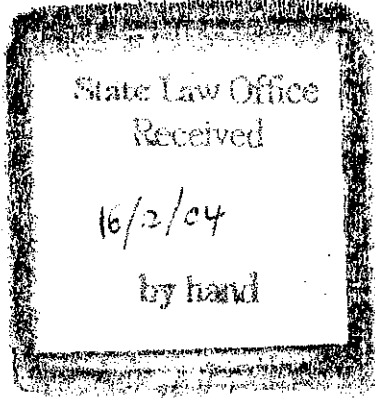


(Civil Jurisdiction)



BETWEEN: ZEBEDDEE TANGA  
Of C/- Chiefs Nakamal Area  
Port Vila, Republic of Vanuatu

*Plaintiff*

AND: THE GOVERNMENT OF THE  
REPUBLIC OF VANUATU of C/-  
Prime Minister's Office, PMB 048,  
Port Vila, Republic of Vanuatu

*First Defendant*

AND: JOHN PAKOA TARIMAS  
Of C/- Vila Police Headquarters  
Port Vila, Republic of Vanuatu

*Second Defendant*

## DECISION ON QUANTUM

On the 28 August 2003, the court made a finding in respect of liability and held that the Second Defendant, John Pakoa Tarimas was liable in negligence. It further found that he was acting in the cause of his duty when he committed the tortious act. John Pakoa Tarimas is a Police Officer with the Vanuatu Police Force. There is no dispute that a relationship of master and servant or employer and employee existed. Moreover, because of this relationship, the First Defendant is liable for the tort committed by his servant, acting in the cause of his employment under the principle of vicarious liability. I reserve the question of damages until now. This decision is restricted to assessment of damages only. The following excerpts taken from the book *The Law of Torts in Australia* by F.A. Trindade and Peter Cane, pp.383-390 and 596-617 in explaining the how to go about making assessment of damages. (Cases cited therein are omitted).

In torts of negligence and strict liability, the basic function of the award of damages is to compensate the plaintiff for his loss. The plaintiff is entitled to *restitution intergrum*, that is, to be put in the position he would have been in had the tort not been committed. The *restitutio* principle applies in its most straight forward way pretrial pecuniary losses (losses in money or money worth) such as hospital expenses or loss of wages. In the

present case losses associated with motor vehicle repairs, cost of transportation, payment of police report and loss of business through non-service of bus would come under this head. Payment of transport and telephone also come under pecuniary losses which can be easily quantified.

The application of the *restitutio* principal is even more problematic in relation to non-pecuniary losses such as pain and suffering and loss of amenities of life. These losses cannot be expressed in money terms, let alone semblance of accuracy. Any payment for non-pecuniary losses must therefore be fair. These difficulties in applying the *restitutio/compensation* principal has produced the idea that although compensation must be "full" it must also be "fair" to the defendant; full so far as assessment in money term is possible, fair to the extent that any money value is seen as arbitrary. Moderation must be exercised in assessing damages for non-pecuniary losses because, since there is no rational relationship between the award and loss, the court might be easily be led to express sympathy for the plaintiff in such an award, ignoring the rights of the defendant to fair treatment.

Having made this observation there must be a need to strike a balance between pecuniary and non-pecuniary losses. Whilst pecuniary losses are easily ascertained, it cannot be the same for non-pecuniary losses. Moreover, claims must be supported by evidence. Plaintiff's claim is for Vt271,000. From evidence losses able to be quantified is in respect to cost of motor vehicle repairs of Vt51,300 Exhibit P7). Seven days loss of business when bus ceased operation due to accident was a legitimate claim. I accept the rate of Vt10,000 per day. Reason being that the Plaintiff's bus was newly acquired in 1998. That time not many public motor vehicles were operating thus allowing Plaintiff's bus to be fully utilized. Claims for telephone calls and transport although legitimate no evidence of exact number of calls and trips made to justify full payment of the claims, thus reduction in the claim. No award was made for worry, anxiety and depression as there was no evidence to support the same. The break-up of the damages appears below.

Cost of Repair (Exhibit P7)

Painting Labour	Vt11,600	
Labour Cost	18,800	
New Number Plate	2,500	
New Paint	6,800	
Other Materials	<u>11,600</u>	Vt51,300

Bus Non- Service

7 days @ Vt10,000/day	70,000
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Telephone (Estimate)

To Police	Vt1,000
To Police Prosecutor	1,000

Police Report- Fee	<u>1,000</u>	3,000
<u>Paper Work</u>		100
<u>Transport (Estimate)</u>		
20 bus trips X 2 X Vt100		<u>4,000</u>
Sub total		Vt128,400
Cost		<u>25,000</u>
Grand Total		Vt153,400


This is a claim for negligence and the court could have made the Defendants share the costs equally. Alternatively, Second Defendant could have been made solely responsible in meeting the entire Plaintiff's claim. However, having heard Mr. Tarimas it appears that he was not in a financially sound position to pay all the claims. His pay advice indicates that his net fortnightly pay was only Vt9000. His action in respect of the incident has cost his promotion. He was demoted from Senior Inspector to Inspector. The Force disciplined him and further deducted his salary for the recovery of repair costs on the police vehicle. At time of this proceeding deduction is continuing. Under these circumstances, it would be unreasonable to make any orders against him under Schedule 2 of the Civil Procedure Rules calculated at the rate of Vt25,000. First Defendant's right to contribution is not distinguished and reserves the right to bring an action for contribution should Mr. Tarimas financial position improves. In the meantime, the following orders are made.

### ORDER

1. First Defendant is to pay Vt128,000
2. John Pakoa Tarimas to pay Vt25,000
3. Interest Nil

Dated at Port Vila this 20th day of November, 2003

By the Court

  
Magistrate

