IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU Civil Case No. 16 of 2009

(Civil Jurisdiction)

BETWEEN: LEVU ANTFALO

Claimant

AND: REPUBLIC OF VANUATU

First Defendant

AND: TITUS TANGA

Second Defendant

Mr Justice Oliver A. Saksak
Mrs Anita Vinabit – Clerk

Mr Less John Napuati for the Claimant
Mr Justin Ngwele for the Defendants

Date of Hearing: 29th June 2010
Date of Judgment: 8th December 2010

JUDGMENT

1. This claim arose out of a motor vehicle accident on 30th March 2009. The second defendant was driving as an escort for the Speaker of Parliament, the Honourable George Wells. Whilst traveling back into town near the Sanma Provincial Headquarters, the second defendant collided with the claimant's vehicle. The claimant was traveling towards Chapuis to go to Matevulu College. The accident occurred at around 8.40 p.m.

2. The claimant's vehicle was damaged to its left side of rear view mirror, back left mud-guard, spring, shaft and hand brake, right rear wheel seal, rear wheel bearing and rear spring pushes.

3. As a result of the accident, the claimant alleged he suffered loss and damages as follows –

(a) Pain and suffering –	VT500.000
(b) Emotional stress –	VT100.000
(c) Costs of repairs to Asco Motors –	VT416.840
(d) Loss of business from 30/03/09 to 20/06/09 at VT10.000 per day for 373 days –	VT1.214.000
(e) Undue loan payments –	VT299.140
(f) Bank charges –	VT204.468
(g) Expenses on attending Public Solicitors –	VT 5.000
(h) General damages –	VT 50.000
Total	VT2.719.448

4. The claimant alleged that the second defendant drove negligently by failing to –

(a) Keep a proper lookout

(b) Travel on his right of way

(c) Slow down; and

(d) Control his vehicle.

5. The claimant also alleged that the first defendant is vicariously liable for the second defendant's actions.

6. The second defendant was charged with Careless Driving contrary to section 29 of the Road Traffic (Control) Act Cap 29 in the Magistrate's Court. On 29th April 2009, he pleaded guilty to the charge and was fined VT10.000 and ordered to pay costs of VT1.000 to the prosecution.

7.1. The claimant gave oral evidence confirming two sworn statements dated 14th July 2009 and 4th May 2010. These were tendered into evidence as exhibits C1 and C2. Mr Ngwele cross-examined the claimant on his evidence.

7.2. The burden of proof rests on him to prove his claims on the balance of probabilities.

8. The defendants did not adduce any evidence. The first defendant filed a defence on 11th January 2010. The second defendant did not file any defence. And neither of them filed any sworn statements in response to the claimants' evidence as contained in his sworn statements.

9. At the close of the claimant's case, Mr Ngwele indicated to the Court that –

(a) With respect to liability, the defendants were in the hands of the Court. The Court infers from this that the defendants do not dispute liability issue.

(b) With respect to loss and quantum of damages, there were four issues raised as follows:-

(i) Whether the claimant was entitled to repair costs of the vehicle?

(ii) Whether there was loss of business earnings?

(iii) Whether the claimant was entitled to any award for undue loan repayments, bank charges and penalties?

(iv) Whether the claimant was entitled to any award for pain and suffering and emotional stress?

Counsel indicated that in written submissions, he would point to the deficiencies in the claimant's evidence to support their argument that the claimant was not entitled to any of his claims.

10. In the defendants' written submissions, the defendants have not addressed the issue of liability and whether or not the State is vicariously liable for the negligence of its servant. That being so, the Court takes the view that the first defendant accepts liability for the collision and the State accepts it is vicariously liable for the actions and the consequences of its servants' actions. Accordingly, I so rule.

11.1. Dealing now with the issues as raised in light of the evidence adduced by the claimant.

(a) Costs of repairs of the vehicle

In the claimant's sworn statement dated 14th July 2009 (Exhibit C1) the claimant annexed as "Annexure 4" –

(i) Quotation of materials by EPS Motors in the sum of VT164.840 dated 30th March 2009.

(ii) Receipt of cash payment of VT2.000 by EPS Motors on 30th March 2009.

(iii) Repair Assessment from Asco Motors dated 30th March 2009 showing the sum of VT250.177.

(iv) Parts Quotation from Asco Motors dated 30th March 2009 showing the sum of VT196.852.

