LEMALU PUIA'I v. FRANK JESSOP

SUPREME COURT. 1968, 1969. 7, 8, 13, 28, 29, November; 30, July.
SPRING C.J.

Negligence - personal injuries following motor vehicle accident - special and general damages - assessment

1. There are no rigid rules that apply to all cases of special damages for personal injury, and each must be considered on its own set of circumstances, but special damages must be strictly proved and must not be too remote; and where special damages claimed is loss of earnings, the plaintiff is entitled to recover the loss which he sustained by reason of being unable to pursue his ordinary avocations, subject to the broad principle that in assessing damages for loss of income there will be deducted a sum equivalent to the amount of tax which would have been payable on the income if received by the plaintiff so that the final award represents his net financial loss.

"The Greta Holme" /1897/ A.C. 596; and British Transport Commission v. Gourley /1955/ 3 A.E.R. 796, referred to.

2. General damages for personal injuries are to compensate for results that have actually been caused, which may consist of both physical loss and of pain and suffering, loss of enjoyment of life and opportunities, and future needs, such as for special treatment; but the Court is not required to segregate and assess separately the heads of damages, they being only aids or guides in arriving at a fair and reasonable compensation; and, moreover, in considering an award of general damages, the Court is to have regard only to the social and economic conditions existing in Western Samoa, and not to be guided by awards given in other jurisdictions where different social, economic and industrial conditions obtain.

H. West and Son Ltd v. Shephard /1963/ 2 A.E.R. 625; Fletcher v. Auto Car and Transporters Ltd /1968/ 1 A.E.R. 726; Watson v. Powles /1967/ 3 A.E.R. 721; Bird v. Cocking and Sons Ltd (1951) 2 T.L.R. 1263; and Singh v. Toong Fong Omnibus Co Ltd /1964/ 3 A.E.R. 925, referred to.

Judgment for plaintiff.

ACTION claiming special and general damages for personal injuries sustained by the plaintiff following a motor vehicle accident caused by the negligence of the defendant's employee.

Clarke, for plaintiff.
Phillips, for defendant.

Cur. adv. vult.

SPRING C.J.: The plaintiff, a Western Samoan, claims the sum of $12,000 for general damages and $3,113.27 for special damages, making a total of $15,113.27 for injuries arising out of a motor accident which occurred on the 2 December 1965. The plaintiff was a passenger in an omnibus owned by the defendant and driven by his employee. As a result of the negligent driving of the defendant's employee (which was admitted) the omnibus ran off the road and collided with a coconut tree. The plaintiff's right leg was severely crushed which necessitated amputation of the right leg in the mid portion of his right thigh. He was admitted to the Moto'otua Hospital from the 2 December 1965 and discharged on 10 January 1966 but he attended the Hospital as an out-patient until 10 March 1966 when he was re-admitted for further treatment. He was discharged on the 15 March 1966. He attended the said Hospital weekly thereafter as an out-patient from the 15 March 1966 until the 16 October 1966 when he left Western Samoa to attend the Artificial Limb Centre at Mt. Eden,

Auckland, New Zealand, where he was fitted with an artificial leg. While in New Zealand the plaintiff received treatment to his left leg at both the Middlemore and Auckland Hospitals. On 17 April 1967 the plaintiff was appointed by the Western Samoan Government to in-service training in New Zealand in dentistry. The plaintiff continued making visits to the Artificial Limb Centre, 2 or 3 times a week thereafter until he returned to Western Samoa on 8 October 1967. The plaintiff resumed employment at Moto'otua Hospital as a Dental Officer on 16 October 1967. The plaintiff was born on the 6 June 1912. He commenced employment as a dentist in the Public Service in December 1937 and at the date of the accident, 2 December 1965, he was a permanent employee of the Western Samoan Public Service at a salary of £765 or $1,530. When he was re-engaged on the 17 April 1967 (as an in-service trainee) he was employed as a temporary employee at a salary of £655 or $1,310. On 1 April 1968 the plaintiff's salary was increased to £690 or $1,380 which at the date of hearing of this action was his current salary. The defendant admitted that the plaintiff suffered the injuries complained of while a passenger in the defendant's omnibus and that they were caused as a result of the negligent driving by the defendant's employee. The defendant claimed, however, that the plaintiff after the issue of proceedings but before the hearing of the action had accepted an ifoga in accordance with Samoan custom and tradition which amounted to a settlement of the claim thereby estopping the plaintiff from proceeding with his claim. An ifoga in the fa'a-Samoa arises when a person who has committed a wrong presents himself to the person wronged or injured and tenders gifts such as fine mats, money or goods and apologises for the hurt or injury and further virtually submits himself to that person's mercy. If the ifoga is accepted then it is claimed by the defendant that this would amount to a full settlement of the matter or trouble between the parties. In other words the defendant claims that if an ifoga has been made and accepted by the plaintiff then this amounts to a compromise of the action. The defendant did not apply to the Court for an order staying proceedings on the grounds that there had been a compromise which amounted to a valid and binding settlement of the plaintiff's claim. It is stated in 30 Halsbury's Laws of England 3rd Edition, p. 408:

