

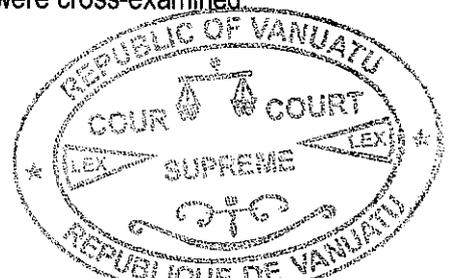
BETWEEN: Jules Benjamin
Claimant

AND: Vanuatu Ferry Limited
Defendant

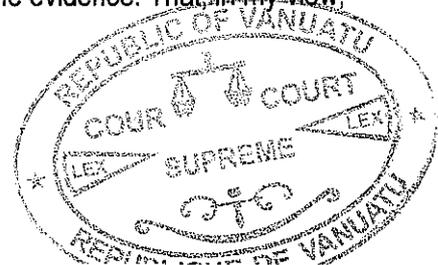
Before: Hon. Justice EP Goldsbrough
In Attendance: Rongo R for the Claimant
Hurley, M for the Defendant
Date of Hearing: 20th May 2024
Date of Judgment: 28th October 2025 liability and contributory
negligence, 13 November 2025 final decision

JUDGMENT

1. On 18 November 2021, the claimant, Jules Benjamin, was at work. He was riding on a motor vehicle operated by his employer and was injured when he was caught between the rear of the cab of the vehicle and a container which it was carrying. During a manoeuvre, the container moved from its position on the trailer forwards towards the rear of the cab and the claimant was caught between the two objects. This was the cause of his injury.
2. There are other matters which are not in issue in this otherwise contested matter on liability and quantum. It is conceded that, as his employer, the defendant Vanuatu Ferry Limited, owed the claimant a duty of care. It is not in issue here that the claimant was injured when the two objects came into closer contact, nor is the nature of the injuries.
3. The trial took place based on the amended claim filed on 11 October 2022, seeking a total of VT 9.6 million, including VT 600,000 in costs, and the defence to the amended claim filed on 20 October 2022. Evidence was received from the claimant in chief through sworn statements filed on 15 July 2022, 12 October 2022, and 15 December 2022, together with evidence from two doctors, Willie Tokon and Samuel Kemuel. All three witnesses were cross-examined.

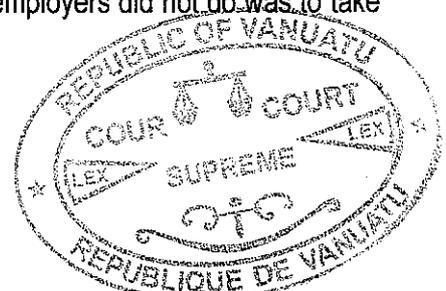


4. For the defendant, evidence came from Morris Philip, the driver of the vehicle; Catherine Keys, a manager within Vanautu Ferry Limited; Gilbert Phan, a workshop supervisor; and Sam George and Annie Emelee, both employees of the defendant.
5. To succeed, the claimant must show on the balance of probabilities that the defendant owed him a duty of care, that the defendant breached that duty of care and that as a result of that failure, he suffered loss and damage.
6. There is no doubt from the evidence that the claimant was aware that he should not occupy the place he did on this moving vehicle. He had been told, as the evidence shows and which I accept as true, by his bosses that he should not ride on the motor vehicle like this, but must remain inside the cabin. There is some evidence that he had been told not to travel in the vehicle at all, thus leaving his post as security of the premises. Still, that evidence was then contradicted by the second witness for the defendant, who, fairly in my view, admitted in cross-examination that he had, at times, asked the claimant to accompany the vehicle.
7. There is no doubt that his manager, Catherine Keys, had spoken to the claimant and firmly told him not to ride on the vehicle in this way. That is established in the evidence, which again, I accept. There is no doubt that the driver of the vehicle remonstrated with the claimant about where he chose to ride. Again, that is evidence for the defendant that I accept.
8. But it is also clear that the same driver began the journey with the claimant exactly where the claimant wanted to be. Regardless of the various rules and procedures that no doubt existed, the defendant, in fact, allowed the situation to occur. Its employee, the driver, knew that what was happening was contrary to the employer's rules or policy, yet he still undertook the journey. Catherine Keys knew of the claimant's predisposition, but, other than raising her voice at him when she caught him in flagrante, took no further steps to ensure that the practice came to an end. Such steps could have included a warning to both him and any driver who facilitated this action, and, ultimately, dismissal if the warnings proved ineffective. There had been talk of disciplinary steps, none of which had been taken when the accident occurred. This occurrence was not an isolated incident.
9. The pleadings relating to negligence are problematic. The pleading suggests that the container that moved should have been secured from moving forward with iron restraints. Quite why the claimant chose to limit himself to that remedy was not clear from the evidence. That, in my view,



