RETZLAFF (TUITAUTAI RICHARD) v WESTERN SAMOA AIRPORT AUTHORITY AND POLYNESIAN AIRLINE HOLDINGS LIMITED

Supreme Court Apia
Dillon J
18, 19 November 1991

NEGLIGENCE - breach of airport rules

PERSONAL INJURIES - assessment of damages - contributory negligence.

HELD: Plaintiff was awarded damages for personal injuries (loss of right eye) in an accident at Maota Airport. Allocation of damages between 1st and 2nd Defendants 75:25. No contributory negligence.

CASE CITED:

- Fletcher v Auto Car [1968] 2 Q.B. 302

H T Retzlaff for Plaintiff
R Drake for 1st and 2nd Defendants

Over a period of 2 days I have heard evidence from 11 witnesses concerning this incident at Maota Airport. I have been impressed by the attempts by all to give their evidence honestly and truthfully and I believe that all were credible witnesses in that regard. I have however been able to come to fairly clear conclusions about this matter. Firstly it is common ground that as a result of the incident the Plaintiff has lost the sight of his right eye and evidence from Dr F. Smith was very carefully given explaining that the possible sympathetic loss of sight in the remaining left eye has now been by-passed. He does not discount entirely that it is possible but he is not as concerned as he was immediately after the accident. The Defendant has, after consultation with Dr Smith, rightfully had the eye operated on in New Zealand and there is at this stage general acceptance between Counsel that the special damages involving travel accommodation and medical expenses in New Zealand is of the order of $15,332.32. Included in that is accommodation for 2 occasions in New Zealand. Be that as it may I have no doubt in round figures that $15,332.32 is a figure which can be accepted as special damages the Plaintiff has incurred.

There was then the evidence of the Plaintiff and Matauaina. Their evidence was of having been ticketed for a flight out of Maota. The Plaintiff moved to the front of the terminal building and whilst there and still in the actual terminal was struck. He was hit in the eye by a sharp object which both witnesses assume was a stone flung up by a mower operated by the 1st Defendant. The evidence is countered by evidence of the mower operator who claimed that as he was looking over his shoulder in driving away from the terminal building he saw the Plaintiff moving out into the grass area. The glance over his shoulder was to check if the mower was running smoothly. That witness conceded he did not know anything about the incident until the nightwatchman told him the following day, Thursday.

Although approached very shortly after for a statement his complaint that he should have been informed of the incident, rings true. He is trying to reconstruct the incident in his mind. The fact that he was glancing over his shoulder may have been prompted by the mower going over rough ground.

I note from the photos of the mower that all photos show only 1 side and that side is heavily pockmarked.

If that is so then one of those stones or a stone being flung out would be like a bullet. I am reinforced in this conclusion by the rule that there is to be no mowing when planes land or take off, nor is there to be mowing in the vicinity of the terminal when there are passengers waiting to catch their flight. Dr Smith's evidence is that there are 1 or 2 eye cases a year from mowers, It is notorious that a stone can be flung from a mower and cause damage such as the Plaintiff suffered.

In the circumstances I am satisfied that the Plaintiff is entitled first by the 1st and 2nd Defendants or 2nd Defendant's agent to have had the mower operator stop work particularly as the plane's arrival was imminent. It seemed a matter of seconds rather then minutes between this incident and the plane arriving. There is a general rule which suggests the mower operator should stop when a plane arrives or departs.

I find therefore that the Plaintiff's allegation against the 1st Defendant of failing to ensure the safety of passengers and/or by operating mower near the terminal building when it knew or ought to have known passengers were within the vicinity, has been made out. I do not find as against the 1st Defendant, it was operating a mower when the guard was not affixed.

Similarly I believe the 2nd Defendant by its agent the loading officer should have called out to the mower operator to have him stop his operation once the Plaintiff and he arrived for the purpose of catching the flight out of Maota.

I find therefore the 2nd Defendant has failed to take adequate steps for the safety of passengers waiting to enplane in an area which it ought to have known was likely to be unsafe by reason of the operation of the lawn mower.

I do not find that the Plaintiff ventured out of the terminal on to the grass area before he was struck by the stone and I am reinforced in that conclusion in that he was able to have the Loading Clerk assist him by rushing into his office. Further the Plaintiff said he was concerned not to fall down and I cannot imagine a person suffering such a blow to his right eye to make it back, from a distance, to the terminal clutching his eye, bleeding from his eye, without stumbling or falling well away from the terminal.

Consequently I do not find there is any evidence which should reduce the damages payable to the Plaintiff because of the Plaintiff's contributory negligence.

I now come to the problem of fixing damages and allocating such damages between the 1st and 2nd Defendants. In allocating between the 2 Defendants the rule that applies was the rule imposed on the 1st Defendant to stop mowing when the plane is arriving and not to mow near the terminal. Consequently the major portion of responsibility must be with the 1st Defendant.

There was however at Maota the operator of PAL as the only operator. The arrival of a passenger to catch the flight was well known because the operator arrived together with the Plaintiff. Responsibility on the 2nd Defendant of 25% of damage I propose to award. Allocation therefore between 1st and 2nd Defendant is 75% to 25%.

On the question of damages I do not accept the Plaintiff's submission this is subjective according to the Plaintiff. I am reinforced in this by the decision in the Court of Appeal in Fletcher v Auto Car [1968] 2 Q.B. 302 a statement on pain and suffering.

I accept the Plaintiff endured pain and suffering, emotional trauma and fear of losing his other eye and general inconvenience up to this point. Further and on this point I bring in the Plaintiff's personal characteristics, he has suffered loss of amenities of his eye - it is trite to say he would rather have his eye than cash.

My task is to try and deal with this in an even handed manner between the Plaintiff who will receive and the Defendants who will have to pay. I am conscious of the assistance I have sought

from Counsel concerned and the difficulty with the lack of previous decisions. I have got as something of a guideline the cost that has been incurred by Plaintiff to date of special damages of $15,332.32.

There will have to be a fresh eye put in at present and there may well be 2 or 3 more such occasions.

There can only be one allocation of general damages which has to cover all these contingencies in the future. There is no provision for a Plaintiff to return to Court and say he needs more because the cost of living has gone up or that the cost of travel to New Zealand has gone up.

Taking into account all those contingencies and trying to be even handed between the Plaintiff and the Defendants in Western Samoan Society the Court proposes to award the Plaintiff the sum of $70,000.00 such to be against both 1st and 2nd Defendants along with special damages of $15,332.32.

Both figures are against the Defendants but the award as between Defendants is 75% to 25%.

The question of costs and disbursements will be according to scale subject to Counsel wishing to be heard further.