11.2. There is no evidence that the claimant ever paid any money to Asco Motors following their Assessment and Quotes. In regard to EPS Motors, there is no evidence the claimant paid them the sum of VT164.840. He paid only the sum of VT2.000 to EPS Motors. And that appears to be his only special damage in respect to the repair costs.

11.3. The Court accepts defence submission that the claimant has not adduced sufficient evidence to prove that he paid moneys to EPS

Motors and/or Asco Motors in respect of repairs to his vehicle. Quotations are not receipts and only receipts prove payments were made. There is only one receipt of payment of VT2.000 to EPS Motors paid on 30th March 2009. That is the only valid claim the Court will accept.

11.4. The Court accepts defence counsel's submission that the claimant has not complied with the requirements set out in Rule 4.10(2) of the Civil Procedure Rules No. 49 of 2002. Further, the Court accepts counsel's submission that the burden lies on the claimant to prove losses or injury for which he seeks damages. See Todorovic v. Walker [1981] HCA 72; (1981) 150 CLR 402. The claimant has not discharged that duty in this case regarding his claims for costs of repairs.

(c) Loss of Business Income or Earnings

11.5. The claimant claims the sum of VT1.214.000 being loss of earnings for 373 days from 30th March 2009 to 20th June 2009 at an average of VT10.000 per day. Again, according to Todorovic Case the claimant has the duty to prove this loss. In his two sworn statements, the claimant has no evidence to substantiate this alleged loss. In business of the nature that he operates, there is normally a record book showing each day earnings and expenditures. The claimant did not include extracts of such a Book to convince the Court that he was doing business at the time of the accident. (See Coconut Oil Product (Vanuatu) Ltd v. Peter Terry).

11.6. The claimant has not shown he has a valid Business License to do business from the period from 30th March 2009 to 20th June 2009. In his sworn statement of 14th July 2009, he annexed as Annexure 6 a copy of his Business License but his was valid only for the period of January to 31st December 2008.

11.7. Another factor that affects the validity of the claimant's under this head is the lack of documentation showing that the claimant's vehicle had an insurance policy cover at the time of accident. As part of Annexure 11 to his statement of 14th July 2009, the claimant annexes a receipt from AFA Ltd showing that he paid VT61.875 in respect of a Third Party Policy Cover, but his was for the period of 14th November 2007 to 14th November 2008 only.

11.8. For the foregoing reasons this claim fails.

(d) Award For Undue Loan Repayments, Bank Charges And Interests

12. The claimant claims VT229.140 as undue loan repayment and VT204.468 as bank charges, interests and penalties. His evidence in sworn statement dated 14th July 2009 show transactions from 13th November 2008 to 13th June 2009 sees Annexure 2. In his Exhibit C3 details of transactions from 24th August 2009 to 29th April 2010 are shown. On transaction record of 13th June 2009, bank interests and penalties are calculated at VT204.468. Total loan repayments for 3 months is calculated at VT76.380 from end of June 2009 making a total of VT229.140. These are consistent with the claims of the claimant. The defendants did not object to these. Neither did they show any evidence challenging these or rebutting them. Therefore, these claims are accepted and allowed by the Court as valid claims. The total sum will be VT229.140 plus VT204.468 = VT433.608.

(e) Award For Pain And Suffering And Emotional Stress

According to the Torodovic Case, the claimant has the duty to prove this by evidence. The claimant has not produced any medical report or certificate to confirm he suffered emotional stress or that he

experienced pain and suffering as a result of the collision. These claims are clearly not substantiated and they must fail, and I so rule.

13. Counsel for the claimant submitted that an award of general damages should be based on the method used in Gomer v. Hotel Equities South Pacific Ltd [2002] VUSC 13. That submission is rejected as the circumstances of the case were very different from the present case.

14.1. In conclusion, the claimant succeeds only on part in his claims. There will be judgment in his favour but his claims are substantially reduced. He is only entitled to damages in the sum of VT433.608 plus VT2.000 = VT435.608.

14.2. The claimant is entitled to interests on VT435.608 at 5% per annum from April 2009 to the date of judgment.

14.3. The claimant is also entitled to his costs of and incidental to this action on the standard basis to be agreed or taxed by the Master.

DATED at Luganville this 8th day of December 2010.

BY THE COURT

OLIVER A. SAKSAK
Judge

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