

OF THE SUPREME COURT OF THE
TERRITORY OF PAPUA AND NEW GUINEA

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B E T W E E N :

GUBA KEVAU by her next friend

INOGO KEVAU

Plaintiff.

- v -

STEAMSHIPS TRADING COMPANY LIMITED.

Defendant.

This is an action for damages for personal injuries brought on behalf of a native girl aged four years who is living according to native custom as a member of Hanuabada native village.

Liability in respect of the injuries is admitted by the Defendant. I was asked to assess the damages, and the Defendant concedes upon the available medical evidence that the Plaintiff's present injuries are of a permanent nature.

The Plaintiff suffered a severe compound fracture of the left leg accompanied by injuries to the nervous system which have caused substantial wastage of muscle and immobility of the left ankle causing her to walk with a very pronounced limp, her left leg with the foot pointing stiffly downwards being effectively longer than the right leg with the foot in the normal position. The bone which was broken in two places is crooked and the ankle, apart from the loss of articulation, appears to be out of alignment. This may be due to muscular or other causes but it is evident that the Plaintiff will not be able to carry heavy loads and will have to accommodate herself to a great deal of discomfort in walking. She will also suffer substantial limitations in her enjoyment of the usual pastimes of children and in later years social and sporting activities.

I think that the principle upon which the Court should proceed to assess the damages is quite clear. It is that the Plaintiff is entitled to the pecuniary compensation representing as nearly as possible what she has lost as a result of her injuries. This means that I must assess as at the time when the accident occurred what prospects she had for the enjoyment of life and its benefits in the future. The problem is that in a native community such as Hanuabada, economic and social conditions have already changed greatly and are likely to change over the next few years at an even greater rate, and I must bear in mind not only the social background in which she lives today but the background which will be or which but for this accident would have been here in the future.

In this task I have been greatly assisted by the evidence of Mr. D. Marsh, the District Officer for the Central District. It appears that although native customs are changing and to a large extent breaking

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down with the advancement of the native people, there are certain fundamental social structures which are not likely to change for a very long time. These are matters of vital concern to the natives themselves and involve their concepts of social security which appear to be in many respects very much superior to those of European society. It is unlikely that during the lifetime of the Plaintiff a girl in her position would find that her injuries would prevent her from leading a full and happy life as a native or would affect her prospects of marriage to any extent. Her position in native society is not likely to be affected in any way at all. Other people will help and support her as necessary. There are, however, clearly disadvantages in association with her native life which must be borne in mind. They include, for example, the loss of full enjoyment of participation in ceremonial and other activities, discomfort when carrying out the tasks normally performed by native women and the limitation upon progress and comfort when walking from place to place - walking over considerable distances in the course of the daily work being one of the features of native village life.

The Plaintiff is the daughter of one of the more highly advanced of the natives from Manuabada village. INOGO has been employed for a long time by the Government Printer and is an established and responsible citizen. He is bringing up his children with a proper regard for education, and there is no reason why the Plaintiff should not in the ordinary course pursue her education up to the Intermediate Standard or possibly beyond. With advancing education, Manuabadans are likely to find greatly increased scope for employment in the future in the increasing commercial and other activities at Port Moresby. Mr. Marsh thinks it quite likely that a girl of the Plaintiff's age would be able to reach standards which would enable her in a few years time to gain employment as a Typist or in some other office work. Her injuries are likely to be a disadvantage to her when seeking employment but they are not of a nature which would prevent her from working or carrying out her duties efficiently, for example as a Typist.

During the lifetime of the Plaintiff the Westernisation of native life is not likely to proceed to a stage at which she would be left without security and support of her native community, nor is she likely to suffer direct financial loss. Her claim amounts more to matters of pain and suffering, inconvenience and probably discomfort in whatever kind of life the future may hold for her, and a reduction in the extent to which she will be able to participate fully in social and other activities. Her injuries constitute a severe and permanent disfigurement, but her handicap as a social unit will depend very largely on changing social conditions. I therefore estimate her loss very broadly at £800.

Questions may arise as to the appropriate form of order for the investment of the money on behalf of the infant Plaintiff and generally as to the administration of the fund. Possibly the Director of Native Affairs or the Secretary for Law may wish to put some material before the Court or make submissions as to the proper form of the order. I will direct that the £800 be paid into Court within seven days, and stand the case down pending further order as to the investment and disposition of the money.

Judgment will be entered for £800 with costs to be taxed.

Chief Justice.

7/12/59.