

Falakiko v Tukala

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Supreme Court, Nuku'alofa

Ward C.J.

Civil Case No.53/1991

13 February, 1992

Negligence - motor accident - general damages for personal injuries - deduction for customary gifts.

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Damages - assessment for personal injuries deduction for customary gifts.

The plaintiff claimed general damages of \$50,000 and \$2040 special damages for serious leg injuries sustained when she was a passenger on a truck driven by the defendant which was involved in an accident.

HELD:

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- 1 The accident was as a result of the negligence of the defendant and there was no contributory negligence;
2. General damages must be fair compensation, but not excessive; and must be fair to both parties;
3. General damages here should include compensation for pain and suffering, physical deformity, affect on marriage prospects and dignity and confidence and affect on ability to do future work.
4. The value of gifts presented as part of a traditional apology should be taken into account and deducted from the damages to be awarded.
5. The court awarded general damages of \$34,000 and special damages of \$2008, less \$3,200 for the value of the customary gifts.

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Judgment

The plaintiff claims damages for injuries caused by the negligence of the defendant.

There is no dispute that the injuries were caused when the defendant lost control of the vehicle he was driving and it hit a coconut tree stump throwing out the plaintiff and others who were travelling in the open back. The plaintiff suffered a compound fracture dislocation of the left ankle and a simple fracture accompanied by substantial tissue loss of the right tibia & fibula. The plaintiff was, as a result, bed-ridden in hospital for six weeks and further detained for another 6 1/2 weeks whilst she tried to walk again.

50 These injuries have left very noticeable scars and deformity. The left ankle is mishapen as a result and the right shin is bent and has substantial swelling and scarring. The doctor's opinion which is unchallenged save to the extent of a residual limp, is that she will retain a permanent deformity. This could, in the case of the right leg, be reduced with treatment by an orthopaedic surgeon but the nearest facilities of that nature are in New Zealand. Such treatment would improve her right leg but only partially.

60 The defence pleaded is that the accident occurred without any negligence by the driver and that the plaintiff was travelling on the truck without the knowledge and permission of the defendant. As a further ground of defence in the nature of a set off, he pleads he has presented a number of items to the plaintiff in a traditional apology and was also assaulted himself at the time by the plaintiff's father. The plaintiff admits the gifts and the assault but disputes the value placed on the gifts by the defendant.

Both sides called a number of witnesses and there was little dispute except as to the reason for the accident. (The Chief Justice then traversed the facts and continued):

70 The burden is on the plaintiff and the Court must be satisfied on the preponderance of probabilities that the evidence is such that negligence might reasonably be inferred from it. That legal burden has been discharged by the plaintiff and the evidence of the accident itself is sufficient. On the evidence I am equally satisfied on the preponderance of probabilities the manner of the defendant's driving was negligent and caused the injuries to the plaintiff. It was a clear case of failure in his duty to take care and as a result the plaintiff suffered injuries. I find for the plaintiff.

The relief sought is (1) \$50,000 general damage (2) \$1,440 loss of wages from the accident to the date of the statement of claim. (3) \$600 costs of hospitalisation, interest and costs.

80 I deal with the special damages first. The plaintiff's evidence, which is unchallenged, is that she was off work from 24th August 1990 to 25th August 1991 and earns, and earned before the accident, \$38.55 per week. There was no evidence of whether this was a gross or nett figure. The plaintiff's father stated she received just over \$30 and in the absence of anything else I take \$32 as the nett income. She was paid on a daily basis. I heard no evidence of holidays or other periods off work. I shall deduct an estimated period for leave and possible sickness of 3 weeks and award \$1408 for loss of earnings.

The cost of hospitalisation related to the expenses incurred by the plaintiff's parents visiting her and providing additional food. There was reference to the fact the hospital was owed money but no figure was quoted. The cost of food and fares to the hospital was put, by the father, at \$50-\$60 per week. That figure was not challenged. I award damages at \$50 per week for 12 weeks under this head to make a total of \$600.

90 The claim for general damages relates to a number of factors. The injuries were serious and caused considerable pain and suffering to the plaintiff. They have left her with

severe scarring to her left ankle and a shortened and bent right leg. Although when asked to walk across court she showed little sign of a limp, it is inevitable because the doctor's evidence is that the leg is shorter. Those deformities are likely to be more or less permanent even if treated abroad by an orthopaedic surgeon. The plaintiff is a young unmarried woman of 23. She has scars that embarrass her and prevent her from going dancing which she did before. Her ability to do household chores that involve standing is reduced. Pain can still be considerable and sufficient for her to stop work but the incidence is decreasing. She has the same job as before but she can only do a reduced amount of lifting and carrying.

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I feel it is correct to fix a global figure for such injuries. The Court must award a reasonable figure as compensation for the injuries that is fair compensation but is not excessive. It must be fair to both parties. I attach considerable weight to the affect on her marriage prospects, the ability to carry out her normal domestic duties in the future and the effect of such disfigurement on her dignity and confidence. I feel a proper figure for all these matters is \$34,000 general damages.

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No contributory negligence has been pleaded but the defendant is entitled to deduct the value of goods given by him to the plaintiff or her parents. The values are disputed and the values pleaded have been changed in evidence. I felt the plaintiff's father was unwilling in the witness box to concede anything on this and simply tried to reduce the figures. I felt the defendant on the other hand was trying to be fair. I accept his evidence on this. He valued the cow at \$1,500, the tapa at \$450, the yams at \$500 and the pig at \$500. He did not attempt to value the mat but the plaintiff accepted a value of \$250 and I accept that. Thus the total to be deducted from the award is \$3,200.

I order interest at 10% from the date of judgment and costs to the plaintiff to be taxed if not agreed.