SAMOAN PUBLIC TRUSTEE v PILA PĀTŪ

Supreme Court Apia
25, 26, 27, 28 October 1971; 27 January 1972
Spring CJ

TORTS (Negligence) - Common law duty of master to take reasonable care for the safety of his servants.

(Contributory negligence) - Burden of proof on defendant - Question of fact whether injured party contributed to accident by lack of care for his own safety.

DAMAGES (Quantum) - Fatal accidents - Assessment by Judge necessarily speculative - Assessment not to be made on basis of actuarial calculations alone - Chances and vicissitudes of life must be taken into consideration.

ACCORD AND SATISFACTION (Whether acceptance of Ifoga barred claim of dependants) - Presentation of fine mat, food, and money to deceased's mother by defendant held to have been in performance of Samoan custom, rather than in settlement of possible claims for damages for loss of her son.

Filipo Sefo, who had spent some time as an assistant in an electrical business, but was not qualified as an electrician, was employed by the defendant as a member of the crew of his ship to operate electrical equipment, including charging the batteries. He had been so employed for barely two weeks when he was electrocuted as a result of the engineer in charge plugging in a long electrical lead, which ran from an outlet in the kitchen to the battery charger in the engine room where Sefo was attending to charging the batteries and not visible to the engineer. Deceased was 38 years of age at date of death, earning $6 W.S. a week, and partially supporting his mother (57) as well as his two children (5 and 13).

Held: In all of the pertinent circumstances deceased had been performing a hazardous operation; that the system for charging the batteries was not reasonably safe; that the defendant had a common law duty to his employee to ensure that it was so; and that the fatal accident was the result of his failure to fulfil that duty: Smith v Baker & Sons [1891-1894] AER Rep 69, Wilsons & Clyde Coal Co Ltd v English [1937] 3 AER 628, Qualcast (Wolverhampton) Ltd v Haynes [1959] 2 AER 38, General Cleaning Contractors,Ltd v Christmas [1952] 2 AER 1110 applied.

The defence that deceased's negligence by reason of his failure to remedy the deficiencies in the system, or see that they were remedied, failed on the evidence, which proved he was not employed as a qualified electrician in charge of and responsible for the system, but simply to carry on the method which had been in use for a considerable time.

Nevertheless, it was reasonable to conclude that a person with any practical experience in electrical work would ensure for his own protection that the power was not switched on while he was preparing to charge the batteries, and also reasonable to conclude deceased had

of electrocution. I have no hesitation on the evidence in finding that the cause of death of Filipo Sefo was electrocution.

The plaintiff claimed that the death of the deceased was occasioned by the negligence or breach of duty of the defendant, his servants or agents in -

(a) failing to take adequate precautions for the safety of the deceased;
(b) exposing the said deceased to a risk of damage or injury of which they knew, or ought to have known;
(c) failing to provide a safe and proper system for the charging of the batteries or the handling of electricity on board the Lady Lata;
(d) causing or permitting the said deceased to take an unnecessary risk by using a long lead to transmit electric current;
(e) failing to provide proper electrical equipment for use in conditions which are likely to be wet;
(f) causing or permitting the deceased to handle a "live" electric lead in conditions in which the defendant, his servants or agents knew, or should have known were dangerous;
(g) failing to provide or maintain any proper or safe system of charging the batteries.

The defendant in his amended Statement of Defence denied the allegations of negligence stated above and alleged that the deceased by his own negligence brought about the fatal accident.