> "If an action has been compromised and the action is proceeded with in spite of the compromise an order may be obtained for the stay of proceedings."

In Kontvanis v. O'Brien /1958/ N.Z.L.R. 502 at p. 505 Adams J. says:

> "It is true that a defendant who has paid an agreed sum by way of compromise of an action may, if he likes, avail himself of the agreement as a defence to the action instead of applying for a stay. (Edwards on the Law of Compromises and Family Arrangements (1925) 190). He must of course plead the matter if he wishes to defend on that ground but it rests with him to decide whether he will take that course or claim a stay."

The defendant in this case defended the action on the grounds that an ifoga had been made by the defendant and the plaintiff had accepted same thereby constituting a valid and binding compromise in law to the claim of the plaintiff.

It is necessary for me to determine on the facts firstly whether an ifoga had been made and secondly, if there was such an ifoga, whether it was agreed by the parties to be in full satisfaction of the plaintiff's claim.

From the evidence I conclude that representatives of the defendant lead by Mulitalo an orator, travelled to the home of the plaintiff at Lefaga towards the end of January 1968 for the purpose of presenting an ifoga to the plaintiff. A speech in accordance with the Samoan custom was delivered by Mulitalo, on behalf of the defendant which was replied to by Leaupepe an orator of the plaintiff's family, on behalf of the

plaintiff. Seven fine mats were presented to the plaintiff together with $50 of which $10 was handed to matais of the plaintiff's family. The defendant claimed that the fine mats were valued at $240 although this figure was disputed by the plaintiff.

The plaintiff in giving evidence regarding the ifoga said at p. 39 -

"Well as I explained earlier that soon after the other matais of my family arrived in the fale I then explained to them the position about these people coming to perform the ifoga and then Leau asked the other party to wait while we leave the fale to discuss what is to be done and it was at that discussion that the other matais of my family and I decided then that this ifoga is to be accepted solely on the understanding that is to keep the peace within the two sides and to maintain the dignity of the Lemalu and the Mamea title of Lefaga with the dignity of Tofaeono and Tama of Vaiala and Moata'a, but as far as my claim is concerned I do not want that to be withdrawn and that was to make it clear to the other side."

The plaintiff further stated at p. 43 -

"Q. And the speech as to the ifoga was, in effect, accepted?

A. Yes, on the understanding that it was accepted as I have explained and that my claim will not be withdrawn."

The plaintiff maintained that the ifoga was to be accepted by the chiefs and orators of his family but with the specific reservation that his claim would not be withdrawn.

The plaintiff called Leaupepe Fa'atoto who acted as his orator at the presentation of the ifoga and Leaupepe said in evidence - p. 61 -

"Lemalu Folima then once we were seated inside said that he would abstain from making a speech, but he will leave it to me to inform the other side of what we have decided that the ifoga has been accepted according to the custom. I then made the speech on behalf of the Lemalu family and I directed my speech to Mulitalo on their side of course the traditional passages used in speeches of this sort are made to Lemalu on that this ifoga was performed because of the trouble that happened to Lemalu Puia'i. I then of course informed Mulitalo exactly what we have decided in the other fale that was told to him that their ifoga was properly accepted in accordance with the custom but as far as the claim of Lemalu and the law well that was the matter entirely to Lemalu if he wants to proceed with his claim. **That was the purpose of my speech that their ifoga had been accepted in accordance with the custom, then Mulitalo made a speech.**"

Lemalu Folima was also called to give evidence on behalf of the plaintiff and the following is an extract from the record - p. 66 -

"A. Leaupepe said in his speech that the claim of Lemalu Puia'i will be proceeded with because he does not wish to withdraw it.

