

## Manu & Kingdom of Tonga v Muller

Court of Appeal

Hampton CJ, Morling & Tompkins JJ

10 App 10/96

9 & 13 June, 1997

*Damages - general - exemplary - principles - awards*  
*Tort - assault - false imprisonment - damages*

The respondent won a verdict against the appellants for damages as a result an assault on him and false imprisonment (by police). An appeal was taken against quantum of general 20 (\$10000) and of exemplary (\$1500) damages.

Held (dismissing the appeal):

1. A court on appeal will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because the appeal judges think that if they had tried the case in the first instance they would have given a lesser sum. The trial judge must have acted upon a wrong principle of law or the amount awarded is such as to be an entirely erroneous estimate of the damage.
2. For false imprisonment damages are recoverable for the injury to liberty and the injury to dignity and reputation (humiliation and disgrace).
- 30 3. For assault damages are recoverable under such well known heads as pain and suffering, loss of amenities and enjoyment of life, and loss of future earning capacity (economic loss).
4. The trial judge did not act upon any wrong principle of law nor were the general damages so extremely high as to make them an entirely erroneous estimate of damage. It is important that a court, in assessing damages, taken into account levels of ordinary income in Tonga and the value of money and general conditions in the Kingdom.
- 40 5. The award of \$10000 was not out of line with other awards. The amount of \$1500 exemplary damages was a modest one. An higher award could have been justified but it could not be said that the award was so very small as to make it an entirely erroneous estimate even, although it related to an abuse of power and authority by police.

Cases considered : Kaufusi v Lasa [1990] Tonga LR 139  
Flint v Lovell [1935] 1 KB 354  
Lotu v Govt. of Tonga (1/85)

Counsel for appellants : Mr Malolo  
Counsel for respondent : Mr Niu

### Judgment

On 27 March 1996 Lewis J. in the Supreme Court, following a trial which lasted some 9 days, made findings that the respondent (the plaintiff below) had been wrongly arrested, assaulted and falsely imprisoned by the first appellant (a police officer then acting in the execution of his duty) and that the second appellant was vicariously liable for those actions.

The events in question took place on 12 February 1993 and the trial judge's findings of fact are as follows: (the facts were then set out in detail).

The judge later said this as to general and exemplary damages (and it is the quantum of those two awards only which is the subject of this appeal):

"Being satisfied that the plaintiff suffered wrongful arrest and false imprisonment and being satisfied that as a consequence of the violence used against him in taking him into custody the plaintiff sustained shock and associated pain and suffering from the punches blows and kick delivered by the first defendant to his body, I am satisfied that the experience was an humiliating and distressing one.

I find that he, as a consequence of the kick to his left knee delivered by the first defendant, has suffered a permanent residual disability in the nature of a 5% permanent loss of function. I am satisfied that the plaintiff's left knee is now more susceptible to early onset of aching. (Exh. P12 - 11.12.95). I find that the plaintiff will experience from time to time a sensation of locking of the knee and the feeling that something is catching behind the knee cap. I assess general damages as a global award of \$10,000-00.

It is appropriate to make an award to exemplary or punitive damages in this case. The first defendant was an officer entrusted with a duty of policing the area of Nuku'alofa under consideration. His duty included looking to the safety of the citizens of the Kingdom not to cause injury and humiliation to them. He was to prevent breaches of the peace - not cause them. I award the plaintiff the sum of \$1500-00 by way of exemplary damages."

The appellants say that both awards (of general and exemplary damages) were excessive and "not in line with recent case law." It is worth repeating what this Court approved and followed in *Kaufusi v Lasa* [1990] Tonga LR 139, at 140:

"A classic statement of the grounds upon which a Court of Appeal will interfere by reassessment of damages appears in the judgment of Greer LJ in *Flint v Lovell* [1935] 1 KB 354 (C.A.) at 360 where he said:

"This Court will be disinclined to reverse the finding of a trial judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."

This statement has been approved and adopted by both the House of Lords and the Privy Council and although not binding on this Court we would be foolish not to follow it."

We turn then to the award of \$10,000-00 for general damages. This was, as the trial judge noted, a global award covering not only the assault and the injuries suffered in that, but also the wrongful arrest and false imprisonment.

With regard to false imprisonment damages are recoverable, in a general sense, for the injury to liberty and the injury to dignity and reputation (humiliation and disgrace).

