

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

Civil
Case No. 19/3268 SC/CIVL

BETWEEN: Jean Marc Buleban
Claimant

AND: Anderson Thor
Defendant

Date of Hearing: 17 September 2020
Before: Justice V.M. Trief
In Attendance: Claimant – Mr J. Vohor
Defendant – no appearance (Mr A. Bal)
Date of Decision: 8 October 2020

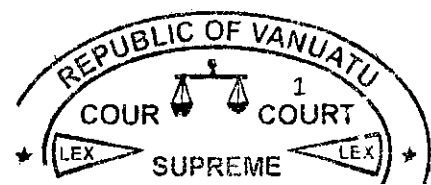
JUDGMENT – QUANTUM OF DAMAGES

A. Introduction

1. Default judgment was entered on 17 July 2020. The Defendant Anderson Thor did not comply with the orders for the parties to file sworn statements and submissions as to the quantum of damages nor take any other step, despite counsel Mr Bal accepting service of the documents filed by the Claimant Jean Marc Buleban.
2. The matter proceeded by way of formal proof hearing. This judgment determines the quantum of damages to be paid by Mr Thor.

B. Background

3. Mr Buleban and Mr Thor occupy adjoining properties at Fresh Water 2 Area in Port Vila.
4. Over time, Mr Buleban and Mr Thor had an escalating argument about their fence line. This culminated in Mr Thor attacking Mr Buleban with a chainsaw on 16 March 2019, causing him physical injuries.



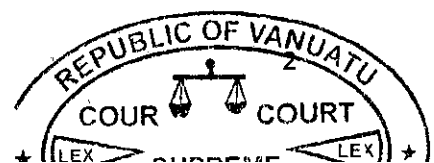
5. After a trial, the Supreme Court convicted Mr Thor of intentional assault causing injuries of a permanent nature and sentenced him to 4 years imprisonment – *Public Prosecutor v Tor* [2019] VUSC 143.
6. On 2 December 2019, Mr Buleban filed this Claim seeking general and special damages, interest and costs.
7. Mr Thor did not take any steps to defend the Claim.
8. On 17 July 2020, the Court entered default judgment for Mr Buleban for an amount to be determined.

C. The Claim

9. Rule 4.10(1) of the *Civil Procedure Rules* ('CPR') provides that if damages are claimed, the claim must also state the nature and amount of the damages claim. Rule 4.10(2) requires that the basis on which the amount claimed has been estimated must be included. This Claim states the nature of damages sought – general and special damages – but does not state the amounts sought.
10. Even though the Claim is not compliant with r. 4.10 of the CPR, damages will flow depending on the personal injuries suffered. I will therefore make findings about the injuries Mr Buleban suffered and then consider quantum.

D. The Injuries

11. Mr Buleban's evidence is set out in his sworn statements filed on 14 August 2020 and 2 December 2019 ("**Exhibits C1 and C2**"). I accept his evidence as to his injuries which were inflicted by Mr Thor and the medical treatment he received.
12. Mr Buleban was aged 55 at the time of the assault; he is now 56. Mr Buleban suffers from Diabetes Mellitus type 2 for which he takes oral medications.
13. The pictures in "**Exhibits C1 and C2**" of Mr Buleban's injuries immediately after the attack by Mr Thor wielding a chainsaw are confronting. They show Mr Buleban sweating profusely with deep cuts to both arms and heavily bleeding. He states at paras 3 and 4 of "**Exhibit C1**":
 3. *I confirm the day of the incident I recall felt a great shock when the defendant cut my three fingers and my left arm and forearm. I began to lose sight and felt dizziness [to] the point to lose my balance and felt a great pain on that day.*
 4. *I recall walking, sweating and bleeding at the same time. My fingers bones were broken and my forearm muscles were tom and cut deeply by the chainsaw. I felt a great pain.*
14. ProMedical attended to Mr Buleban and then rushed him to the Vila Central Hospital ('VCH'). Mr Buleban was commenced on intravenous antibiotics, dressings, splints and pain relief. He had surgery on 17 March, 19 March and 27 March 2019.



15. Dr Kemuel's report dated 8 April 2019 outlines that Mr Buleban presented on 16 March 2019 with multiple injuries to his left and right upper limbs. Examination under anaesthesia revealed the following injuries:

- Left lateral arm oblique linear laceration and abrasions of about 12 cm, no muscle involved;
- Left forearm extensor laceration about 25 cm length, with segmental loss involving most extensor muscles of the wrist and fingers, no bony involvement, confirmed on X-ray;
- Right extensor thumb laceration over and exposing distal interphalangeal joint with severed extensor tendon;
- Right distal phalanx traumatic amputation of index finger;
- Right middle finger proximal phalange joint open fracture-dislocation with severed extensor tendon.

16. Mr Buleban stated at para. 15 of "**Exhibit C1**":

15. *I confirm that the doctor at the hospital had to amputate my thumb, index and middle fingers because those fingers were badly damaged by the chainsaw that the defendant used against me.*

16. Mr Buleban was bed-ridden for 2 weeks, having to be fed by his partner Chantal and daughters Sonia and Diana and helped with a bed pan. Sonia travelled from Tanna to Port Vila to do so. Mr Buleban spent a month in hospital. After discharge, he spent another month bed-ridden at home as his wounds had not completely healed; he was temporarily paralysed. He attended the VCH Physiotherapy Outpatients clinic one day a week for 8 weeks and then twice a month until November 2019.

17. The report by Daniel Frankem, Physiotherapist from his assessment on 12 November 2019 is that Mr Buleban does not have full extension in his left wrist and left fingers. Therefore he cannot do work with his left hand like gripping and carrying heavy objects.