Q. Anything else?

A. And as far as the ifoga is concerned it is accepted according to the custom and the matter of Lemalu Puia'i's claim that is left to Lemalu Puia'i to decide."

Finau Matagi was also called to give evidence and he said - p. 71 -

"A. Leaupepe said that Lemalu agreed to accept the ifoga but as far as his claim is concerned he does not want to withdraw."

Mulitalo was called by the defence and he said in evidence - p. 117

"Q. In Leaupepe's speech on behalf of the whole family, did he make reference to the claim which Lemalu had already filed in Court?

A. Leaupepe did not make any specific reference to the claim by Lemalu but Lemalu himself after Leaupepe's speech made a speech telling us what their family had decided as was outlined by Leaupepe in his speech but as far as his claim is concerned he will have to think about it and he will let us know what he will decide about his claim."

Mulitalo also said he explained the position to the defendant who was not present at the presentation of the ifoga as follows - p. 118 -

"Q. Did you report to Mr Jessop on the result of the ifoga which you conducted out there?

A. I did explain to Jessop when I met him.

Q. What did you tell him about the matter of the claim?

A. I told Jessop what Leaupepe and Lemalu said in their speech accepting the ifoga which we had performed at Lefaga and I also told Jessop that Lemalu said that he will have to think about his claim and that to wait until he comes to Apia he will let us know what he has decided."

Evidence was given by the plaintiff that one Lisone Palelei called to see him at the Dental Clinic at Moto'otua Hospital on four occasions after the presentation of the ifoga asking the plaintiff to withdraw his claim from Court and on some of the occasions he asked the plaintiff to sign a paper to the effect that the ifoga had been accepted by him in full settlement of the claim.

The plaintiff stated in evidence that he refused either to withdraw his claim from Court or to sign any such paper.

The defendant in evidence said he gave Lisone Palelei $400 to be handed to Lemalu Puia'i if he accepted the ifoga. The plaintiff denied ever receiving any money from Lisone Palelei apart from the $50 above referred to. Lisone Palelei admitted in evidence that he went to the Dental Clinic to see the plaintiff, after the ifoga presentation, to give him approximately $300. He also stated that Lemalu accepted the $300 and he further stated at p. 125 -

"Q. What did he have to say about the claim?

A. And he told me not to worry what he had told us at the time of our ifoga that he will withdraw his claim."

I am satisfied that the plaintiff was a truthful witness and I accept his account of what took place in preference to the evidence of Lisone Palelei. If the ifoga was accepted in full settlement of the claim as the defendant asserts, why then should Lisone Palelei go to the Hospital to see the plaintiff asking to have the claim withdrawn. I am satisfied on the facts, that the ifoga which was made by the defendant's party to the plaintiff was not accepted by him in full settlement of his claim and this defence accordingly fails.

Having so found I am relieved from the necessity of deciding whether such an ifoga in the fa'a-Samoa would be a valid defence in law to a claim such as the instant one.

I turn now to consider the claims made by the plaintiff and it will be convenient to deal first with the items of special damage.

The plaintiff abandons his claim for medical expenses amounting to $64 and referred to in paragraph 6(b) of the third amended Statement of Claim.

The plaintiff also abandons the claim for $65.50 cost of transportation in New Zealand and referred to in paragraph (g) of the said Statement of Claim.

The plaintiff also abandons the claim for $329.02 being the cost of an artificial leg and referred to in paragraph 6(h) of the said Statement of Claim as apparently this item was paid for by the New Zealand Red Cross Society. The claim for $754.00 for air fares to New Zealand in respect of the plaintiff, his wife, and 2 young children and referred to in paragraph 6(f) of the said Statement of Claim is abandoned except to the extent of $188.50 which was paid by the plaintiff for his daughter Pamata's return air fares, Samoa to New Zealand.

The defendant admits the claims made by the plaintiff in 6(a), 6(c), 6(d) and 6(e) of the said Statement of Claim totalling the sum of $100.00 and I accordingly give judgment for the plaintiff for the said sum of $100.00.

I consider now the above claim for $188.50.

The plaintiff claims that it was necessary for his daughter to travel with him to New Zealand. The plaintiff when asked why was it necessary for Pamata to travel with him to New Zealand said - p. 48 -

> "A. The main reason was that I particularly wanted someone to assist me in on to the plane and carrying my luggage and coming out of the plane and any other matters that I require I had to call on her to assist me as my other children are in New Zealand."

