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BETWEEN: MYRIAM KARIE ESLEY

Plaintiff

AND: FRED TOARA

First Defendant

AND: RICHARD TOARA

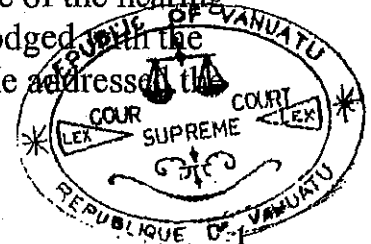
Second Defendant

Assessment of Damages

Steve Taione Esley died as the result of a road traffic accident on 15 May 1999. The plaintiff, his mother, has brought this action "for the benefit of: -

- (a) the dependents of the deceased under the Fatal Accidents Acts (1846 – 1959) of the United Kingdom;
- (b) the deceased's estate under the Law Reform (Miscellaneous Provisions) Act 1934 of the United Kingdom; and
- (c) such of the deceased's kin as would have been entitled under customary law principles, applying on the island of Efate to support and assistance from the deceased".

There is no issue as to liability before me. The purpose of the hearing is to assess damages. The plaintiff's lawyer very helpfully lodged with the Court a 'Precis Submissions of the Plaintiff on Quantum'. He addressed the court using that framework and I adopt it.



1. **Damages under the Fatal Accidents Acts**

The claim under this head is for four dependants, Steve's mother, father and two brothers. The plaintiff says that the deceased could reasonably be expected to contribute to the family for a period of 20 years. That is within the life expectancy of both parents and, of course, the two younger brothers.

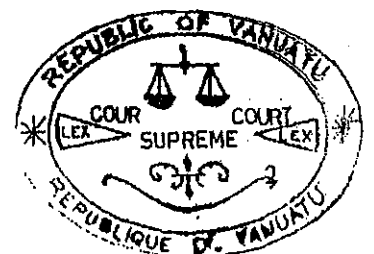
The case of Wathen and Vernon [1970] RTR p.471. was cited in support. A sum was awarded to the parents of a deceased who was 17 years old at the time of his accident. He was not actually supporting his family at the time, but there was a reasonable prospect of him doing so.

I am satisfied that there was a reasonable prospect of Steve helping to support his parents, particularly as they retired and became older. Also, he would have helped with the support of his two younger brothers Jason, now aged nine years, and Dick now aged eight years.

I find the period of twenty years is reasonable. Steve would have helped financially with the household generally and in the earlier years with Jason and Dick, more than their parents. In the later years the balance would have tipped the other way with the greater provision being made for the parents.

The claim is made for Vt100, 000 per annum. All the evidence shews that Steve would have been able to obtain employment in the middle range of wages. The current minimum monthly wage is Vt16, 000. That is a minimum. Out of his wages doubtless he would have paid for things for himself and probably in time supported a wife and children of his own. The figure of Vt100, 000 per annum equates to a contribution of Vt8, 333 per month. I find this is a reasonable figure and the kind of sum it is likely he would have contributed.

Accordingly under this head I award the sum of Vt2, 000, 000, being 20 years at Vt100, 000 per year.



2. Damages under the Law Reform (Miscellaneous Provisions) Act.

The claim under this Act lies in respect of

- (a) Damages for pain and suffering caused by the defendants act between commission of the act and death, and
 - (b) Damages for loss of expectation of life. (This head has been abolished in the United Kingdom, but still continues here).
- (a) From the documents before me it appears that Steve either died upon impact or was unconscious from that moment, until a very short while later when he died.

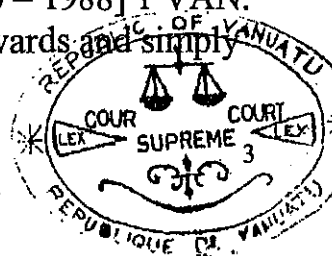
The plaintiff cited the case of *Kralj v McGrath* [1986] 1 All ER 54 in which damages were awarded under this head for an eight week old baby who "had no insight into his condition". Lord Woolf, at page 59j stated "... I consider it is appropriate to approach the matter on the basis that Daniel had no insight into his condition." In evidence, Professor Hurtingdon, "a very distinguished doctor", indicated that "it is not possible to say whether Daniel had any insight into his condition during the short period he lived".

The circumstances in this case are different.

This is not a case where someone has been caused pain and suffering for days or weeks, but there is a difficulty in assessing whether or not there was any insight into that pain and suffering. In this case death occurred on impact or there was loss of consciousness upon impact and death very soon afterwards.

The very nature of this exercise in fixing a sum under this head might well appear unfeeling. However, it is required in the proper assessment of damages. An award is appropriate but necessarily only a small one. I fix the sum at Vt100, 000.

- (b) I consider damages for loss of expectation of life. Steve was young, 15 years old, he was healthy and could have looked forward to a full and active life. In *William and Another v Obed* [1980 – 1988] 1 VAN. LR p.11 Chief Justice Cooke followed the English awards and simply



converted the sum into vatu at the prevailing rate. In 1981 that was Vt185, 000. The plaintiff cited further English cases shewing the increase in size of the sum over the years and concluding it increased at a rate of 500 pounds every five to six years. There is a degree of artificiality when fixing sums for damages in any area by taking the prevailing figure in England or any other country and simply applying the current exchange rate. Such an approach overlooks a wealth of relevant factors.

A figure of Vt185, 000 was awarded in 1981 in Vanuatu. That is nearly twenty years ago. The plaintiff's claim under this head is "conservatively estimated as Vatu500, 000". I do not disagree with that assessment and award Vt500, 000 under this head.

3. **Damages under Customary Law**

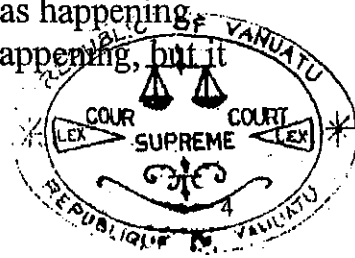
No claims were pressed under this head and consequently I do not consider it.

In the cases of *William and Another v Obed (supra)* and *Boe and Taga v Thomas [1980 - 88] 1 VAN LR p.293* it has been held that both the Fatal Accidents Acts (1941 - 1959) and the Law Reform (Miscellaneous Provisions) Act 1934 are statutes of general application.

4. **Special Damages**

There is a claim for Vt415, 023 in respect of a number of expenses, funeral and attendant ceremonies, the coffin and grave, and other expenses. I am satisfied this sum is properly claimed.

The two defendants were present. They have been represented by the Public Solicitor, although attendance by a legal representative has been occasional. The original date to assess damages was fixed with the agreement of the lawyer from the Public Solicitor's office, but he then left on leave a few days later. The hearing was adjourned for another to be present. Unfortunately he was able to do no more than make a note and explain to the defendants what was happening. The Court also explained to the defendants what was happening, but it was understandably difficult for them to follow.



It would certainly have aided this assessment had I received legal argument on behalf of the defendants. However, in the circumstances, I was not prepared to adjourn the matter again, for a period that might well have been two to three months.

Accordingly I award damages as follows: -

<i>Under the Fatal Accidents Acts :</i>	<i>Vt2, 000, 000</i>
<i>Law Reform Miscellaneous Provision Act</i>	<i>100, 000</i>
	<i>500, 000</i>
<i>Special Damages</i>	<i>415, 023</i>
<i>Total</i>	<i>Vt3, 015, 023</i>

I award interest at the rate of 10% per annum from 11 January 2000 and costs.

DATED at Port Vila, this 21st Day of December 2000

BY THE COURT

R. J.

R. J. COVENTRY
Judge