18. Dr Kemuel's report dated 7 November 2019 assessed that Mr Buleban's total incapacity due to injuries he sustained (using the combined value chart¹) is 38% as a result of the following:

- Left wrist extension of 0 degree equates to 8% incapacity, radial deviation 0 degree equates to 3% incapacity;
- Right distal phalanx traumatic amputation of index finger (50% of a phalanx) – 4% incapacity;

¹ *Guide to the Assessment of Traumatic Injuries and Occupational Diseases for Work Injury Compensation*, 5th Edition, 2011; *Permanent Impairment Rating PPI Schedule A 2018*).



- Right middle finger proximal phalange arc of active flexion to 40 degrees equates to 5% incapacity;
 - Radial nerve impairment (triceps sparing) – motor 21%, sensory 3%; combined value using combined value chart of 23%.
19. I accept Mr Buleban's evidence that he has lost full strength in both his arms as a result of his injuries.

E. General Damages

Pain and suffering

17. Mr Buleban stated at paras 6 and 11 of "Exhibit C1":

6. ... Later at the surgical wards I cried a lot feeling great pain. I recall the nurses would come and change my bandages three times in a day because I lose too much blood. I remember crying day and night because of the pains left by the chainsaw.

...

11. At the hospital I could not move so I have to lay on my back for at least 2 weeks before I was able to move my hands and legs to walk to bathroom and toilet.

20. At paras 16 and 30 of "Exhibit C1", he stated:

16. Apart from the injuries and cuts on my body I confirm to suffer from mellitus type 2 and I was afraid to lose all my fingers badly cut.

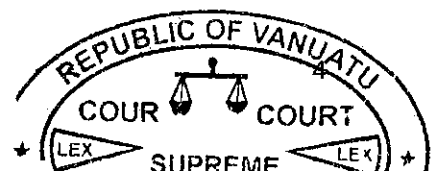
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30. I confirm that after recovering from the deep cuts, I confirm that as from today, I cannot straighten my four fingers as flat. Sometimes I will feel pain in my right thumb, index and middle fingers.

17. Mr Buleban has proved on the balance of probabilities his pain and suffering from the injuries inflicted by Mr Thor using a chainsaw. He suffered great pain as a result of his injuries and continues to feel pain sometimes particularly in his right hand. Mr Buleban also suffered anxiety from not knowing whether or not he would recover from the cuts inflicted on him as he is diabetic. Mr Buleban is entitled to VT750,000 damages for pain and suffering.

Loss of amenities of life

18. I accept from Dr Kemuel's 7 November 2019 report that Mr Buleban's total incapacity due to the injuries he sustained is 38%. Besides the lacerations to his left arm and forearm, his right thumb was lacerated, half of his right index finger amputated and his right middle finger fractured and dislocated completely. I accept from Mr Frankem's November 2019 report that Mr Buleban no longer has full extension in his left wrist and left fingers.



19. I accept Mr Buleban's evidence that prior to the assault, he personally dug a trench in his yard for a septic tank and had supervised workmen to construct a bungalow in his yard to rent out to tenants. However, as a result of his injuries and losing full strength in both his arms, he has lost all interest in continuing the building and supervising workmen to construct the verandah for the bungalow. He had taken out a loan from the National Bank of Vanuatu for this purpose but since the assault all work has ceased and his son has now taken over paying back the loan. The completion of the building as planned would provide Mr Buleban with rental income in the future; his ambitions to complete the building have been dashed by the assault. Moreover, losing strength in both arms is a permanent disability that will continue to inhibit what Mr Buleban can physically do for the rest of his life.
20. On the evidence and in the particular circumstances of the case, Mr Buleban is entitled to VT2,000,000 damages for loss of amenities of life.

F. Special Damages

Medical and other expenses

21. The receipts produced are in relation to:

Receipt	Amount (VT)
ProMedical for emergency response and membership fee	13,000
VCH Surgical Ward	6,500
VCH Medical Report fee	500
Daughter Sonia's return travel Tanna-Port Vila to care for Mr Buleban while in hospital	30,560

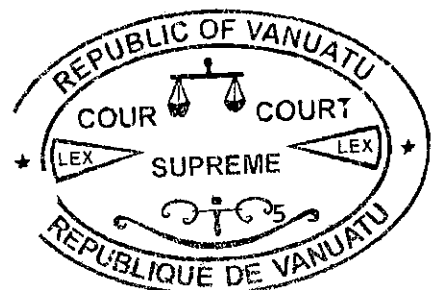
22. These amounts totalling VT50,560 have been properly proved as being reasonable and necessary.
23. Further, it is common knowledge that a one-way bus fare in Port Vila is VT150. I allow VT13,000 for bus fares for Mr Buleban and his partner Chantal Niro to attend hospital to get his dressings changed and for physiotherapy.

Loss of VNPF entitlements

24. No receipts were produced in relation to the loss of VNPF entitlements submitted by Mr Vohor therefore loss in this regard has not been established.

G. Result and Decision

16. Mr Buleban is entitled to:



- a. VT750,000 damages for pain and suffering;
 - b. VT2,000,000 damages for loss of amenities of life; and
 - c. VT63,560 special damages.
17. Mr Buleban is entitled to interest at 5% p.a. on the sums awarded from 2 December 2019 until the judgment amount is paid in full.
 18. Mr Buleban is also entitled to the costs of this proceeding. They are to be taxed and once set, to be paid within 21 days.
- H. Enforcement
19. Pursuant to Rule 14.3(1), I now schedule a Conference **at 3pm on 28 October 2020** to ensure the judgment has been executed or for the judgment debtor to explain how it is intended to pay the judgment debt.
 20. For that purpose, this judgment must be served on the Defendant.

**DATED at Port Vila this 8th day of October 2020
BY THE COURT**

VM Trief
.....
Viran Molisa Trief
Judge