110 With regards to assault damages are recoverable under such well known heads as pain and suffering; loss of amenities and enjoyment of life; and loss of future earning capacity (economic loss). The trial judge did not attempt to undertake any breakdown of the award of general damages.

However it is clear from the extracts from his judgment, which we have already set out, that all of the above-mentioned features or heads were in his mind when he made the award of general damages. He was recompensing the respondent for the separate (but related) wrongs inflicted upon him, resulting in public humiliation and violence on a person doing no wrong or harm, and for considerable injuries including a permanently disabling injury to the respondent's left knee.

120 The medical evidence as to that last - mentioned injury, was extensive. It showed, inter alia, that within 2 months of the kicking to his knee he had to undergo surgery to that joint in New Zealand followed by prolonged and intensive physiotherapy but that, notwithstanding that treatment, he was left with a knee with a 5% loss of function (a lack of flexion) with some continuing discomfort (likely to increase with age) and, as well, a lack of stability in the knee. That latter feature was said to make it unsuitable for the respondent (31 at the time of the assault) to continue in the occupation for which he had training, and in which he had experience, namely as a rigger. The lack of reliability in the knee was the important feature there.

130 The trial judge did not act upon any wrong principle of law here - and the appellants do not argue so. Nor are we convinced that the amount of general damages awarded were so extremely high as to make it an entirely erroneous estimate of damage.

It is important that the Supreme Court, in assessing damages, takes into account levels of ordinary income in Tonga and the value of money and general conditions in the Kingdom. We have reviewed the award in the light of those criteria. We have also considered the various cases put to us, by counsel on both sides, for comparative purposes, on matters of awards made in Tonga, in the past. We note that most of those cases put to us date back to a period between 1987 and 1990 (with one in 1993). It is a difficult and invidious task to draw comparisons because physical injuries and the range of consequential sequelae do vary so much.

140 Nonetheless reviewing those judgments it does not seem to us that this award here is out of line. One only has to look at the general damages awarded in 1987 in Lotu v Govt of Tonga & ors (No. 1/85) of \$6000 for assault involving injuries that did not result in permanent disability (an award described by Mr Justice Webster in Otuafi v Sipa & ors (3.8..90 No.42/89) as being "the best yardstick") to see that is so.

150 Particularly it is so when it involves those additional heads (such as those that follow from the wrongful arrest and imprisonment; and from the permanent disability from the assault) as we have mentioned.

Indeed if the matter is looked at under the heads of damages we have the view that, on the evidence as found by the trial judge, the following sums might well have been appropriate:-

- |   |          |
|---|----------|
| (a) for pain and suffering                      | \$4000 - |
| (b) for loss of amenities and enjoyment of life | \$4000 - |
| (c) for loss of future earning capacity         | \$2000 - |

That totals \$10,000, without any account being taken of humiliation and loss of liberty.

160 As for the exemplary damages the cases reviewed by us show these features:

- (a) first - an award of \$1500 as here, in these circumstances, is not excessive, as claimed. However it is out of line with other awards, in the sense that it is somewhat less than other awards which have been made in circumstances where police officers have abused their authority and power.
- (b) second - too many of the cases have involved police perpetrating wrongs on members of the public. Police are there to protect persons from harm.

170 The award of \$1500 exemplary damages, in the circumstances found by the trial judge, was a modest one indeed. An higher award, in our view, would have been justified. But it is not our role to substitute our view for the trial judge who heard the evidence. And we cannot say that the award was so very small as to make it an entirely erroneous estimate of the damage. But the appellants may count themselves fortunate.

Perhaps it is that the trial judge had in mind the overall effect of these two awards of damages (general and exemplary). He certainly dealt with them in the one short passage we have already quoted.

180 In that regard it is worth repeating what this Court said in Kaufusi v. Lasa & ors (supra, at p 142): "(The trial judge) concluded that although this was a case for an award of exemplary damages, they should be assessed having regard for the sum he proposed to award for compensatory damages ... That is certainly a legitimate approach. While the assessment of compensation can never be affected by the amount awarded by way of exemplary damages, the converse is certainly not true and Rookes v Barnard is authority for that proposition and particularly the observations of Lord Devlin at p.1228" - ([1964] A.C. 1129).

The appeal is dismissed. The respondent is awarded costs and disbursements as agreed or as taxed.