

BETWEEN: Arion Kaltamat

Claimant

AND: Anthony Nial

Defendant

Date of Hearing: *17th March 2021*
Date of Decision: *16th July 2021*
Before: *Justice Oliver.A.Saksak*
In Attendance: *Mrs Pauline Malites for Claimant*
Defendant in person- unrepresented

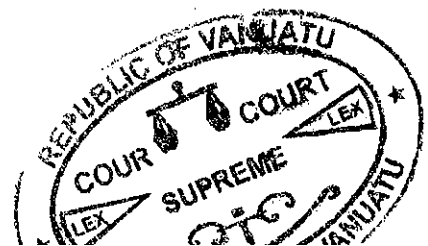
JUDGMENT

Introduction

1. This is a claim for personal injuries, loss of earnings and costs.
2. On 17th March 2021 the defendant admitted liability for the accident resulting in the injuries sustained. The Court issued directions for the filing of submissions as to quantum of damages by 30th March for the claimant, and by 12th April 2021 for the defendant.
3. The claimant filed written submissions on 22nd April 2021. The defendant has not filed any submissions in response.

The undisputed facts

4. On 3rd April 2016 at 11:00pm at Ohlen Area the defendant drove a double cabin vehicle under the influence of alcoholic liquor. He failed to keep a proper lookout and control and at excessive speed ran into the claimant and his friend, causing them to crush into a hibiscus hedges and barbed wire fence. The claimant sustained multiple injuries to his abdomen, left forearm and left radius. He fell to the ground unconscious and was taken to hospital by the ambulance.



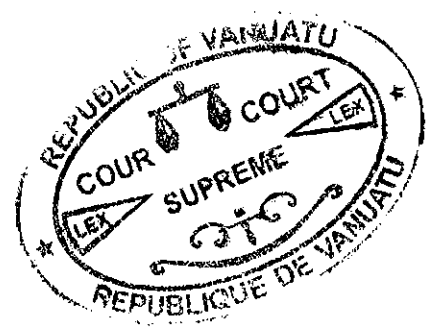
5. Dr Ricky Mera issued a Medical Report on 3rd April 2016 outlining the following injuries-
 - (a) Abdominal distention with abrasion on left flank.
 - (b) Abdominal pain
 - (c) Rebound tenderness and guarding.
 - (d) Swelling and deformity on left forearm.
 - (e) X-ray_fracture of left distal radius
 - (f) Scan-showed ruptured spleen.

6. On 6th July 2016 Dr Trevor Cullwick issued an updated medical report showing-
 - (a) The claimant was admitted on 3/04/016 and discharged on 18/04/016, a period of 16 days.
 - (b) His ruptured spleen was removed by surgery.
 - (c) He recovered well but faced a risk of Overwhelming Post splenectomy Infection (OPSI).
 - (d) He was immunised and given anti-malarial tablets.

7. The claimant was at the time of accident working at the Iririki Island Resort as a Bar tender. Although discharged on 6th July 2016 he was incapable of working for another seven weeks. He was earning VT 270 per hour for 8 hours each day for 6 days.

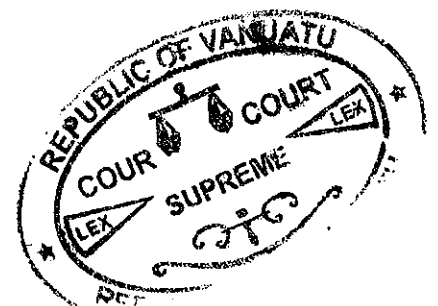
His Claims

8. The claimant's claims are for-
 - (a) Loss of Earnings at 8 hours per day x VT 270 per hour = VT 2,160 per day x 6 days= VT 12,960 per week for 9 weeks = VT 116,640.
 - (b) Loss of spleen and continuing risk of infection and disorder due to damage to the immune system- VT 1,942,089.
 - (c) Swelling and deformity of left forearm- VT 618,907
 - (d) Legal costs- VT 22,045
 - (e) Total- VT 2, 699, 681



Discussions

9. Mrs Malites based the calculations of the amounts claimed for loss of spleen and deformity of the left forearm on the Judicial studies Board (JSB) Guideline that guides values of injuries awarded by the Courts in the United Kingdom. The JSB Guideline has been recognised and adopted by the Vanuatu Courts in cases such as Benard v Blake [2013] VUSC 2017 and Rovo v Republic [2020] VUSC 138.
10. For loss of spleen the minimum value in the UK is £13,650 to the maximum of £ 17,250; equivalent to VT 1,194,089 to VT 2,454,288. Mrs Malites submitted the minimum award should be made in the sum of VT 1,942,089 to the claimant for loss of his spleen.
11. For deformity of the left forearm Mrs Malites submitted the awards made in the UK under the JSB Guideline was the minimum of £ 4350 to £12,600 as the maximum value. These in vatu equivalent was VT 618,907 to VT 1,792,697. In the claimant's case Mrs Malites submitted to minimum of VT 618,907 be awarded.
12. The total amount for personal injury under the JSB Guideline is VT 2,560,996. Mrs Malites submitted a third be deducted from this total figure. I do not understand the basis for such a deduction and reject the submission.
13. There is no specific claim for pain and suffering and therefore to reduce the total claim by 1/3 for an award deemed to be for general damages, would be insufficient in my view.
14. The defendant has no challenge to the amounts claimed. To submit that the court should only award the minimum values in light of what from the facts, was a very serious accident, caused as a result of careless and negligent driving, would be an undervalue assessment and award.
15. There will therefore be no deductions.




16. There is therefore judgment given in favour of the claimant for –

(a) Loss of the Spleen and risks	VT 1,942,089
(b) Deformity of left forearm-	VT 618,907
(c) Loss of earnings (9 weeks)	VT 116,640
(d) Legal costs	VT 22,045
TOTAL:	VT 2,699,681

17. The judgment shall be served on the defendant to pay the judgment sum of VT 2,699,681 within 28 days from the date of service, failing which the matter be returnable for enforcement conference on 23rd August 2021 at 8:30am in chambers 3.

DATED at Port Vila this 16th July 2021

BY THE COURT


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Oliver.A.Saksak
Judge

