

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil
Case No. 21/1147 SC/CIVL

BETWEEN: Jacklo Pakoa
Claimant

AND: Gibson Lui
First Defendant

AND: Republic of Vanuatu
Second Defendant

Coram: Justice Dudley Aru
Counsel: Mr. D. Yawha for Claimant
Mr. B. Livo for First Defendant
Mr. S. Aron for Second Defendant

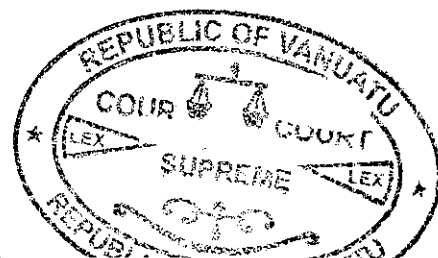
JUDGMENT

Introduction

1. This is a claim for damages for personal injury as a result of a car accident.

Background

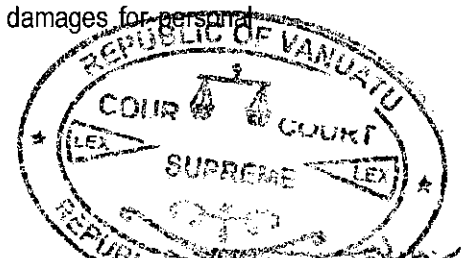
2. On the 6 December 2019, the claimant was a passenger in a vehicle driven by the first defendant. They were returning to Vila from attending a Christmas party at Havannah harbour. On approaching Klems hill before the Tamate stream, the first defendant lost control of the vehicle resulting in the accident. The claimant suffered severe injuries to his body and another passenger lost his life at the scene of the accident.
3. The vehicle was a black Ford Ranger owned by the Department of Forestry project carrying the registration number 4VE 830. It was driven by the first defendant who was hired by the department as its driver.
4. The claimant asserts that the second defendant was vicariously liable for the actions of the first defendant and claimed damages against them jointly in the sum of VT40,000,000.



5. Upon filing and serving the claim, the second defendant filed a defence and a cross claim against the claimant for contributory negligence and against the first defendant for damages as a result of breaching his hiring agreement as driver. The claimant responded to the cross claim. The first defendant did not file a defence to the cross claim against him and default judgement was entered for damages to be assessed. Directions were also issued for the filing of sworn statements and submissions on the assessment of damages in relation to the default judgment.
6. The assessment of damages on the default judgment was not progressed and a hearing listed for 1 December 2021 was vacated. Further directions were issued for the parties to file their sworn statements in support of the claim and defences. The matter was then listed for a two-day trial on 23 and 24 May 2022. This trial dates were later vacated as well as the first defendant had been away overseas on seasonal work for quite sometime and attempts to contact him by counsel were in vain. The first defendant's absence oversea delayed the proceedings for sometime.
7. Following the filing of evidence, the second defendant admitted vicarious liability. The only remaining issue then was the determination of the quantum of damages. The parties sought time and were allowed time to settle the matter out of Court. This however did not eventuate and directions were issued for the filing of evidence on the assessment of damages with written submissions. The assessment hearing was listed for 1 August 2024.

Discussion

8. Before the hearing commenced, Mr Yahwa informed the Court that the claimant **accepted** the total quantum of damages submitted by the second defendant in the sum of **VT27,689,146**.
9. In brief, the second defendant arrived at this overall figure by relying on the medical assessment reports of the claimant's injuries carried out by Dr Richard Leona and Dr Jimmy Obed disclosed in: -
 - Sworn statement of Dr Richard Leona filed on 14 September 2021;
 - Further sworn statement of Dr Richard Leona filed on 2 April 2023;
 - Memorandum disclosing the claimant's academic report with USP Eralus Campus; and
 - Sworn statement of Dr Jimmy Obed filed on 6 March 2024.
10. And submitted that Dr Leona's assessments classified the claimant's injuries at a moderate level in line with the *United Kingdom (UK) Judicial College's Guidelines for the assessment of General Damages in personal injury cases (16th edition)*. These injuries were short term memory loss, chronic neck pain, spinal stenosis osteoarthritic, moderate head injures, neck injury, and post traumatic stress disorder.
11. The contributory negligence of the claimant was assessed at 20% for not wearing the seat belt at the time of the accident. This was deducted from the total general damages for personal



injuries. Damages for future economic loss (future earnings) were then added arriving at the total damages amount submitted in the sum of VT27,689,146.

Interest

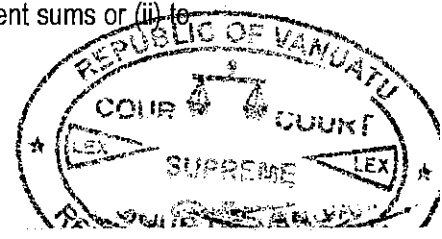
12. The claimant submitted that they are seeking interest at the rate of 5% from 6 December 2019 to the date of judgment with no orders for costs. The second defendant in response submitted that the Court should decide whether or not to award interest. I allow interest to be calculated at 5% from 6 December 2019 to the date of judgment as submitted by the claimant. The 5% interest was also part of the relief sought in the claim. I allow that only for the specific period sought by the claimant.

Assessment of damages on the default judgment against the first defendant

13. As a result of the first defendant's failure to file and serve his defence within 28 days of being served with the claim, default judgment was entered against him on 28 September 2021 for damages to be assessed. The second defendant submits that their cross claim against the first defendant is for damages in the sum of VT2,990,000. This is the replacement value of the defendant's vehicle which was completely written off after the accident. They rely on the sworn statement of Humau Tomat Sale filed on 30 November 2023. Mr Tomat deposes that the Department of Forestry purchased the vehicle with VAT exemption from Ford – Auto Dis for the sum of VT2,990,000. The evidence of payment and contract of sale is annexed as **Annexure "HTS 1"** and **"HTS2"**.
14. No submissions in response were filed by the first defendant. He was allowed ample time to respond and did nothing. I enter judgment against the first defendant to pay damages to the second defendant in the sum of **VT2,990,000**.

Result

15. The Orders are: -
 - a) THE claimant concedes to and accepts the second defendant's assessment of total damages owing to him;
 - b) THE second defendant shall pay the claimant the total sum of **VT27,689,146 with interest at 5% from 6 December 2019 to the date of judgment within 21 days;**
 - c) THE first defendant shall pay the second defendant the sum of **VT2,990,000 within 21 days;**
 - d) Each party to bear their own costs.
 - e) AN **Enforcement Conference** is listed for **16 September 2024 at 8.30am** for the first and second defendants to inform the Court: (i) that they have paid the judgment sums or (ii) to



explain how they intend to do so. Upon failure to comply, the file will be transferred to the Master for enforcement action.

- f) THE claimant must serve the first and second defendants personally with a copy of this judgment and file proof of service.

DATED at Port Vila this 14th day of August, 2024

BY THE COURT

Dudley Aru
Judge