I have to decide whether this expense was reasonably necessary. The plaintiff was admittedly on crutches but on the aircraft he would have had the help and assistance of the airline staff. He was met in New Zealand by his brother who took him to his home at Herne Bay. Approximately 3 months after the plaintiff and Pamata arrived in New Zealand, Pamata obtained a position in employment in which she continued until one month before she left New Zealand to return to Samoa.

No rigid rule or rules that apply to all cases can be laid down and each case must be considered on its own set of circumstances. There was no evidence from the plaintiff's medical adviser that it was necessary for Pamata to accompany her father on the trip to New Zealand. Special damages must be strictly proved and must not be too remote.

In my view this expenditure was not necessary and accordingly I disallow the claim of $188.50.

I turn now to the claim for $80 for taxi fares travelling from Malifa to Moto'otua and back to Malifa for the period 9 October 1967 to 31 August 1968 at $8 per month and referred to in paragraph 6(i) of the said Statement of Claim.

The plaintiff stated that before the accident in December 1965 he used to go home to Lefaga each night and return the following morning. The bus fare to Lefaga was 30 sene. The cost of travelling to Lefaga each night and back the next morning would be $3 a week. The plaintiff claims now that he is living at Malifa and spends $1.60 on taxi fares - 60 sene on one return trip to Lefaga per week making a total of $2.20.

When I consider the evidence it is clear that the plaintiff is paying less in travelling expenses now than what he was paying before the accident. This is no doubt due to him obtaining accommodation at Malifa - apparently free of charge as there was no claim for board and lodgings in respect of this accommodation at Malifa.

I am asked to give judgment for $80. In my view the plaintiff has not proved that he is being forced to spend more on travelling expenses now as a result of the accident - in fact he is spending less. Accordingly I reject his claim for $80.

The last item of special damage contained in paragraph 6(j) of the said Statement of Claim is a claim for $1,721.25 for loss of earnings suffered by the plaintiff from 1 March 1966 until 18 April 1967.

The plaintiff at the 2 December 1965 - the date of the accident - was earning £765 or $1,530.

The plaintiff joined the Public Service in 1937 and resigned on 30 June 1962 and withdraw his superannuation benefits. He was re-engaged on 27 May 1963 as a Dental Officer on a temporary basis and was appointed a probationer as from 1 October 1963.

I am satisfied on the evidence that at the date of the accident the plaintiff was employed by the Government of Western Samoa in a permanent capacity: see section 16(2) of the Samoa Amendment Act 1949.

The plaintiff gave evidence that he resigned from the Public Service after the accident and the record of his evidence is -- p. 15 -

"Q. Now when you stopped receiving your salary after February 1966 did you find out the reason?

A. Yes I did try to find out the reason for not paying my salary during that time and although it was not very satisfactory but I was told I think it was through the number of days that I was entitled on sick leave on full pay used up and I therefore no longer be entitled to that.

Q. When you found that you were no longer receiving any salary did you attempt to get employment at the Hospital?

A. Yes I did apply to get employment again with the Health Department on type of work that I can sit down and do it such as making dentures.

Q. What was the result of your approach for sit down work?

A. The Public Service Commission was not able to re-employ me again.

Q. Did you resign from the service in that year 1966?

A. That time Dr Larkin was in charge of the Dental Service this was after my efforts to get re-employment back but as services were filled I was advised by Dr Larkin then to resign.

Q. Did you resign then?

A. Yes."

He later admitted that he resigned as at the 23 January 1966. After the accident the plaintiff was on sick leave but this was fully taken by the 23 January 1966. The plaintiff sought a sedentary position in the Dental Clinic but none was available to him. It must be remembered that the plaintiff was on crutches and had no artificial leg. After discharge from Hospital on 15 March 1966 he was requested to make weekly visits to the Hospital at Tote'otua for treatment and this continued up until he left Samoa in October 1966 to go to New Zealand for the purposes of having an artificial leg fitted.

The Chairman of the Public Service Commission said in evidence - p. 101 -

"Q. Now had Lenalu not resigned on the 23 January 1966 was there some other type of leave that he could have taken from his employment?

A. At that time of course we will just have to terminate his services because he cannot resume his normal duties; of course he resigned first that was the result from it."

