

BETWEEN: VANUATU COPRA & COCOA EXPORTERS LIMITED
First Appellant

AND: HENRY ALEXANDER FORD HOOKER
Second Appellant

AND: ENID TUTUO AGWAIASI AND
ZARIELLA AGWAIASI
Respondents

Date of Hearing: 9 May 2024

Before: Hon. Chief Justice V. Lunabek
Hon. Justice J.W. von Doussa
Hon. Justice R. Asher
Hon. Justice D. Aru
Hon. Justice V.M. Trief
Hon. Justice E.P. Goldsbrough
Hon. Justice W.K. Hastings

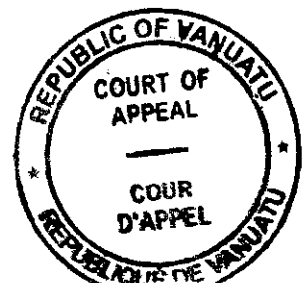
Counsel: M.J. Hurley and A. Kaimet for the Appellants
P. Fiuka for the Respondents

Date of Decision: 17 May 2024

JUDGMENT OF THE COURT

A. Introduction

1. This is an appeal against a judgment of the Supreme Court dated 2 February 2024, where the learned trial Judge made an award of damages in favour of the respondents. Their claim for damages related to severe personal injuries suffered on 16 February 2022 when the second appellant Henry Alexander Ford Hooker, then employee of the first appellant Vanuatu Copra & Cocoa Exporters Limited ('VCCE'), lost control of the loader that he was driving and hit the respondents who were walking along the side of the road at Luganville on Santo.
2. The respondents are citizens of the Solomon Islands. The first respondent Enid Tutuo Agwaiasi was working as a nurse at the Northern District Hospital at Luganville under contract with the Vanuatu Government. The second respondent is her daughter Zariella Agwaiasi, who was 20 years old at the time and enrolled at university.



3. Mr Hooker was convicted of careless driving and given a suspended sentence.
4. In the judgment, the primary Judge found the appellants jointly and severally liable in negligence. He held that there was no contributory negligence on the part of the respondents. The appellants had accepted the respondents' medical evidence as to the nature and extent of their injuries. The primary Judge awarded general damages and damages for pain and suffering to each respondent, loss of earnings to Mrs Agwaiasi, special damages, interest and costs. He stated the following at [33]-[37] of the judgment:

33. *I accept the defendants' calculations of damages. Mrs Enid Agwaiasi to be as follows, but disallowing the 33% for contributory negligence: -*

a)	<i>For right ankle injuries</i>	<i>VT5,801,600</i>
	<i>Lacerations and abrasions</i>	<i>VT2,755,000</i>
		<i><u>VT8,556,600</u></i>
b)	<i>For left ankle injuries</i>	<i>VT3,935,320</i>
	<i>And left leg fractures</i>	<i>VT4,440,000</i>
		<i><u>VT8,375,320</u></i>
c)	<i>For Pain & Suffering with</i>	
	<i>Stress & anxiety</i>	<i>VT4,000,000 (as submitted by claimants)</i>
d)	<i>For loss of earnings (x13 fortnight) =</i>	<i>VT847,340</i>
	<i>Total damages =</i>	<i><u>VT23,627,126</u></i>

34. *For Ms Zariella Agwaiasi, she has Judgment for: -*

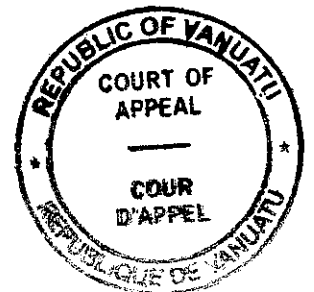
a)	<i>Head injuries</i>	<i>VT457,209</i>
b)	<i>For facial lacerations</i>	<i>VT2,033,520</i>
c)	<i>For left eye injury</i>	<i>VT584,600</i>
d)	<i>For left leg injury</i>	<i>VT5,801,600</i>
e)	<i>For right leg injuries</i>	<i>VT14,245,000</i>
f)	<i>For Pain & Suffering with</i>	
	<i>Stress & anxiety</i>	<i>VT4,000,000 (as submitted by claimants)</i>
	<i>Total damages =</i>	<i><u>VT27,121,929</u></i>

35. *For Special damages as submitted by the claimants, I accept the amount of VT1,847,863.*

36. *I assess the total damages awarded to the two claimants to be in the total sum of VT52,597,018.*

