

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

Civil
Case No. 17/2751 SC/CIVIL

BETWEEN: **Jeffa Lee Rovo**
Claimant

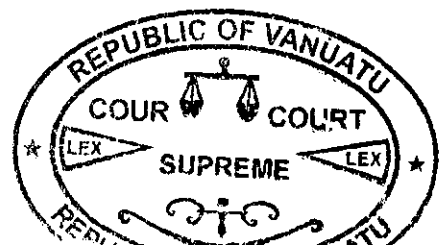
AND: **Republic of Vanuatu**
First Defendant
David Bong
Second Defendant

Date: 29 June 2020
Before: Justice G.A. Andrée Wiltens
In Attendance: Mr B. Livo for the Claimant
No appearances by of for the Defendants

JUDGMENT

A. Introduction

1. This case involves a claim for damages in respect of an assault against the Claimant by the Second Defendant, and vicarious liability therefor in respect of the First Defendant. The Claim against the First Defendant was discontinued; and the liability aspect of his Claim against the Second Defendant was resolved by Default Judgment granted on 18 May 2018.
2. What remains to be determined therefore is the quantum of the award of damages. This is to be determined on the papers filed, at the request of the Claimant – the Second Defendant having taken no steps whatever.



B. Claim

3. Following an incident on 31 October 2015 at Matevulu College, on Espiritu Santo, a number of students were apprehended by the police in respect of allegations of criminal damage to school property. The suggestion is that a number of the College students were intoxicated and out of control. The Claimant was one of the students who was apprehended and detained in the police cells for a time prior to being interviewed. In the course of being interviewed, Constable Bong entered the interview Room and slapped Mr Rovo on his right ear first, and later again but on his left ear. The blows caused both ear drums to perforate, and has left Mr Rovo with permanent loss of hearing to certain degrees in both ears, as well as enduring the pain and suffering around the time of the incident.
4. Constable Rovo was charged with criminal assault and convicted in the Magistrate's Court. The sentencing notes record that the assault involved slapping on both Mr Rovo's ears. That is relevant as it clearly establishes causation in respect of both ears, and contradicts the defence filed by The Republic of Vanuatu of only one slap having been delivered.
5. Mr Rovo seeks general damages for loss of hearing in both ears and loss of employment prospects. He has found difficulty in completing the school year and accordingly could not continue on past Year 12. He maintains that as a result, he will not be able to obtain higher paid employment. He also has lost the ability to play sports he previously enjoyed, and to swim in the sea.
6. For his hearing loss, Mr Rovo sought VT 1,950,628. For pain and suffering he sought VT 2.5 million. For loss of future earnings he sought VT 21 million. He also claimed 10% interest on these sums from 27 September 2017, the date of filing his claim, as well as costs.

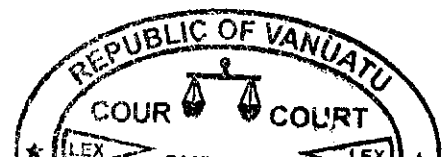
C. Discussion

7. The Claim included a prayer for special damages to be assessed. Special damages cannot "be assessed". They are to recompense a Claimant for actual costs incurred, and are usually capable of accurate calculation. In this instance there is no evidence of any medical bills, transport costs or even school fees unnecessarily expended. In the circumstances of this Claim, there can be no award in respect of special damages.
8. In respect of pain and suffering counsel's submissions relied upon the evidence in Mr Rovo's sworn statement of 4 May 2018 to establish quantum, in particular paragraphs 8, 9, and 14. Paragraphs 8 and 9 both state there was bleeding from the ears – as to be expected when ear drums are perforated. Paragraph 14 records:

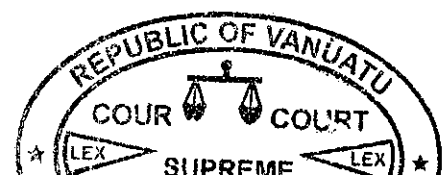
"After the injuries until today both my ears are very painful especially in cool weather....The reason I stop playing sports was because when I move my body especially my shoulder, I feel great pain on my two ears."

9. Paragraph 16 is also relevant. It records:

"When I was assaulted by the Police Officer, it caused pain and I undertook medication for sometimes and I cannot attend school."



