case the plaintiff had suffered no damage, and so she could not sue for negligence;

(3) It was unlawful for the police officer to slap the plaintiff when she was arrested.

(4) Damages recoverable for physical injuries should not be reduced by reason of provocation by the plaintiff.

(5) The plaintiff had been brought before the police officer in charge of the charge room as authorised by s22 Police Act and so there was no false imprisonment.

(6) Even if s22 Police Act required that the plaintiff be brought before the Police Inspector in charge of the whole Police Complex, the plaintiff had failed to prove that she would have been released.

Statutes considered
Police Act s22
Motor Traffic Act s16

Cases referred to
Roncarelli v Duplessis 16 Dominion L.R.
Hedley Byrne & Co. Ltd. v Heller and Partners Ltd [1963] 2 All ER 575
Wilcher v Barret [1965] 2 All ER 271

Counsel for the Plaintiff : Mr Niu
Counsel for the Defendants : Mr Tupou

Hill J

Judgment

On the 13th July Lata Soakai was involved in a traffic accident and she very properly went and reported this to the police. Indeed she took a police officer to the scene of the accident. That was Police Officer Fifita. They subsequently went back to the Traffic Department together, and he gave her a piece of paper which I am satisfied, was a Notice of Intended Prosecution. Now under the Traffic Act, he has to do this unless he charges her at the time. Because if he does not, then he cannot prosecute. I now put the 3 alternatives precisely because I think it is important in view of what I am going to say that they should be accurately stated. Either the person involved must be warned at the time of the offence that he may be prosecuted, or within 14 days of the commission of the offence a summons must be served on him, or within 14 days of the commission of the offence a Notice of Intended Prosecution containing specified details must be served on him. So the officer to protect the Police position served on the Plaintiff a Notice of Intended Prosecution which is produced in front of the Court and is Exhibit 7.

A few days later on the 20th she went to the Traffic Department again to get a Vehicle Licence or as the Police say to produce her licence. And it was then that the trouble began. The 1st Defendant in these 3 actions whom I shall refer to as Coporal Lui came out and he formed the impression quite rightly, that the plaintiff was going to drive her vehicle away. He told her that she must not do so. She got very angry at this and made an extremely rude and vulgar remark to the Police Officer. There is some dispute about what happened after this. She says that he told her that he was going to arrest her for using obscene language to a Police Officer. She said she was not aware of this. However she walked rapidly away from the scene of the incident and when her hat fell off she failed to pick it up. I am quite satisfied that the Police Officer did tell her that he was going to arrest her for using obscene language and that even if he did not, it must have been perfectly obvious to her when he later came over to arrest her with two Police women, that she was being arrested for using insulting and obscene language to a Police Officer.

Before we leave this particular incident I must point out that the Police Officer was wrong in telling her she could not drive the vehicle. And the reason for that is this; that the section which deals with the suspension of Driving Licences expressly provides that "when a person is charged, their licence will be suspended". See Sec.16 of the Motor Traffic Act Chap.99 as amended by Act 21 of 1973. Now in my view this an extremely harsh section because it may result as it did in this case, in a perfectly innocent person, losing their licence for a period of time. In my view it is a section which ought not to be in any way enlarged and it must be strictly interpreted in favour of the subject. It is to be noted that the section provides that the licence will be suspended so there is no discretion in anybody to leave it with him. The requirement is, that the person whose licence is to be suspended must be charged. And I am certainly not prepared to extend that to include "served with a Notice of Intended Prosecution". Therefore as I say, Corporal Lui was in the wrong when he told her that she could not drive because there is no doubt that she had not been charged by that date.

Now this incident is the subject of the 1st claim because these claims were all brought separately although they have been consolidated. The plaintiff says that she sustained damage by being wrongfully prohibited from driving a motor car. This is, I think new ground in that nobody has ever brought a claim like this before. But having

given the matter the best attention I can, and read a Canadian case, very helpfully supplied by Mr Niu, that is Roncarelli v Duplessis 16 Dominion Law Reports and considered the English cases as dealing with negligent misrepresentation such as Hedley Byrne & Co Ltd v Hellen and Partners Ltd. [1963] All ER 575, I have come to the conclusion that it is possible for there to be a claim for damages in a situation like this provided there is actual damage. For example, if the plaintiff had been in the car to go to the airport or take a plane to Australia or somewhere and as a result she missed the plane, her ticket had become invalid and she suffered damage and inconvenience, then I think a claim would lie.