37. *I therefore enter Judgment in favour of the two claimants against the first and second Defendants jointly and severally for the following sums: -*

- a) *For Mrs Enid T. Agwaiasi – VT23,627,126 as general damages, and as special damages, the sum of VT1,847,863;*



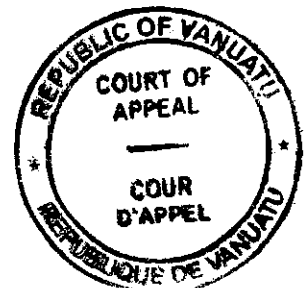
b) For Ms Zariella Agwaiasi – VT27,121,929 as general damages.

B. The Appeal and Submissions

5. The appeal was advanced on the following grounds:

- (i) Grounds 1 and 4 – that the primary Judge erred in that despite accepting the appellants' calculations of damages based on the United Kingdom ('UK') Judicial College's *Guidelines for the Assessment of General Damages in Personal Injury Cases* (16th ed.) (the '*Guidelines*'), "*but disallowing the 33% for contributory negligence*", awarded general damages without reducing the comparable awards by one third to take into account the various socio-economic differences between the UK and Vanuatu. Accordingly, the award for Mrs Enid Agwaiasi should not have exceeded VT9,741,512 and for Ms Zariella Agwaiasi should not have exceeded VT15,404,500;
- (ii) Ground 2 – that the primary Judge erred in awarding VT4,000,000 damages for pain, suffering, stress and anxiety when the claims for pain and suffering, including stress and anxiety, fall within the general damages awards under the Guidelines and are not separate components of general damages awards otherwise it would result in double or multiple counting: *Shem v North Efate Timber Ltd* [2008] VUSC 48 per Tuohy J at [8]-[10] and *Tari v Telecom Vanuatu Limited*, unreported judgment dated 13 June 2018 at [15] in Civil Case No. 17/1228 per Saksak J (not overturned on appeal);
- (iii) Ground 3 – that the primary Judge erred in finding for loss of earnings when there was no evidence adduced from the period of Mrs Agwaiasi's admission in hospital that she had not received her fortnightly salary after the accident; and
- (iv) Ground 5 – that apart from the costs of care VT163,500 and airfare to the Solomon Islands VT62,050, there was no evidence adduced to substantiate the claims for ongoing care of VT180,000, medication costs of VT500,000 or ongoing medication of VT1,000,000 therefore those items should have been disallowed.

6. The respondents conceded grounds 1 and 4 in that they agreed with the primary Judge's calculations of the general damages (which were based on the Schedule to the appellants' submissions) and that those totals be reduced by one third to take into account the socio-economic differences between the UK and Vanuatu, therefore the award for Mrs Enid Agwaiasi should be VT11,287,947 and for Ms Zariella Agwaiasi be VT15,414,620. They also conceded grounds 2 and 4. As to ground 5, they agreed that medication costs and ongoing medication be disallowed but that clear evidence was adduced that Ms Zariella Agwaiasi went to the Solomon Islands for bone treatment (which is lacking in Vanuatu) therefore the special damages award should be VT405,550.



7. Respondents' counsel Mr Fiuka submitted that since they had conceded 4 out of the 5 appeal grounds, that the parties should bear their own costs of the appeal. Appellants' counsel Mr Hurley sought costs of VT300,000 as there had been a significant change in the result as to quantum. There was no challenge to the costs in the Supreme Court where the appellants lost on liability. He submitted that the difference between the parties' calculations for general damages for Mrs Enid Agwaiasi was because instead of using the Guidelines-based figure in one instance, the primary Judge used the quantum awarded in *Obed v Kalo* therefore it would be double-dipping to maintain that.

C. Discussion

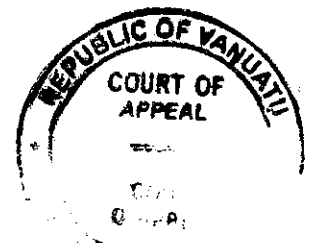
8. It was accepted before the primary Judge that the Guidelines were to be used in his assessment of general damages. The appellants set out in the Schedule to their submissions in the Supreme Court calculations of general damages based on the Guidelines. They also set out awards previously made by the Vanuatu Courts in other personal injury cases. The appellants converted the awards from the Guidelines into vatu and reduced them by one third to take into account the socio-economic differences between the UK and Vanuatu. We agree this was in accordance with the trend in the Supreme Court in *Bernard v Blake* [2013] VUSC 217, *Rovo v Republic of Vanuatu* [2020] VUSC 138, *Nicholas v Yamak* [2020] VUSC 256 and *Covo v Ritsinias* [2021] VUSC 167. Accordingly, the primary Judge erred in not reducing his calculations of the general damages by one third to take into account the various socio-economic differences between the UK and Vanuatu.

