

MARTHILYANO RUBELUKAN, Plaintiff

v.

FRENDO FALEWAATH, Defendant

Civil Action No. 38

Trial Division of the High Court

Yap District

February 20, 1968

Action to determine amount of property and personal injury damages. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that while plaintiff could recover out of pocket expenses, damages for pain and suffering and loss of earnings as damages resulting from personal injury, he could not recover for loss of earnings during a period in which he delayed in obtaining medical aid.

1. Torts-Damages-Generally

The measure of damages for personal injury is compensation for the injured party's loss and this includes special damages and compensation for pain and suffering.

2. Torts-Damages-Generally

Compensation for an injured party's loss is subject to reasonably precise measurement because it includes costs of medical services, hospitalization, and related costs such as travel expenses, room and board in connection with treatment and other incidental and directly related expenditures.

3. Torts-Damages-Loss of Earnings

An injured party's loss also includes loss of earnings when there is total disability and compensation for reduction of earning ability if the injury is semi-permanent or permanent.

4. Torts-Damages-Generally

It always is the obligation of the plaintiff to produce itemized records to support his claim for damages for personal injury.

5. Torts-Damages-Generally

Where injured party was not billed for and did not pay certain expenses resulting from his injury he is not entitled to any recovery for them.

6. Torts-Damages-Loss of Earnings

Loss of earnings, an element of special damages resulting from personal injury, are subject to mathematical calculation, subject, however, to any reductions due to what is called "avoidable consequences".

RUBELUKAN v. FALEWAATH

Torts-Damages-Mitigation

An injured party is bound to exercise reasonable diligence in securing medical aid, to take all reasonable medical means to promote recovery and to prevent any aggravation of the injury thereby aiding in the speedy cure of the injury.

8. Torts-Damages-Mitigation

Where long periods of delay in obtaining medical aid and the resultant delay in the "cure" were attributable to the injured person he was not entitled to loss of earnings for the full period of his disability.

9. Torts-Damages-Loss of Earnings

Special damages for loss of earnings must be clearly and specifically shown and where they are not recovery will be denied.

10. Torts-Damages-Pain and Suffering

Pain and suffering is recognized as a principal element of damages for personal injury, although it is impossible to calculate with any degree of certainty.

11. Torts-Damages-Pain and Suffering

Pain and suffering also includes damages resulting from the anguish of surgical operation or medical treatment reasonably required by an injury.

---

<i>Assessor:</i>	JUDGE JOSEPH FANECHOOR
<i>Interp'J'eter:</i>	THOMAS A. FAIMAU
<i>Reporter:</i>	NANCY K. HATTORI
<i>Counsel for Plaintiff:</i>	LINUS RUUAMAU
<i>Counsel for Defendant:</i>	FRANK FALOUNUG

TURNER, *Associate Justice*

OPINION

In accordance with the Interlocutory Judgment entered by this court December 15, 1966, further trial, limited to plaintiff's entitlement to damages was held before Associate Justice D. Kelly Turner sitting in the Yap Districton February 12, and 13,1968.

The Interlocutory Judgment found the defendant liable to plaintiff for twenty-five dollars (\$25.00) property damages and for damages for plaintiff's personal injuries in an amount to be determined upon the re-opening of the trial.

**[1-4]** The measure of damages for personal injury is compensation for the injured party's loss. This includes special damages and compensation for pain and suffering. The former is subject to reasonably precise measurement because it includes costs of medical services, hospitalization, and related costs such as travel expenses, room and board in connection with treatment, and other incidental and directly related expenditures. It also includes loss of earnings when there is total disability and compensation for reduction of earning ability if the injury is semi-permanent or permanent. Only in the last situation is there any speculation or estimation required. Expenses and losses for the other items are subject to precise determination. It always is the obligation of the plaintiff to produce itemized records to support his claim.

**[5]** In this case, the plaintiff demonstrated entitlement for only two items of recovery. These were Yap District Hospital billings for seventy dollars and thirty cents (\$70.30) and for forty-eight dollars and forty-five cents (\$48.45) and loss of earnings from the time of the injury, September 3, 1965, until the re-opening of the trial. The plaintiff also produced evidence of two periods of hospitalization and further outpatient treatment at the U.S. Naval Hospital in Guam. Because he was not billed for and did not pay any of these expenses and because of the usual practice in the Trust Territory, he will not be billed nor be compelled to pay these costs, and is, therefore, not entitled to any recovery for them. Presumably, the Trust Territory Government paid the costs and since recovery has not been sought by it, we may not speculate what the amount of these special damages would be if the plaintiff had been obligated to pay the charges.

**[6,7]** Loss of earnings, another element of special damages, are subject to mathematical calculation, subject,

however, to any reductions due to what is called "avoidable consequences".

