

WESTERN SAMOA TRUST ESTATES CORPORATION v
SUEMALO (FOGASAVAII ATIOO)

Supreme Court Apia
Lowe J
1986

PRACTICE AND PROCEDURE - interest payable on damages only after judgment, not up to the date of judgment.

LEGISLATION:

- Bills of Exchange Act 1882
- Law Reform (Miscellaneous Provisions) Act 1934
- Supreme Court Act 1882 - rule 126
- Judicature Amendment Act 1952
- Samoa Act 1921 (NZ) - Ss 73, 74, 80, 349, 351, 355,
- Constitution of Western Samoa, Art. 73
- Law Reform Act 1964 (WS)
- Fatal Accidents Act 1974 (WS)
- High Court Act New Zealand - Rule 305

R Drake for Applicant/Defendant
C J Nelson for Respondent/Plaintiff

The judgement of Bremner J of 6 December 1985 left for argument the question of interest on damages up to the date of judgment, which His Honour thought should be awarded to the Plaintiff if the law permitted it. His Honour considers himself to be functus officio now, and therefore declines to deliver a further judgment in respect of interest.

The position regarding interest on damages up to the date of judgment appears to be as follows:

1. In England
 - (a) Until 1934, interest was payable only where it was recoverable at common law (e.g. in agreement or mercantile custom etc) or by Statute (e.g. Bills of Exchange Act 1882), and not on damages for personal injury.

- (b) In 1934 the Law Reform (Miscellaneous Provisions) Act was passed providing for interest to be payable on such damages at the discretion of the Court. My recollection is that the same Act gave power to an administrator to sue for damages in respect of the death of a person as a result of a tortious act - before that such an action died with the person. See Bullen & Leake 12th Ed. pp.578-580.

2. In New Zealand

- (a) The Supreme Court rules were enacted as the Second Schedule to the Supreme Court Act 1882. Rule 308 (now rule 304) authorises the Court where the parties could not agree on the rate, to fix the rate which was to be paid. It did not give the Court power to award interest where it would not otherwise be payable, however,
- (b)
- (c) The Judicature Amendment Act 1952 replaced s.87 with the present section, which is to much the same effect as the English 1934 Act (see 1(b) above), and so from 1952 NZ Courts have been able to award interest on damages from the date when the cause of action arose to the date of judgment.
- (d) Rule 305 provides for interest to be payable on the judgment debt from the time of judgment to the time of payment.

3. In Western Samoa

- (a) S.73 Samoa Act 1921 (NZ) gave the High Court the "jurisdiction which may be necessary to administer the laws of Samoa..." S.74(1) said "The rules of Court determining the practice, procedure, and powers of the High Court shall be such as may be made in that behalf by the Governor General by Order in Council. S74(2) said "Subject to the provisions of this Act and of rules of Court, the practice and procedure of the High Court shall be such as the Court thinks in each case to be most consistent with natural justice and convenience". The words "practice and procedure" cannot encompass "powers".

S.80 extended the jurisdiction of the Supreme Court of New Zealand to Samoa, but did not extend the jurisdiction of the High Court of Western Samoa. S.349

provided that the law of England, including the common law, as at 14.1.1840, if it was in force in New Zealand and was not otherwise inconsistent with Samoan law, was in force in Western Samoa.

S.351 provided that, except as expressly provided by the Samoa Act or by any other Act, regulation, or Ordinance, NZ Statute-law was not in force in Samoa. S.355 also applied.

- (b) The Judicature Act (NZ) does not apply in W. Samoa and never has, the provisions of the Samoa Act meeting local needs in that respect. Interest would therefore be payable on debts, etc., where the common law of England applied, as was the case in New Zealand before 1952.
- (c) The Law Reform Act 1964 (WS) and the Fatal Accidents Act 1974 (WS) make no provision for the payment of interest on damages.
- d) Rule 126 of the Supreme Court of Western Samoa is to the same effect as Rule 305 of the High Court Act New Zealand.
- (e) Article 73 of the Constitution provides that the Supreme Court shall have such original appellate and revisional jurisdiction as may be provided by Act. The Judicature Act 1961 says that the Supreme Court shall possess and exercise all jurisdiction, power and authority, which may be necessary to administer the laws of Western Samoa, and s.66 revokes parts III and IV of the Samoa Act 1921 (NZ), and the rest of the Samoa Act has been revoked by other enactments.

Although New Zealand after 31 years has grown accustomed to interest being payable on damages and in England after 60 odd years it is taken for granted, it is clear that statutory authority is necessary, that reference to natural justice and convenience is insufficient, and that interest must have some statutory or common law authority shown for it. There is no authority for the High Court in Western Samoa to award interest on damages up to the date of judgment as a general rule, and in particular that is so in the case of damages for personal injury or in respect of death as a result of a tortious act. Of course, interest from and after the date of judgment is payable as of right, by virtue of the provisions of Rule 126, on every judgment debt in excess of \$200, at the rate of 8% per annum and "judgment debt" can only have the meaning "a sum ordered to be paid by one party to another by a final judgment of the Court".

Accordingly, in the present case, there can be no award of interest on damages up to the date of judgment but interest on all sums ordered by the Court to be paid in the judgment of 6th December 1985 is payable at the rate of 8% per annum from that date up to the date of payment.