should not be fatal to the claim. If the claimant can show that the defendant failed in its duty of care to him and he suffered damage as a result, he will be entitled to succeed.

10. Determining whether the duty of care was breached requires consideration of what occurred. The fact that an accident happened will not, of itself, entitle the claimant to succeed. The evidence suggests that there is no need to secure a container with strapping or other physical restraint, for the container itself is sufficiently heavy to remain stationary in the normal course of events. This container slid from its position.
11. There is evidence from both the claimant and the driver of the motor vehicle regarding what caused the container to move. The claimant, in cross-examination, said there was a problem with the vehicle's brakes that caused the driver to collide with something on the side of the road. He described it as a cliff. The driver said, in response to a question, that he had hit a wall. Whether it was a cliff or a wall, both accounts suggest that the container's movement on the trailer was caused by the motor vehicle coming into contact with a solid object, which disrupted its normal movement.
12. The driver said nothing about having a problem with his brakes, but he was not asked any questions about that. Whether affected by defective brakes or not, both accounts show that the vehicle collided and that the container moved as a result.
13. It was, of course, the movement of the container from its position that was the direct cause of the claimant's injuries, causing him, as it did, to jump off the trailer onto the ground. The driver, in his evidence given in cross-examination, admitted that he collided with a wall and immediately thereafter saw in his rear view mirror that the container had shifted and that the claimant had left the vehicle. It is not necessary to determine whether the driver was negligent in his driving or whether the defendant was negligent in sending him out on his journey with a defective vehicle, which caused the driver to collide with a solid object. A collision with a solid object should not happen.
14. This is a breach of the duty of care that makes the defendant liable to the claimant in damages.
15. Turning to the question of whether the claimant contributed to his injuries, the evidence is clear. He knew that he should not be standing where he did. Common sense tells him that, but I accept that his employers had also reinforced the position. What his employers did not do was to take

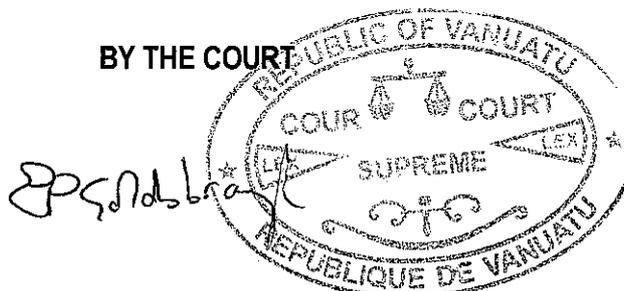


such steps as to ensure that what, it seems, many knew was taking place, ceased. Rules, it appears, are more honoured in the breach than in the observance.

16. I assess the relative contributions at 50%. The employer used a lethal weapon when it drove around Port Vila with a substantial trailer rig transporting either full or empty containers. It is, in my view, required to ensure that all necessary steps are taken to minimize the risk of injury to other road users and to its own employees. The claimant foolishly preferred to ride in the open, putting himself at risk of harm.
17. The claimant seeks damages in his amended claim of VT 9 million, comprising VT 5 million for personal injury, VT 1 million for emotional distress, VT 600,000 for economic loss, VT 2 million for general damages, and VT 1 million as punitive damages. After being informed of the decision on liability and contributory negligence, counsel filed a memorandum agreeing on the quantum of damages and costs. On that basis, it is agreed that the order of the Court is that damages are awarded to the claimant of VT 1.1 million, and an order for costs of VT 600,000 is made.

Dated at Port Vila this 13th day of November 2025

BY THE COURT



Hon. Justice EP Goldsbrough