I turn now to the allegations of negligence alleged by the plaintiff. Evidence was given by one Peter Paramore that he had been employed for four weeks by the defendant in October, 1970 as an electrician on the Lady Lata. He described the method of charging the batteries by means of the long power lead plugged into an outlet in the kitchen, which method I have already detailed. He denied that it was part of his duties as an electrician to charge the batteries, and said it was the responsibility of the oiler. He further stated that while employed on the vessel he installed in the engine room an A.C. power outlet just near the battery charger as he wished to do away with the long power lead running from the kitchen to the battery charger in the engine room. The plug he installed was no more than 18" to 2' away from the battery charger. He said he knew the deceased, and had employed him as an assistant in his electrical business, which he had been operating in Apia prior to October, 1970; that the deceased was not a qualified licensed electrician, but that he carried out certain practical electrical work. Mr C.A. Northcote, who is the Senior Electrical Engineer employed by the Ministry of Works in Western Samoa, stated that he inspected the Lady Lata on the 12th March, 1971 and explained the method used in charging the batteries by means of a long electrical lead running from the power outlet in the kitchen to the battery charger in the engine room. He stated that the steel deck of the engine room was very wet; that the engine room was hot, and that any person working there would be constantly sweating, and as a consequence very susceptible to an electrical shock if there was any leakage of power. Mr Northcote expressed the opinion that the method of charging the batteries by the long power lead was a hazardous and risky operation, particularly in view of the wetness and the moisture in the engine room. The power outlet needed to charge the batteries should, in his view, be placed in close proximity to the battery charger and the safe way to charge the batteries was firstly, to connect the battery charger to the power outlet nearby and then switch on the power at the outlet. He said he was unaware that there was a power outlet installed close to the battery charger. He had not been shown same when he inspected the vessel. The master of the ship, one Harry Jay Moors, was called to give evidence for the defendant, and he stated that he was aware of the method of charging the battery by the extension lead as mentioned above. He said there was an A.C. power outlet in the engine room, but exactly where he did not know. He considered it was the duty of the deceased to find out where it was. He further maintained that he did not wish to interfere with the operations of the engine room as there

was an engineer in charge, Mr Lees. At this point, it should be mentioned that Mr Lees was not called to give evidence as he had left Western Samoa for the United States of America. Mr Moors stated that he expressed annoyance at the method used for charging the batteries and asked why the power outlet in the engine room was not used. He took the matter no further. Evidence was called by the plaintiff from Pasia Filo and Fa'ausu as to the plugging in of the switch by Mr Lees and the cry emanating from the engine room from the deceased. According to the medical evidence there was a slight dark discolouration of the deceased's right index finger with a few blood stains and in the doctor's opinion this was caused by the entrance of electrical current into the deceased's body at this point. I accept this evidence and draw the inference when the plug on the long lead was connected to the power outlet in the kitchen the deceased was attending to the business of charging the batteries and electrical current entered his body through the right index finger causing his death. No one witnessed the deceased's death, but I find on the evidence that as soon as the plug was pushed into the power outlet there was a cry from the deceased who was found immediately thereafter lying on the engine room floor close to the battery charger. When Lees pushed the plug into the outlet he would not be able to see the deceased in the engine room, nor would he know what the deceased was doing at that time, nor, I find, was the deceased ever told of a power outlet in the engine room near the battery charger. I find that the engineer knew that the deceased was unlicensed as an electrician when he employed him.

This action is founded on the common law negligence of the defendant in failing to take reasonable care for the safety of his servant Filipo Sefo. The common law has always held the master to be under an obligation to take reasonable care for his servants' safety.

In Smith v. Baker & Sons [1891-1894] All E.R. Rep. 69 Lord Watson said at p. 83:-

> It does not appear to me to admit of dispute that, at common law, a master who employs a servant in work of a dangerous character is bound to take all reasonable precautions for the workman's safety. The rule has been so often laid down in this House by Lord Cranworth and other noble and learned Lords, that it is needless to quote authorities in support of it.

Again, in Wilsons & Clyde Coal Co., Ltd. v. English [1937] 3 All E.R. 628 Lord Wright restated this obligation and said:-

> The obligation is threefold, "the provision of a competent staff of men, adequate material, and a proper system and effective supervision;" I repeat the statement of the duty by Lord McLaren, quoted with approval by Lord Shaw in Butler (or Black) v. Fife Coal Co. Ltd. (20) at p. 173, and again approved in the Lochgelly case (19), at p. 28.

And their Lordships held that the duty is imposed upon the master himself, and if he entrusts the performance of it to another instead of performing it himself he is liable for the negligence of that other under the maxim respondeat superior. The duty remains personal to the master even though he is obliged by statute to entrust to a duly qualified person the duty of providing a safe system of work and is forbidden to interfere in the working himself. As stated by Lord Wright at p. 641:-

> It is the obligation which is personal to him, and not the performance.