I am satisfied on the evidence that the plaintiff resigned from the Public Service as he was unable to carry out his duties as a Dental Officer and was unable to obtain suitable sedentary occupation. His sick leave had been expended and the Government had ceased to pay him. I conclude from the evidence and draw the inference that had the plaintiff not resigned he would have been dismissed and given three months' notice. In my view, the plaintiff is entitled to recover the loss which he sustained by reason of being unable to pursue his ordinary avocations" - as Lord Halsbury said in "The Greta Holme" /1897/ A.C. 596. I am further satisfied that the plaintiff recommenced employment as soon as he was able to do so, viz., on the 19 April 1967.

I find therefore that the plaintiff is entitled to succeed on this head of special damage. I will deduct 2 months' salary from the amount claimed as I consider that the action of the plaintiff in resigning was somewhat hasty as he would in my view have received 3 months' notice of dismissal from the Public Service Commission.

The plaintiff's claim is not from the 1 February 1966 but from 1 March 1966 and it should be from 1 May 1966 until 18 April 1967. I will also take into account the tax position in assessing damages attributable to the loss of earnings. The broad principle being that in assessing damages for loss of income there will be deducted a sum equivalent to the amount of tax which would have been payable on the income if received by the plaintiff so that the final award represents his net financial loss. See British Transport Commission v. Gourley /1955/ 3 A.E.R. 796.

I am advised by counsel that the amount of tax involved would be approximately $15.

There is the further point, although it was not alluded to at the trial - namely that in order to earn the loss of earnings now claimed the plaintiff was required to travel from Lefaga to Apia each day at a cost according to the evidence of $3 a week. This amount the plaintiff was not required to spend and in my view it would be proper to make a deduction in respect of the cost of travelling which was not expended by the plaintiff. I propose to deduct therefore the sum of $150 from the special damages claimed in respect of loss of earnings.

I therefore give judgment for the plaintiff for the sum of $1,298 in respect of his claim for loss of earnings.

There remains the claim of $12,000 for general damages. Counsel for the plaintiff submitted that this claim should be dealt with under four separate heads, viz., (i) economic loss (ii) loss of limb (iii) pain and suffering and (iv) loss of enjoyment of life. Counsel further submitted that the sum of $4,000 should be awarded for economic loss and $8,000 should be awarded in respect of the remaining three heads.

In Western Samoa damages for personal injuries are determined by a Judge alone and in my view the trial Judge is to award what is in all the circumstances fair compensation. As to the nature of damages to be awarded in personal injury claims Lord Devlin stated in H. West & Son Ltd v. Shephard /1963/ 2 A.E.R. at p. 636 -

"There must be compensation for medical expenses incurred and for loss of earnings during recovery; these are easily quantified, whether as special or as general damage. Then there is compensation for pain and suffering actually

experienced. Loss of consciousness, however caused, whether by the injury itself or produced by drugs or anaesthetics, means that physical pain is not experienced and so has not to be compensated for; and this must be true also of mental pain. Then there is or may be a temporary or permanent loss of a limb, organ or faculty. Whether it is the limb itself that is lost or the use of it is immaterial. What is to be compensated for is the loss of use and the deprivation thereby occasioned. This deprivation may bring with it three consequences. First, it may result in loss of earnings and they can be calculated. Secondly, it may put the victim to expense in that he has to pay others for doing what he formerly did for himself; and that also can be calculated. Thirdly, it produced loss of enjoyment, loss of amenities as it is sometimes called, a diminution in the full pleasure of living. This is incalculable and at large. This deprivation with its three consequences is something that is personal to the victim. You do not, for instance, put an arbitrary value on the loss of a limb, as is commonly done in an accident insurance policy. You must ascertain the use to which the limb would have been put, so as to ascertain what it is of which the victim has actually been deprived."

Lord Denning M.R. in Fletcher v. Auto Car and Transporters Ltd /1968/ 1 A.E.R. 726 at p. 733 in dealing with the compensation to be awarded in personal injury claims said:

"Field J. in summing up to the jury said in Phillips v. London South Western Rly. Co /1879/ 5 Q.B.D. - 78 at p. 79 . . . in actions for personal injuries of this kind . . . and it is wrong to attempt to give an equivalent for the injury sustained. I do not mean to say that you must not do it, because you are the masters and are to decide; but I mean that it would operate unjustly, and in saying so I am using the language of the great Parke, B., whose opinion was quoted with approval in Rowley's case /1861-73/ All E.R. Rep. 823; Perfect compensation is hardly possible, and would be unjust. You cannot put the plaintiff back again into his original position."