9. In *Telecom Vanuatu Ltd v Tari* [2018] VUCA 37, this Court held as follows:

25. ... *The guidance found in the UK Judicial Board of Studies publication can only be that, guidance. It is necessary to look at the particular circumstances of the injured party to arrive at appropriate award of general damages rather than just the injuries suffered. There is no doubt that the impairment experienced by one person as a result of a particular injury may be very different to that experienced by another from exactly the same injury. Obvious examples would be the loss of sight in the right eye of a man already blind in the left eye as opposed to loss of one eye to a normally sighted person; or the loss of a finger by a concert pianist as opposed to a labourer.*

10. This Court's cautionary words were that the Guidelines offered guidance in assessing general damages in personal injury cases. However, it is necessary to look at the particular circumstances of the injured party to arrive at an appropriate award of damages rather than just the injuries suffered. In this matter, however, the parties focused on the injuries suffered without arguing the respondents' particular circumstances.

11. For the reasons set out above, the awards of general damages in [33] and [34] of the judgment dated 2 February 2024 must be set aside. In the circumstances and given the seriousness of the injuries suffered by the respondents, the calculations of general damages accepted by the



primary Judge are reduced by one third so that the following award of general damages is substituted for Mrs Enid Agwaiasi:

(a) For right ankle injuries	VT5,801,600
Lacerations and abrasions	VT2,755,000
(b) For left ankle injuries	VT3,935,320
And left leg fractures	VT4,440,000
Total	VT16,931,920
Reduced by one third	(VT5,643,973)
TOTAL DAMAGES	VT11,287,947

12. The following award of general damages is substituted for Ms Zariella Agwaiasi:

(a) Head injuries	VT 457,209
(b) For facial lacerations	VT2,033,520
(c) Left eye injury	VT 584,600
(d) Left leg injuries	VT5,801,600
(e) And right leg injuries	VT14,245,000
Total	VT23,121,929
Reduced by one third	(VT7,707,309)
TOTAL DAMAGES	VT15,414,620

13. Following the concessions to grounds 2 and 3 of the appeal, the awards for pain and suffering, and for loss of earnings, in [33] of the judgment dated 2 February 2024 must be set aside.

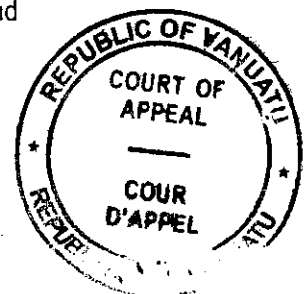
14. As to ground 5 of the appeal, we agree with the respondents that there was evidence adduced that Ms Zariella Agwaiasi went to the Solomon Islands for bone treatment (which is lacking in Vanuatu). Accordingly, the award of special damages in [35] of the judgment dated 2 February 2024 must be set aside and be substituted by an award of VT405,550 for the costs of care, airfare to the Solomon Islands and ongoing care.

D. Result

15. Appeal allowed.

16. The awards of general damages in [33] and [34] and other damages in [35]-[37] of the judgment dated 2 February 2024 are set aside and substituted by the following:

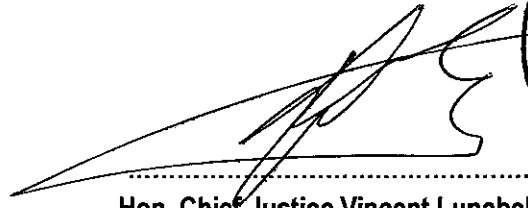
- (i) General damages for Mrs Enid Agwaiasi of VT11,287,947;
- (ii) General damages for Ms Zariella Agwaiasi of VT15,414,620; and
- (iii) Special damages of VT405,550.



17. Costs shall follow the event. Given the concessions made by the respondents, we consider that the amount sought by the appellants for the costs of this appeal is too high, and we fix a lower amount. The respondents are to pay to the appellants the costs of the appeal fixed at VT75,000.

DATED at Port Vila, this 17th day of May 2024

BY THE COURT



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Hon. Chief Justice Vincent Lunabek

