**KERAI OLOUCH, Plaintiff**

**v.**

**KITALONG DULEI, Defendant**

Civil Action No. 485

Trial Division of the High Court

Palau District

January 29, 1974

Action for damages for personal injuries. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, accepted Master's fixing of damages.

1. Courts—Master's Report

Where, in action for damages for personal injuries suffered as result of defendant's assault with an *ebakl* (hatchet knife), the case was referred to a Master and both parties agreed to his recommendations, it was Trial Division's duty to determine whether the Master's fact findings and the law applicable thereto supported the proposed decision.

2. Assault and Battery with a Dangerous Weapon—Damages

Where defendant, using an *ebakl* (hatchet knife) inflicted five and one-half inch cut to the bone of plaintiff's left leg, severing arteries and veins, medical officer testified there was total and permanent paralysis of the leg, the leg was paralyzed three years later at time of suit, plaintiff was hospitalized 36 days and later sent to Guam for treatment of the paralysis, and plaintiff lived on a subsistence economy by raising pigs, fishing, cutting and selling copra and construction work, $1,000 for pain and suffering was not unreasonable, and $300 for loss of earning capacity, though speculative, would not be disturbed where defendant did not object.

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*Counsel for Plaintiff:* JONAS W. OLKERIIL
*Counsel for Defendant:* KAZUMOTO RENGULBAI

TURNER, *Associate Justice*

Plaintiff brought this action for compensation for personal injuries suffered as result of defendant's assault upon him with an *ebakl* (Palauan hatchet knife) in Melekeok Municipality, Babelthaup Island, Palau District. The case was referred to the Acting Presiding Judge of the Palau District Court, Francisco Morei. Hearing was held by this Court on the Master's report with counsel for plaintiff and defendant present. Both agreed to the Master's recommendations.

[1] Under the circumstances it is the duty of this Court to determine whether or not the Master's findings of fact and the law applicable thereto support the proposed decision. At the hearing before the Master the defendant admitted liability for the assault.

The medical officer from the Dr. McDonald Memorial Hospital, where plaintiff was taken for treatment after

the injury, testified plaintiff suffered a five and one-half inch cut to the bone on his left leg that severed veins and nerves which resulted in total and permanent paralysis of the leg.

The injury was inflicted by defendant February 1, 1970. Plaintiff was confined 36 days in the Koror hospital and was released although he had not recovered from the paralysis. April 17, 1970, plaintiff was sent to the U.S. Naval Hospital on Guam for further treatment. However, the paralysis was not cured and plaintiff was returned to Koror. At the time of hearing before the Master, nearly three years after the injury, plaintiff's leg remained paralyzed.

Recovery of damages for tort depends upon the amount fixed for pain and suffering which is governed by the extent of the injury and the amount shown to have been lost by the victim as result of the injury. The first of these two measures of damages is called compensatory and the second is called special damages.

Special damages are explained at length in *Rubelukan v. Falewaath*, 3 T.T.R. 410:—

> "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."

The foregoing case was appealed and the Appellate Division commented on the measures of compensatory damages for pain and suffering in *Falewaath v. Rubelukan*, 4 T.T.R. 527:—

"As the trial court said in his opinion, compensation for pain and suffering is an element of damage which is not capable of precise calculation. . . . It is clear from the court's opinion that it took into consideration the periods of plaintiff's hospitalization, necessity of surgical operations and medical treatment, and the probability that further surgery would be required. Having done so, we cannot say that the amount of $1,000 is excessive. Such a determination is within the province of the trial court and cannot be disturbed on an appeal unless clearly unreasonable or plainly excessive."

In *Mechol v. Kyos*, 5 T.T.R. 262, the court refused to award special damages because of the insufficiency of proof, and then said:—

"All we have left upon which to establish damages is compensation for pain and suffering. This may not be precisely calculated because money is not the equivalent of pain and suffering."

**[2]** The Master allowed the sum of $1,000 for pain and suffering and this Court cannot say the amount is not reasonable under the circumstances of the case.

With regard to special damages plaintiff was not regularly employed but engaged in the usual occupations of a subsistence economy, raising pigs, fishing, cutting and selling copra and employment with a church group in construction activity. Obviously, the plaintiff's income was almost impossible to prove and the measure of the reduction of income as result of the permanent injury even less susceptible to measurement.

In his report the Master said:—

"Recognizing the possibility of error, and at the same time the probability that such an amount does not adequately compensate the plaintiff for his real, but unproven loss, the reasonable amount will be $300.00 for loss of earning capacity."

Since the amount was not objected to by counsel for the defendant this Court will not disturb the figure, even though the amount recommended was largely based upon speculation. The Master also awarded $162.50 based upon

the evidence "for transportation and incidental expenses incurred during the hospitalization."

This Court accepts as reasonable upon the record the several sums fixed by the Master as plaintiff's damages. Accordingly, it is,

Ordered, adjudged and decreed, that plaintiff shall have and recover from defendant the sum of $1,462.50 together with interest on the judgment amount at the rate of 6% per annum from date of entry until paid.