The direction was approved by Sir Alexander Cockburn C.J. in Phillips v. London South Western Rly Co (supra) at p. 407 -

"....the compensation should be commensurate to the injury sustained. But there are personal injuries for which no amount of pecuniary damages would afford adequate compensation, while, on the other hand, the attempt to award full compensation in damages might be attended with ruinous consequences to defendants . . . Generally speaking, we agree with the rule as laid down by Brett J., in Rowley v. London and North Western Rly. Co (supra) that a jury in these cases 'must not attempt to give damages to the full amount of a perfect compensation for the pecuniary injury, but must take a reasonable view of the case, and give what they consider under all the circumstances a fair compensation'."

In my view the various heads under which general damages are sought are not separate heads of compensation. They are only aids to arriving at a fair and reasonable compensation. This was made clear in the case of Watson v. Powles /1967/ 3 A.E.R. 721 at p. 722 where Lord Denning M.R. says:

"Counsel for the plaintiff made a general submission which is of importance. He said that the Judge ought to divide up the general damage into its separate heads. A Judge ought to say how much he awarded for the past pain and suffering up to the date of trial; then how much for the future pain and suffering and loss of amenities for the rest of his days; then how much he awarded for the future incidental losses when he is off work

in the future; and then how much for the reduction in his earnings for the rest of his life. Counsel says if that were done, it would be far more satisfactory to the parties and he suggested that a more just result would be achieved.

"We have often had to consider such a suggestion. In the old days, when damages were assessed by juries, there could be no question of sub-division. A jury gave one award of general damage. In modern times, when damages are assessed by Judges sitting alone, this Court has discouraged Judges from going too much into detail. When I was a Judge of first instance, this Court told me that it was a mistake to sub-divide the amount. On the whole I think that this is right. There is only one cause of action for personal injuries, not several causes of action for the several items. The award of damages is, therefore, an award of one figure only, a composite figure, made up of several parts. Some of the parts may be capable of being estimated in terms of money, such as loss of future earnings. Others cannot truly be estimated in money at all but must proceed on a conventional basis, such as compensation for pain and suffering and loss of amenities: see Ward v. James /1965/ 1 All E.R. 563 p. 572; at the end all the parts must be brought together to give fair compensation for the injuries."

Further I respectfully agree with the following statement by Birkett L.J. in Bird v. Cocking & Sons Ltd (1951) 2 T.L.R. 1263 -

"I am aware that the assessment of damages in cases of personal injury is perhaps one of the most difficult tasks which a Judge has to perform . . . The task is so difficult because the elements which must be considered in forming the assessment in any given case vary so infinitely from other cases that there can be no fixed and unalterable standard for assessing the amounts for those particular elements."

In considering the claim for general damages, counsel for the plaintiff urged upon me the necessity to look to awards made in other jurisdiction as there were no previous decisions of this Court which would be of assistance.

I am conscious however, that extreme caution has to be exercised when paying heed to the figures of awards in other cases. As was said by Lord Morris of Borth-Y-Gest in Singh v. Toong Fong Omnibus Co Ltd /1964/ 3 A.E.R. 925 at p. 927 -

"If, however, it is shown that cases bear a reasonable measure of similarity, then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardised, or that there should be any attempt at rigid classification. It is but to recognise that, since in a Court of Law compensation for physical injury can only be assessed and fixed in monetary terms, the best that Courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion."

And the learned Law Lord says further at p. 927 -

"that to the extent to which regard should be had to the range of awards in other cases which are comparable, such cases should as a rule be those which have been determined in the same jurisdiction or in a neighbouring locality where similar social, economic and industrial conditions exist."

As stated above I am advised from the Bar that there have been no previous decisions given in the Supreme Court of Western Samoa on personal injury claims which would be a guide or any assistance in the instant case

In considering this claim regard must be had, in my view, to the social and economic conditions existing in Western Samoa. The salaries paid in Western Samoa are generally much lower than those paid in respect of comparative positions in say, New Zealand or Australia. The Workers' Compensation Ordinance 1960 (in force in Western Samoa) provides that the maximum compensation payable in death claims is $1,500, and for permanent total incapacity the maximum compensation is fixed at $2,000.

