

## INDARMATI

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v.

## W. R. CARPENTER &amp; CO. (FIJI) LTD. AND ANOTHER

[SUPREME COURT, 1962 (Knox-Mawer Ag. P. J.), 25th, 29th  
January, 9th March]

B

## Civil Jurisdiction

*Tort—slander—publication—publication to spouse of plaintiff sufficient.*  
*Tort—slander—vicarious liability—implied authority of employee to speak to person reasonably suspected of shoplifting—use of defamatory words unauthorised—employer liable.*

C

*Master and servant—implied authority—unauthorised mode of performing authorised act—slander—vicarious liability of master.*

The second defendant, an employee in the store of the first defendant company, slandered the plaintiff by an accusation, made in the presence of the plaintiff's husband, that she had taken goods for which no payment was made.

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*Held*: 1. Publication of the defamatory statement to the husband of the plaintiff was a sufficient publication.

*Wenman v. Ash* (infra), applied.

2. The first defendant company was liable along with the second defendant, because the second defendant was impliedly authorised to speak to the plaintiff in circumstances in which he honestly believed that the plaintiff had taken goods, but by using words defamatory of the plaintiff, he did what was authorised to do in an unauthorised manner.

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Case referred to: *Wenman v. Ash* (1853) 13 C.B. 836; 22 L.J.C.P. 190.

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Action in the Supreme Court for damages for slander.

R. I. Kapadia for the plaintiff.

G. M. G. Johnson for the defendants.

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The facts sufficiently appear from the judgment.

KNOX-MAWER Ag. P.J.: [9th March, 1962]—

This is an action for slander. In the prayer of her statement of claim the plaintiff has claimed damages for both slander and false imprisonment, but her counsel has now conceded that the evidence is insufficient to support the allegation of false imprisonment. This judgment is therefore concerned only with the issue of slander.

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A The plaintiff contends that on the morning of the 25th February, 1961, she was slandered by the second defendant, a salesman employed by the first defendant, at the latter company's store in Rodwell Road, Suva. The plaintiff alleges that after she and her husband had brought and paid for certain goods in the self-service department, they were accosted in the main store by the second defendant who said to her husband, in her presence, "this woman" (referring to the plaintiff) "has pinched powder, check this woman she has got powder in her blouse", or words to that effect.

B In support of her claim, the plaintiff herself has given evidence, along with her husband Ram Karan, Inda Datt, and Thomas Columbas. For the defendants, the witnesses called have been the second defendant, together with Mr. F. H. Jackson, Mrs. Ogilvy and Timoci Sevio, all employees of the first defendant. The Court has also viewed the *locus in quo*.

C The second defendant has stated in cross-examination that when the plaintiff and her husband were buying goods in the self-service department, he saw, reflected in a wall mirror, the plaintiff putting a tin of powder in her blouse. He said he knew she hadn't paid for it. Subsequently, he maintained, he went up the plaintiff and her husband and said to Ram Karan, not words to the effect of those alleged in the statement of claim but, "excuse me Bhai, this woman has taken a tin of powder and has forgotten to pay the money for the same". Ram Karan, he says, then lost his temper, began shouting and attracted great attention from other persons in the shop.

E The plaintiff and her husband, on the other hand, have sworn that the words used by the second defendant to Ram Karan were to the effect of those pleaded.

F I have to decide this difficult issue as to what exactly was said by Shiu Narayan to Ram Karan upon the balance of probabilities. I have concluded, upon the evidence, that in the circumstances and in the belief (mistaken or otherwise) in which Shiu Narayan, the second defendant, approached the plaintiff and her husband, he did, upon the balance of probabilities, use words to the effect of those alleged in paragraph 3 of the statement of claim, and not those which he now says (and no doubt wishes) he had used. I consider it easily understandable that Shiu Narayan, who is clearly a faithful employee of the first defendant, did, through genuine, if misguided, zealour, use words to the effect of those alleged. I therefore find that the plaintiff has discharged the onus of proving that words to the effect of those alleged were spoken by the second defendant to her husband.

H The four essentials to be established in an action for defamation are, (1) that the words complained of must be published, (2) maliciously, (3) that they must be defamatory, (4) that they must refer to the plaintiff. The plaintiff has established the first essential, namely publication, because she has shown that Shiu Narayan communicated the offending words to her husband. It is not necessary for her to prove communication to any other person. As is stated in *Winfield on Tort*, Sixth Edition, at p. 312, "communication by a third

Provisions) (Death and Interest) Ordinance, Cap. 17, in her capacity as executrix of the estate of Kutti Gounden deceased she is entitled to damages for

- (a) loss of expectation of life and
- (b) pain and suffering.

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In assessing the damages for loss of expectation of life it is necessary to bear in mind not only the need for some consistency in awarding damages in similar cases in Fiji but also the fact that in a case where the deceased is well over 70 years of age one cannot ignore the fact that the expectation of life must be considerably shorter than that where the deceased is a person of middle age. With these considerations in mind I award the sum of £150 damages in respect of damages for loss of expectation of life. On the question of pain and suffering no evidence has been adduced in support of this part of the claim. Nevertheless the deceased must have undergone some pain and suffering and considerable discomfort and I award £50 damages under this head.

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Secondly, under the Compensation to Relatives Ordinance, Cap. 20, the plaintiff who is admitted to be the sole dependant of the deceased, is entitled to damages in respect of the extent to which she was dependant upon the deceased. On the evidence before me I am quite satisfied that the plaintiff would appear to be, according to her marriage certificate, only one year younger than the deceased and lived with the deceased in a house on the property owned by one of their sons. I accept her evidence that the deceased used to work only 3 or 4 days a week as a labourer for wages of about 8/- or 9/- a day and of his earnings he kept the majority for his own use and in buying food and clothing for the pair of them.

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On the evidence before me it would appear that the extent of the plaintiff's dependence on the deceased did not amount to more than £50 a year. For the rest it would appear that she was dependent on her sons who now maintain her. The medical evidence indicated that the deceased might have expected to live another 5 years had he not met with this accident. It is, however, doubtful whether he would have been working as a labourer until he died had he not met with this accident. Having regard to all these factors, I assess the plaintiff's damages under the Compensation to Relatives Ordinance at the sum of £200.

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The deceased died testate and under the terms of his will all his property was divided between his widow, the plaintiff, and his sons Perumal, Govind Raj, Krishna and Subramani, his son Murgesa having pre-deceased him. It is agreed that the deceased's estate was sworn at £256. The size of his estate will, however, be increased by the sum of £200, being the damages the plaintiff has recovered in her capacity as executrix under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, Cap. 17, which brings the total estate up to a value of £456. Of this sum the plaintiff was entitled to 1/5th, namely £91.4.0., under the terms of the deceased's will and it is by this amount that the damages assessed under the Compensation to Relatives Ordinance namely £200, must be reduced

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A to a net figure of £108.16.0 in making the award to her under this Ordinance. In the result, therefore, the plaintiff is awarded the following damages: firstly, under the Law Reform (Miscellaneous Provisions) (Death and Interest) Ordinance, Cap. 17, the sum of £200 and, secondly, under the Compensation to Relatives Ordinance, Cap. 20, the net sum of £108.16.0, making a total of £308.16.0 together with the costs of this action.

B On the subject of costs I direct that they be taxed on the lower scale. I further direct that because the trial of the action should have been completed in one day had the Plaintiff's pleadings been in order, the defendants shall only bear the costs of one day's trial of this action.

*Judgment for the plaintiff.*