Applying these principles, it is necessary to decide whether reasonable care was taken by the defendant, or his servants, for the safety of the deceased. As Lord Denning said in Qualcast (Wolverhampton) Ltd. v. Haynes [1959] 2 All E.R. 38 at page 44:-

> In the present case, the only proposition of law that was relevant was the well known proposition - with its threefold subdivision - that it is the duty of a master to take reasonable care for the safety of his workmen. No question arose on that

proposition. The question that did arise was this: What did reasonable care demand of the employers in this particular case? That is not a question of law at all but a question of fact. To solve it, the tribunal of fact be it judge or jury - can take into account any proposition of good sense that is relevant in the circumstances, but it must beware not to treat it as a proposition of law.

In General Cleaning Contractors, Ltd. v. Christmas [1952] 2 All E.R. 1110 Lord Oaksey at p. 1114 said:-

> In my opinion, it is the duty of an employer to give such general safety instructions as a reasonably careful employer who has considered the problem presented by the work would give to his workmen. It is, I think, well known to employers, and there is evidence in this case that it was well known to the appellants, that their workpeople are very frequently, if not habitually, careless about the risks which their work may involve. It is, in my opinion, for that very reason that the common law demands that employers should take reasonable care to lay down a reasonably safe system of work. Employers are not exempted from this duty by the fact that their men are experienced and might, if they were in the position of an employer, be able to lay down a reasonably safe system of work themselves. Workmen are not in the position of employers. Their duties are not performed in the calm atmosphere of a board room with the advice of experts.

I have carefully considered the whole of the evidence and I am satisfied that the system used on the 11th March, 1971 for charging the batteries by means of long power lead leading from the kitchen to the engine room on the lower deck, where there was considerable dampness and moisture, was not reasonably safe, and that the defendant failed to take reasonable care to ensure that it was, with the result, that the employee Filipo Sefo died.

There was a conflict of evidence as to whether the deceased was employed as an electrician or merely as a member of the crew. The plaintiff claimed that the deceased was employed by Mr Lees as an electrician and his duties were to maintain the electrical system. The defendant claimed that he was employed merely as a member of the crew.

Paul Po Ching called by the defence stated that so far as he was aware Filipo Sefo was working as an electrician on the Lady Lata. The defendant in his pleadings alleged that the deceased was employed by him as an electrician. I am satisfied on the evidence and find that the deceased was employed by the defendant as electrician despite the fact that he was unlicensed or unqualified. He had had some practical experience, but lacked in my view the knowledge that was requisite and necessary for the post of electrician on the vessel. Argument was addressed to the Court as to the amount of wages received by the deceased. Peter Paramore stated that while he was employed as electrician on the Lady Lata he received $100 U.S. per month. The defendant and Paul Po Ching, his accountant, stated that the deceased received $6 W.S. per week. It may well be that the defendant was endeavouring to secure the services of the deceased at a much lesser figure than the amount he had been paying to Peter Paramore, but the explanation by the defendant was that Paramore was a licensed electrician whereas the deceased was not. The plaintiff's purpose in urging upon the Court that the deceased was employed as an electrician was, I presume, to invite the Court to fix the wages of the deceased at a figure approximating those paid by the defendant to Peter Paramore. This I am not prepared to do. The evidence shows that the deceased, who was employed for barely two weeks was paid a wage of $6 W.S. a week, and I find that this amount, viz., $6 W.S. was his weekly wage. It may well be that had the deceased shown promise in the carrying out of his duties his salary may have been increased. In fact, the defendant admitted this, but on the other hand there was evidence that there was a large turn over of crew on the Lady Lata, and there was no assurance that the deceased's employment would have continued

for any lengthy period.

I turn now to the defence. The defendant alleged, "that the electrical system of the Lady Lata was certified as being adequate and safe and was a prerequisite to the said ship receiving a certificate of seaworthiness." It appears from the evidence that the Lady Lata arrived in Samoa on 14th September, 1970 and at that time had a certificate of seaworthiness issued by the authorities in the United States of America. No certificate as to the electrical system or the seaworthiness of the Lady Lata had, according to the evidence, ever been issued by the authorities in Western Samoa.