But in this case there really was no damage because the distances were so small she could easily walk them until she could instruct an advocate and come in front of the Judge and say "look this is what the police are doing, please issue an injunction to stop them doing it." And that of course was the correct solution open to her. She should have said "look you're wrong about the Law, and unless you let me drive that car away I shall take you up infront of the Judge at 9 o'clock tomorrow morning when these sort of summonses are heard and I'll get an injunction against you". Therefore in the first actior. I am afraid that the plaintiff fails. However I hope that the Traffic Department will take note of this and will get their procedure right in the future because if they had not made this mistake none of this lamentable case would ever have arisen.

To resume the story, the plaintiff was working in the Central Registry at the time not for the Government but in doing private research. Corporal Lui came over and tried to get her to go to the Police Station. She said she would not do so unless there was a police woman so he telephoned and got 2 police women. They duly arrived and persuaded her to go over to the Central Police Station just across the road. He was perfectly right to do this because as we heard when I read out the statutes on the matter, if he arrests her he must take her either to a Magistrate, to a Police Officer of the rank of sergeant or to an Officer-in-Charge of a Police Station. And I will consider who that is shortly.

It was then that the most unfortunate part of this unhappy story occurred. I will put it in the plaintiff's words. "I said where is Haini. He grimaced. I stood at the counter on the public side he was on my right. I moved to the left. I then threw my writing pad at him. He then slapped me." The Police Officer the (First Defendant) says this which is virtually the same. "I pushed her holding her shoulders. I turned to go out and the pad hit the side of my face. I slapped her with my right hand." Well the incident does not reflect much credit on either party. The plaintiff, she knew enough, she's well enough educated to know that it is absolutely wrong to hit a police officer particularly in the execution of his duty. Because the police have a difficult task to perform and they must be protected and people are simply not allowed to assault them. As I remarked when I heard what happened to her in the Magistrates' Court she was very lucky she did not come up in front of me. However, and that is what this action is about, prisoners are also protected-persons, and it is a most serious matter for a police officer to strike a prisoner. So there is really no defence. There is liability in all three Defendants.

I now proceed to consider the basis on which damages should be awarded. First the injuries. I have the benefit of a medical report by Dr 'Opeti Lutui who said that there was bruising of the cheek and a small laceration quarter of a centimetre on the side of the forehead, in the scalp above the hairline and there was also swelling and bruising at the same region. No treatment was required. I think the fitting description of these injuries would be slight but not trivial. The law on this matter is conveniently set out in the fourth

edition of Halsbury Vol.12 paragraph 1158 "Provocation does not serve to reduce the damages recoverable by way of compensation for physical injury. Though it may negative the award of aggravated or exemplary damages." Those are damages which are awarded over and above those necessary to compensate the plaintiff and their purpose is to punish the defendant. Now on the facts as I have stated them, I think it would be quite wrong to award exemplary damages in this case as I would do if she behaved in a perfectly proper fashion. However she is entitled to say that in addition to the pain and suffering which I have mentioned there is also the disgrace which is considerable of being slapped in public and I take that into account. Doing the best I can I think that the proper award is 300 pa'anga for the physical pain and suffering and further $300 for the disgrace of being slapped and so on.

I now turn to the most difficult question in this case and that is the claim for false imprisonment. Counsel for the plaintiff to whom I am indebted for his careful argument, puts the case like this. He says that any police officer who arrests somebody without a warrant must do one or three things. Section 22 subsection 1 of the Police Act 1968 in fact reads: "A Police Officer making an arrest without warrant shall without unnecessary delay and subject to any provisions under any Act as to bail, take or send the person arrested before a Magistrate there to be charged, or before a police officer of the rank of sergeant or above, or before the Police Officer in charge of the Police Station." This is to be understood as the police station to which the accused has been brought of course.

Now a considerable argument has raged around what is meant by the police officer in charge of the Police Station and I should say as a matter of interest that virtually the same words are used in Halsbury Statement of the English Law, "The Officer in charge of the Police Station." The rival contentions are: on behalf of the plaintiff it said that she should have been taken in front of the inspector who is in charge of the whole police complex here in central Nuku'alofa. Whereas Mr Tupou for the Defendant says that the proper person is the officer in charge of the charge room. And that the practice is that all prisoners are brought infront of him and that he is the correct person within the meaning of the Act.

The Act then provides in sub-section 2 of that section and I paraphrase it that if it is not practicable to bring the person arrested before a Magistrate within 24 hours after he has been taken into custody then the sergeant or police officer in charge of the station shall inquire into the charge and that officer may either release him on bail or detain him in custody.