"Thus, it is frequently said by courts that the injured party is 'bound' to exercise reasonable diligence in securing medical aid, to take all reasonable care of the injury, and to make use of reasonable medical means to promote recovery and to prevent any aggravation of the injury-thereby aiding in the speedy cure of the injury." 22 Am. Jur. 2d, Damages, § 38.

The record in this case discloses shocking failures on the part of the plaintiff which subject him to the doctrine of "avoidable consequences". The plaintiff was transferred to the Guam hospital immediately after his injury, remained there for seventy-two days and returned to Yap in November, 1965. From that time until January, 1967, when he again reported for treatment, the two broken bones had not joined and healed. He again was referred to the Naval Hospital where a "nail" was placed in one of the bones. He returned to Yap after fifty-two days and reported to the Yap Hospital in June, 1967. At that time, one bone was "healing" but there was no union of the other. Plaintiff did nothing about it, however, and the Friday before the trial re-opened he reported for a further X ray. The non-joined bone has not improved, the break in the bone repaired by the "nail" appears to be healed.

. [8] These long periods of delay in obtaining medical aid and the resultant delay in the "cure" are attributable to the plaintiff. He is not, therefore, entitled to loss of earnings for the full period of his disability, which continued at the time of trial.

We hold, therefore, plaintiff is entitled to loss of earnings from October 1, 1965 (when his annual and sick leave pay ended after the accident September 3, 1965) until August 16, 1967 (the month in which he returned to employment as a watchman for a three-month period).

At the time of the injury, plaintiff was a carpenter in Trust Territory Public Works, Class *A-5/4*, Earning fifty-six cents an hour. His personnel record (Exhibit 3) shows he would have been entitled to a step increase from *A-5/4* to *A-5/5*, with a wage of sixty cents an hour approximately January 1, 1967, had he continued in employment. A Micronesian pay increase and a new step increase policy would have applied in July, 1967, but because of the holding that plaintiff was not entitled to loss of earnings under the doctrine of "avoidable consequences" after August 16, 1967, this increased earning benefit is denied him. By mathematical calculation, plaintiff's loss of wage entitlement is one thousand four hundred fifty-six dollars (\$1,456.00) for the period until January 1, 1967, and nine hundred forty-eight dollars (\$948.00) for the remainder of the allowable disability. In addition, plaintiff is entitled to the sum of one hundred sixty-eight dollars and forty-eight cents (\$168.48) for compensable annual leave earnable during the disability period.

Plaintiff claimed, as part of his loss, his "accumulated" sick leave hours. However, he would not have received payment for accumulated sick leave if he had been working and earned such leave. Sick leave may be used while an employee is working but is not included in compensable time **if** not used. Plaintiff, therefore, is not entitled to credit for sick leave but may include in lost earnings his lost annual leave. See: Chapter XIII, Trust Territory Personnel Manual, 1964 revision.

**[9]** Plaintiff also asked for fifty dollars (\$50.00) per month additionally as representing earnings from stevedoring, fishing, and selling coconuts and other produce at the market. As already indicated, special damages for loss of earnings must be clearly and specifically shown. All we have in this record is that plaintiff worked for additional income and his suggestion that he "averaged" fifty dol-

lars per month from this source prior to his injury. The court cannot accept generalities in matters reasonably certain of proof. Stevedoring records were available and if there were no books on the Farmer's Market transactions, some corroborating evidence should have been produced. Under the circumstances, we deny recovery on this claim.

**[10]** Pain and suffering is recognized as a principal element of damages for personal injury. It is impossible to calculate with any degree of certainty. Dollars are not exchangeable for pain.

**[11]** Pain and suffering also includes damages resulting from the anguish of surgical operations or medical treatment reasonably required by the injury. In this case, the plaintiff was twice hospitalized and if he expects a full recovery, he undoubtedly must undergo further surgery.

Although a court cannot precisely fix compensation for pain and suffering, it should allow an amount that is fair and reasonable under all the circumstances of the case. 22 Am. Jur. 2d, Damages, § 109.

In this case, plaintiff suggests that one thousand dollars (\$1,000.00) is a reasonable amount. With this, the court agrees.

In accordance with the foregoing, it is

Ordered, adjudged, and decreed : –

That plaintiff shall have and hereby is granted judgment against the defendant in the sum of three thousand six hundred ninety-one dollars (\$3,691.00), together with interest on said sum at the rate of six percent per annum from date of judgment until paid, plus costs in accordance with law upon filing itemized claim.

It is further ordered : –

That the judgment for property damage in the sum of twenty-five dollars (\$25.00) heretofore entered shall

be added to the judgment for damages for personal injuries and shall bear interest at the rate of six percent per annum from December 15, 1966, until paid.