

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

**Civil
Case No. 14/52 SC/CIVL**

BETWEEN: Sam Lai
Claimant

AND: Timothy Noviel
Defendant

Coram: *Justice Aru*

Counsel: *Mr. B. Livo for the Claimant
Mr. W. Daniel for the Defendant*

**RESERVED JUDGMENT
(DAMAGES)**

Background

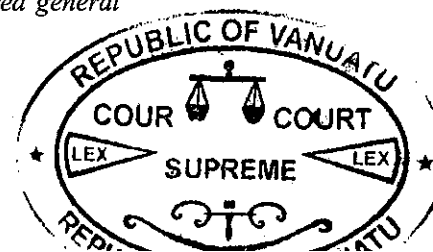
1. On 13 September 2018 the defendant was found liable for the accident causing serious injury to the claimant and judgment was entered accordingly. The matter was then managed for damages to be assessed unless a settlement was reached by the parties. Nothing eventuated on any options for settlement and a number of conferences were called and directions issued for the parties to file their submissions on the assessment of damages. The defendant has not complied with any of those directions and has not filed submissions to date.
2. The claimant filed his submissions on 31 July 2019. No sworn statements were filed in support of the assessment. On 1 November 2019 the defendant was ordered to respond to the claimant's submission by 22 November and judgment to be issued thereafter. Those orders have not been complied with.

Pleadings

3. The relief claimed is general damages in the sum of VT7, 000, 000 and special damages in the sum of VT1, 350,000. The claimant pleads the following at paragraphs 9 and 10:-

"9. As a result of the defendants negligent driving the claimant suffered general damages:

Particulars



- *Pain and suffering for over one year until today*
- *Loss of blood during accident*
- *Claimant is now moderately disabled and must use crutches until today*
- *Claimant's loss of amenities (cannot visit family members ,cannot go to church ,cannot watch soccer every Saturday etc)*

10. *As a result of the claimant's negligent driving, the claimant suffered special damages*

Particulars

- *Loss of employment as a bus driver (90,000VT per month salary x 15 months = 1,350,000)"*

Discussion

4. It was submitted that the claimant was earning a monthly salary of VT90, 000 as a bus driver. As a result of the accident he submits that he was out of the job for 15 months which he would have earned VT 1,350,000 during that period. Secondly he paid a total of VT 35,000 being the filing and trial fees and VT 1, 125 consultation fee to the Office of the Public Solicitor.
5. The claimant also submits that he was admitted to the Vila Central Hospital for 1 year 3 months and 10 days and readmitted twice where screws were inserted into his right leg .It was also submitted that he continues to suffer and lost a lot of blood during the accident . As a result of the accident it was submitted that he moderately disabled and continues to use crutches and cannot enjoy life as before and no longer able to visit families or go to church as usual.

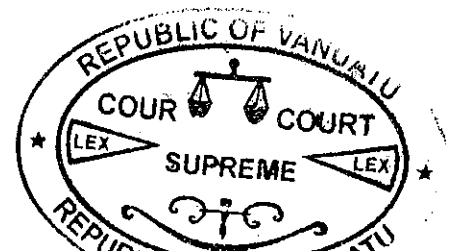
Special damage

6. The only special damage pleaded is the loss of salary for 15 months amounting to VT 1,350,000 at VT 90,000 per month. This has to be proved but there is no evidence filed in support. No salary slips or records of payment are provided. There is also no confirmation by the employer that the claimant was his employee and was earning VT 90,000 a month as his bus driver. In the absence of such evidence the claim for special damage is rejected.

General damages

7. The evidence in support of an award for general damages are two letters from the claimant's doctors. These are referred to by the claimant in his sworn statement filed in support of the claim. First, Dr Trevor Cullwick on 17 April 2012 after seeing the claimant said:-

*"Injuries 1. Fracture right tibia/fibula
2. fracture left acetabular*



3. *Unstable left hip dislocation*

He is currently mobilising on crutches.

He has a left limb which he is unable to weight bear on ‘

Right non union tibia fibula with pseudo arthrosis

Patient is moderately disabled. ”

8. On 2 May 2012 Dr Neslon Tangwha upon observing the claimant stated that:-

“The above present to us with fractured and mobile teeth which were sustained from an accident; he had extractions of upper fractured teeth 23 and 24 done. And also extractions of mobile teeth lower anterior 32, 31 and 42.

Thus in total, he had 5 teeth extracted as a result of the accident.”

9. In the absence of any opposing submissions from the defendant, when considering the medical observations of the two doctors, the claimant’s injuries are to such an extent that he will not be able to have any meaningful employment again and will continue to suffer pain and discomfort for the rest of his life as a result of the accident. The Claimant is 53 years old. The sum of VT7, 000, 000 would be at a higher end of the scale if the claimant was at the beginning of his working life. Given the circumstances, I accept that VT 5,000,000 would be a just award for pain and suffering, loss of blood during accident, loss of amenities and the disability that he will live with from now and into the future.

Conclusion

10. Judgment is entered for the claimant for a total award of damages in the sum of VT5,000, 000. He is also entitled to costs to be agreed or taxed.

DATED at Port Vila this 31st day of March, 2020

BY THE COURT

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D. Aru
Judge