What happened on this occasion was this. The corporal who arrested the plaintiff, went across to the police station before she was brought there by the two police women. He told the officer-in-charge of the charge room why she had been arrested. "I merely told Corporal Fifita Taufa the officer in charge why I had arrested her". He continued, "I did not order her to be put in the cell. She was not put in the cell before I left". The police who actually put her in the cell was even vaguer. This is F. Faletau. She said, "he told us to charge her, but I did not charge her. He did not tell me to put her in a cell, nobody did. It was just routine". Now that evidence is corroborated by Corporal Taufa who is in charge of the charge room and he said "I did not order her to be put in the cell". It also appears from the evidence of the various police officers that she was never charged with striking a police officer on this occasion, until much later.

It therefore falls to be considered what is the duty of the police officer concerned in

a situation like this, and in particular, were the police in breach of their duty on this occasion. The Police Act 1968 as I have said deals with this situation in Sec.22 and the way that section is drafted signifies to me that it is only if the police consider that the accused person, the arrested person, cannot be brought in front of the Magistrate within 24 hours that they are under an obligation to consider the matter. In this particular case it seems to me that the police did and could and indeed should have thought that it would be easily possible to bring the plaintiff in front of a magistrate within 24 hours. All this happened in the early afternoon and there is always a magistrate available here during working days. While they have the power if they want to, to consider the matter and indeed I think release the person on bail, they are not obliged to do so unless they think they cannot get him or her in front of a Magistrate within 24 hours. Now in some cases not of a serious nature, no doubt the police officer in charge of the police station before whom the person is brought, may look at the case and think that it is not very serious and that the person can be bailed in a small sum of money to appear at the Magistrates' Court the next morning. Or indeed tell him to appear without putting him on bail. All of which powers are conferred on him by sub-section 2.

I agree with the submissions of Mr Tupou that once Corporal Lui had delivered the arrested person to the police station he was, as it were, "functus officio", in that he had performed his duty, and any subsequent duties relating to the plaintiff devolved on the officer for the time being in charge of the station. Now the officer in charge of the Police Station was, first of all the Corporal, and then, when he was relieved, a Lance Corporal. It is common ground that the plaintiff was not brought up in front of an Inspector. After listening to everthing that has been said I have come to the conclusion that the words 'police station' mean that station that place where routine police work connected with the public is carried out. It does not include the Traffic Department or the Licensing Department if there is one, except in the most general way that you could say well the Traffic Department is at the Police Station. So that it was on Corporal Taufa that the duty devolved.

I think it is a pity that the question ofwhether the plaintiff was detained or not was treated as a matter of routine. But because of the wording of the section I do not think that Taufa or the Lance Corporal who succeeded him, that is Lance Corporal 219, were obliged to deal with the matter because it was not in the contemplation of either of them that this woman would not be taken in front of the Magistrate the next morning. In fact, surprisingly enough, she was not taken in front of the Magistrate but was released. However there is authority for the proposition in the Court of Appeal case Wilcher v Barret [1965] 2 All England 271 that it does not make a person's arrest unlawful if they are relesed without being taken in front of a Magistrate. Moreover to recover damages the plaintiff would have to convince me, beyond reasonable doubt, that if I am wrong about the charge room aspect and she should been taken in front of the Inspector, that she would have been released on bail. I must say I should have taken a lot of convincing because she was obviously in a very bad temper and might easily have committed another offence of the same nature. If I had been the Inspector I would have said well you had better spend the night in the cells and cool off and we'll see about things tomorrow morning when we find out how you are". And that is what happened and she was in fact released the next morning. And therefore there must be judgment for the defendants on the third of these actions which deals with False Imprisonment.

So the final outcome in all this is that there will be judgment for the plaintiff against the Defendants for 600 pa'anga. Now three writs were issued in this case which were consolidated. That means they were brought together and treated like one action. It would obviously not be right for the defendants to have to pay the costs relating to the writs on which they have been successful. On the other hand the plaintiff is entitled to all the costs reasonably incurred in connection with the action in which she was successful i.e. 164. The practice is, in situations like this, to give the plaintiff the costs of the action in which she was successful and to give to the defendant the costs incurred solely in connection with the two actions which he successfully defended. And that is the order which I shall
280 make in this case. So the plaintiff will have the costs of 164 to be taxed if not agreed. The defendant will have the costs solely attributable to the defence in 163 and 165 and to avoid a lot of doubt, and the practice is, that where the actions are inextricably bound-up like this, the fees of the counsel go with the costs of the successful party. In the action 164 these are paid by the defendants. The defendants get the costs solely attributable to their defences in action 163 and 165 which they won.