Captain Moors the master of the Lady Lata stated in evidence:-

A. We don't have a certificate, no certificate of survey, we have been given permission by the Minister and a letter from the Harbourmaster but no certificate of survey.

Q. What is this letter from the Minister?

A. Giving us permission to fly the Samoan flag and to take this trade between Apia and Pago Pago.

Q. Have you ever had a certificate to show that the electrical system is safe?

A. Yes we have had a certificate of survey from the United States.

Q. How long did that last?

A. That would be an annual survey.

Q. You have got no certificate of seaworthiness?

A. We have a Coast Guard certificate from the United States.

Q. And you are out of their jurisdiction?

A. Yes.

Q. Apart from the letter that you received from the Harbourmaster, have you received any authority from the Minister and so forth to operate this inter-Island service?

A. We have had a stability test.

Q. Nobody at the Marine Department here is competent to issue a seaworthy certificate?

A. No, sir.

Q. Who does issue a seaworthy certificate?

A. Mr Plowman.

Q. Is he the Harbourmaster?

A. Yes.

The allegation of the defendant that "the electrical system of the Lady Lata was certified as being adequate and safe and was a prerequisite to the said ship receiving a certificate of seaworthiness", has not, I find on the evidence, been established, but even if it had been so proved I remain satisfied that the system of charging the batteries as outlined above was an unsafe system of work.

The defence further alleged that, "the deceased by his own negligence brought about the accident as this was specifically the work for which he was engaged, i.e., the maintenance and the provision of a safe and adequate electrical system." This allegation was not supported by the

defendant when he gave evidence and I quote:-

Q. So is this statement then not correct, it was not correct that he was employed on board as the ship's electrician?

A. Truthfully, I say that he was not employed as an electrician. He could not do electrical work, and that was the reason why it resulted in his death, because he is not a qualified person. It was Charlie. As I have said, if there is any fault or anything wrong in the electrical system then the electrician in Pago will attend to any repair work.

Captain Moors of the Lady Lata said in evidence:-

Q. What was Filipo on the Lady Lata?

A. He was hired by Charlie as Electrician.

Q. And what work was he hired to do on the Lady Lata?

A. To maintain the electrical system, wiring and all that.

He further stated:-

Q. According to the Statement of Defence Filipo was specifically engaged to maintain the electrical system and also to make provision of a safe and adequate electrical system, do you agree with that?

A. Yes. It had to be correct at times, but he was sloppy in his work.

The deceased, I find, was an unqualified electrician. In the opinion of Mr Northcote, and in the circumstances obtaining, he was performing a hazardous and risky operation. I reject the allegation of the defence that the deceased by his own negligence brought about his own death.

I have to consider, however, whether the deceased took reasonable care of himself, and if he did not, whether he contributed by this want of care to the accident. Although the deceased must take that amount of care for his own safety which a prudent man would take in like circumstances, it was said in Caswell v. Powell Duffryn Associated Collieries Ltd. [1940] A.C. 152 that not every error of judgment or heedlessness or inadvertence amounts to contributory negligence; that it is a question of fact in each case whether the conduct of the plaintiff amounts to contributory negligence: see pp. 174 and 176.

The burden of proving contributory negligence is on the defendant. It is necessary to have regard to the facts to determine this question. In this case what the deceased was doing at the very moment he met his death cannot with precise accuracy be ascertained. The Court is left to inference or circumstantial evidence. The deceased was an unqualified electrician, although he had had some practical experience.

In considering whether he was negligent it is appropriate to bear in mind that the defendant, as I find, gave no tuition or instruction to the deceased; did not advise him that a power outlet was in the engine room; and the ship's engineer plugged in the lead without ascertaining if the deceased was exposed to any risk of danger. On the other hand, I would expect a man who has had practical experience in electrical work to be aware of the dangers of electricity and the risks involved. He should ensure that the power was not switched on while he was preparing to charge the batteries; in this case the engineer without communicating with the deceased plugged the lead into the power outlet. As a matter of justice and common sense I conclude that the deceased was contributorily negligent, but to a much lesser degree than the defendant. I assess the deceased's share of liability for the accident at fifteen per cent. I am satisfied that the defendant must bear the major responsibility for this tragic accident.