I am mindful that in determining damages in this action I am not to put an arbitrary value on the loss of the leg as is done in claims under the Workers' Compensation Ordinance. However, I must in my view have regard to the social and economic conditions in this country in determining the amount to be awarded by way of damages. To be guided by awards given in other jurisdictions where different social economic and industrial conditions obtain would in my view be wrong as an award based on figures given in other jurisdictions could well disturb the current social pattern in this country.

I now turn to consider the evidence in the light of the above-mentioned principles. The plaintiff at the date of the accident was 53 years of age and at the date of the hearing was 56 years of age. The plaintiff will reach the age of 60 years on 6 June 1972.

The plaintiff is a temporary employee of the Western Samoan Government and according to the evidence when he attains the age of 60 years he can elect to retire or he may elect to continue working until he is 65 years of age. It is to be remembered of course that as a temporary employee his services can be terminated by the Public Service Commissioner at any time, without notice. Further I must bear in mind the possibility that he may suffer some other disabling accident or disabling illness or that he might die before attaining the age of 65 years. Mr Hutchison, a public accountant, was called by the plaintiff to give evidence as to the loss sustained by the plaintiff as a result of the accident and calculated on a differential in earnings basis. (Calculations prepared by Mr Hutchison were produced to the Court). The differential in earnings as calculated by Mr Hutchison until (a) the plaintiff reaches the age of 65 years is $1,880, and (b) until the plaintiff reaches the age of 60 years is $1,565. Mr Hutchison made no allowance for the contingencies mentioned above nor the fact that the plaintiff is a temporary employee and liable to be dismissed without notice. These are matters, however, which I must bear in mind in considering the loss of earnings to be awarded under the head of general damages and I must make due allowance therefor.

The plaintiff also claimed that he had suffered financial loss in not being able to work in his plantation and thereby reap the benefit of his efforts. However, he is a matai and I am satisfied that the taulele'a of his aiga would if requested by him readily carry out any work in the plantation in accordance with Samoan custom, and he should not suffer any significant financial loss. Further no figures were put before the Court in support of this alleged loss of income and it was only referred to in a general way.

The plaintiff's right leg was amputated midway between the knee and the hip joint and he now has an artificial leg. His mobility has been severely lessened. I am mindful that in considering the claim for damages for the loss of the limb and the loss of enjoyment of life the standard of comparison which the law applies is based on the degree of deprivation - as Lord Diplock said in Fletcher v. Auto Car and Transporters Ltd (supra) at p. 736 -

> "the extent to which the victim is unable to do those things which, but for the injury, he would have been able to do."

The plaintiff has also undergone pain and suffering. The medical evidence indicates that the roughening of the bone at the site of the amputation should not lead to complications although there is some looseness of the artificial leg due to muscle shrinkage. This looseness could be

removed by a specialist adjusting the artificial leg. There is, however, no specialist available in Samoa to carry out this work and the plaintiff would have to proceed to New Zealand to have this work done and I bear this fact in mind in considering the sum to be awarded as damages. Dr Judd, stated, however, that the shrinkage of the stump of the right leg should become static within a year or two. The plaintiff claimed that he had suffered loss of enjoyment of life in that he was a keen walker and enjoyed working in his plantation. He further stated he had coached rugby football teams and led an active outdoor life. He is now not able to engage in these activities as freely as he used to because of his loss of mobility. In my view he is to be compensated for the loss of "amenities" as they are called that is the enjoyment of life which he has now lost and also for the pain and suffering endured by him. There must of course be an allowance made for the uncertainties of life and the intangibles involved and to which I have already referred.

It is necessary, in my view, to gather all the items together and give a round sum for general damages. Having given the best consideration that I can to the evidence, taking into account the sum of money which the plaintiff acknowledged receiving from the defendant and the value of the fine mats given to him, paying due regard to the submissions of counsel, remembering the principles of law which I have endeavoured to enunciate, remembering that this is an award of damages in Western Samoa, and paying due regard to the social and economic conditions of this country, I award the sum of $3,350 as general damages.

Judgment is accordingly given for the plaintiff for the total sum of $4,748 (which includes the sum of $1,398 hereinbefore awarded as special damages) together with costs, witnesses' expenses and disbursements to be fixed by the Registrar.