10. Mr Livo submitted the award for pain and suffering should mirror the VT 1.9 million award in *Taravae Junior v Republic of Vanuatu* [2019] VUCA 55, but the circumstances of the accident to Mr Taravae are quite different and far more serious than here. The other authority relied on is *Enterprise Brand v Hinge* [2005] VUCA 21. In that case the award was VT 500,000, and the circumstances are much more in line with what has befallen Mr Rovo.
11. Mr Livo made submissions that the Courts in Vanuatu have tended to follow the UK Judicial Board of Studies Guideline ("UKJBSG") in setting the appropriate levels for certain types of permanent injuries. He pointed to *Bernard v Blake* [2013] VUSC 217 as authority for that submission. I accept the submission.
12. However, the submissions made are on the basis that Mr Rovo has lost all hearing in his left ear and some hearing in his right ear. Appended to Mr Rovo's sworn statement are two reports. The first records an examination on 4 October 2015, in which it is stated that both eardrums were perforated and blood stained. The second statement is by the ENT Nurse at Port Vila Central Hospital and dated 22 June 2016. Following audiometry tests Mr Rovo's hearing was stated to be:
- Right ear
A moderate sensory hearing loss in lower frequency (500Hz&1000Hz) and mild hearing loss in higher frequency (2000Hz & 4000Hz)
- Left ear
A moderate sensorineural loss in all frequency.
- Conclusion: Rovo Jaffae has a significant permanent hearing loss in both ears that will impact his ability to communicate."
13. It is difficult to reconcile those findings with the submissions of total hearing loss in the left ear. On the other hand, they sit comfortably with Mr Rovo's statement to the effect that in undertaking further training following this incident, he needed to sit close to the instructor and used lip-reading skills to embellish the hearing he has left. I further consider this evidence supports the proposition that Mr Rovo's hearing loss is greater on his left side.
14. The UKJBSG proposes an award of between GBP 9,750 to 19,500 for moderate hearing loss. That equates to between VT 1.43 million and 2.86 million. Once the determination has made where this matter sits within the range, there should then be an adjustment to reflect the different living standards between UK and Vanuatu – a one-third reduction is generally accepted as being appropriate.
15. Mr Rovo's position is that was still at school at the time of this incident. He was studying in Year 12 and did not graduate so as to be able to continue his education. He attributes his failure to satisfactorily complete Year 12 on the assault by Constable Bong. However, his results following the examination are poor. For English he received a grade 7, meaning his score was between 19 and 30. His next 3 best subjects were all at grade 6, meaning his scores were between 31 and 42. There must be serious doubts that he would have passed Year 12, given the incident causing his injuries occurred so shortly prior to the exams, and his ability to push the results higher only slightly inhibited.
16. In the circumstances, I am not prepared to accept the submissions that the incident caused Mr Rovo to be able to only take on lower paid work. There appear to me to be other reasons for



that, unrelated to Constable Bong's assaults. I also note that after leaving school he has undertaken training courses at INTV.

17. The loss of earnings accordingly cannot be assessed on the basis of the figures in the Claim – namely VT 21 million. Mr Livo in his written submissions argued the award be determined on the basis of 35 years employment with Mr Rovo earning an average wage of VT 40,000 per month. He calculated that to be VT 5 million – I calculate it to be VT 16.8m. Those calculations however do not compare like with like. The situation is not that Mr Rovo is unable to work as a result of his injuries. What needs to be compensated is the reduced income he can earn, compared to what he might have earned if his hearing was not impaired.


D. Result

18. Mr Rovo is entitled to VT 500,000 for pain and suffering.
19. For his hearing loss, Mr Rovo is entitled to VT 2.25 million for his left ear hearing loss and VT 1.65 million for his right ear hearing loss. Both sums need to be reduced by one-third, leaving the final award in respect of this aspect at VT 2.6 million.
20. For his loss of employment prospects, Mr Rovo is entitled to VT 10,000 per month – that being the income he should be able to earn with his disability as opposed to what he might otherwise have earned. He was able to work for 35 years following the incident. The total sum is therefore VT 4.2 million.
21. There is no justification for the claimed 10% interest. The usual Supreme Court rate is 5% p.a.. Mr Rovo is entitled to interest at 5% pa on the sums awarded from 27 September 2017 until the judgment amount is paid in full.
22. Mr Rovo is also entitled to the costs of this proceeding. They are to be taxed and once set to be paid within 21 days.

E. Enforcement

23. Pursuant to Rule 14.5(1), I now schedule a Conference for 8.30 am on 27 July 2020 to ensure the judgment has been executed' or for the judgment debtor to explain how it is intended to pay the judgment debt.
24. For that purpose, this judgment must be served on the Defendant.

Dated at Port Vila this 29th day of June 2020
BY THE COURT


Justice G.A. Andree Wiltens