As to the further allegation by the defendant, viz., "The deceased

as the said ship's electrician did not at any time advise the Captain of any deficiencies in the said electrical system." I reject this defence. The deceased was merely continuing to use the method of charging the batteries which had existed over a lengthy period. The engineer who was the deceased's superior plugged in the lead and thereby caused this fatal accident. I find no merit in this defence.

It was alleged by way of a further defence that Amela Filipo (the mother of the deceased) accepted a fine mat, food, and money in settlement of any claim she had against the defendant. The defendant himself, however, said in evidence:-

> No, the presentation was not made as a bar to any claim this was made, because in accordance with the Samoan custom this is to settle any hard feelings that the family have had because of Filipo's death as a result of his employment with us. So that is why I have consulted my father for a fine mat to perform a proper Ifoga in accordance with the customs, knowing that this would be settled without any of them bearing any illwill against my family.

It is also a matter of comment that it was not until the amended Statement of Defence was filed that this defence was raised. The defendant also stated:-

> Q. You say that Amela made a settlement with you on her behalf that she would not receive anything?
>
> A. That is what she said, sir, because at that time I did not particularly take much notice of it because she can always change her mind, and she has done so.
>
> Q. You did not place much reliance on it?
>
> A. Likewise, now I will not honour my undertaking to her. If she wants now to come and get anything from me I will not give anything to her.
>
> Q. What about the infant children?
>
> A. I am quite prepared to give the children things that are for their benefits but not like faa-Samoa we see them coming and said would you please have something for the children. Then it turned out to be things for the faalavelave faa-Samoa and the children will suffer.

I am satisfied from a perusal of the evidence that any presentation made by the defendant was carried out in accordance with custom and was not made and accepted as accord and satisfaction of this action. In any event, the mother of the deceased could not compromise the rights of the infant children of the deceased.

I accordingly reject this defence.

Having found that the defendant is liable for this accident to the extent of eighty-five per cent. I now turn to a consideration of the damages.

In this Territory, damages are assessed by Judges sitting alone, and the principles to be applied are stated by North J. (as he then was) in Donaldson v. Waikohu County [1952] N.Z.L.R. 731 at p. 758:-

> In this class of case, damages are not "at large", but require to be assessed strictly according to the pecuniary benefits which it is reasonable to suppose the family would have received had the husband and breadwinner not been killed prematurely. In discussing claims of this kind, Lord Wright said in Davies v. Powell Duffryn Associated Collieries, Ltd. ([1942] A.C. 601; [1942] 1 All E.R. 657): "The damages are to be based on the reasonable expectation of pecuniary benefit or benefit reducible to money value. In assessing the damages all circumstances which

> may be legitimately pleaded in diminution of the damages must be considered . . . It is a hard matter of pounds, shillings and pence, subject to the element of reasonable future probabilities. The starting point is the amount of wages which the deceased was earning . . . Then there is an estimate of how much was required or expended for his own personal and living expenses. The balance will give a datum or basic figure which will generally be turned into a lump sum by taking a certain number of years' purchase. That sum, however, has to be taxed down by having due regard to uncertainties, for instance, that the widow might have again married and thus ceased to be dependent, and other like matters of speculation and doubt" (ibid., 611, 612, 617, 662, 665). In Nance v. British Columbia Electric Railway Co. Ltd. ([1951] A.C. 601) their Lordships said: "A proper approach to these questions is, in their Lordships' view, one which takes into account and gives due weight to the following factors; the evaluation of some, indeed most, of them can, at best, be but roughly calculated. Under the first head - indeed, for the purposes of both heads - it is necessary first to estimate what was the deceased man's expectation of life if he had not been killed when he was; (let this be 'x' years) and next what sums during these x years he would probably have applied to the support of his wife. In fixing x, regard must be had not only to his age and bodily health, but to the possibility of a premature determination of his life by a later accident. In estimating future provision for his wife, the amounts he usually applied in this way before his death are obviously relevant, and often the best evidence available; though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted" (ibid., 614, 615).

At the date of death the deceased was aged 38 years, his mother was 57 years and his two children Mikaele and Francis were aged 13 years and 5 years, respectively.

I have found that the deceased was receiving $6 W.S. a week at the date of death. He had been employed by Peter Paramore at $1.50 a day. For a five-day week this would be $7.50 a week. It is true the wages paid to him by the defendant may have increased, but then on the other hand there is no certainty as to whether employment would have continued for any length of time. Evidence was called by the plaintiff from Mr O'Brien, a Chartered Accountant, who produced certain figures based on an estimated wage of $25 W.S. a fortnight. Mr O'Brien had no detailed facts as to how the deceased spent his income, but he assumed for his purposes that the deceased would spend slightly over half his wages on himself and the remainder use for the maintenance of his mother and two children. Mr O'Brien assessed Amela's life expectancy at eighteen years (approximately).

In assessing claims for damages under the Deaths by Accidents Compensation Act 1952 (N.Z.) one cannot be guided solely by arithmetical calculations.

As Sellers L.J. said in Whittome v. Coates [1965] 3 All E.R. 268 at p. 269:-

> Again, the learned judge has to take into consideration all the chances and vicissitudes of life and arrive at a reasonable figure.

And at p. 270:-

> I would not think it was appropriate to accede to the argument that it should be assessed at some figure based on actuarial calculations; a round sum must be taken.

And Holroyd Pearce L.J. in Daniels v. Jones [1961] 3 All E.R. 24 at p. 28 said:-

> Since the question is one of actual material loss, some arithmetical calculations are necessarily involved in an assessment of the injury. But they do not provide a substitute

> for common sense. Much of the calculation must be in the realms of hypothesis, and in that region arithmetic is a good servant, but a bad master.

One has to take into account the risk that the deceased may have died prematurely; that he may have become unemployed; that he may have suffered an incapacitating illness or injury. Again, it is possible that the defendant may have died prematurely.

I acknowledge that there may be countervailing circumstances which could be suggested by way of balancing the matter; for instance, the deceased may have received a better wage than $6 a week. As was said by Viscount Simon, L.C. in Benham v. Gambling [1941] 1 All E.R. 7 at p. 12 and quoted by Hodson, J. in Bishop v. Cunard White Star, Ltd. [1950] 2 All ER at p. 25:-

> The ups and downs of life, its pains and sorrows, as well as its joys and pleasures - all that make up "life's fitful fever" - have to be allowed for in the estimate.

It necessarily follows that any figure which one determines or fixes must be highly speculative. This is a disadvantage which must necessarily accompany every effort to put into money that which is not assessable in money.

The children would in my view cease to be dependent at the age of sixteen years.

The mother Amela, I find on the evidence, was only partially dependent on the deceased at the date of death. She was working and earning $5 a week. She is not now employed; she voluntarily gave up the position after the death of her son Filipo, but I find the said position is still available to her. I understood from her evidence she would probably seek re-employment.

I have endeavoured to follow the principles enunciated above, and the proper amount to be assessed as damages in my view is $1,600. In accordance with my earlier finding on the question of contributory negligence I reduce this amount by fifteen per cent. and give Judgment on the claim for general damages of $1,360. The claim for $356.48 for funeral expenses I find excessive. It was apparent from the evidence that the mother of the deceased did not pay out this sum. She stated that she purchased the coffin for $40 and made other incidental expenses. The amount I award as special damages is $60 less fifteen per cent., namely, $51. Judgment will accordingly be for the plaintiff in the sum of $1,411, together with costs, witnesses' expenses, and disbursements, to be fixed by the Registrar.

In my view it is proper that I should apportion the damages hereby awarded as between the dependants of the said Filipo Sefo, deceased.

I accordingly order:-

(1) that Amela Sefo, the mother of the deceased, and Mikaele Filipo and Francis, the children of the deceased, be declared the sole dependants of Filipo Sefo (also known as Filipo Ioane Papali'i), deceased;

(2) that the amount of the plaintiff's party and party costs be paid to the plaintiff's solicitor;

(3) that the witnesses' expenses as fixed by the Registrar of this Honourable Court be paid to the persons entitled;

(4) that the sum of $900 (subject to the provisions of clause 6 hereof) be paid to the Samoan Public Trustee (who is hereby constituted Trustee of the fund) to be held in trust as a class fund pursuant to section 15 of the Deaths by Accidents Compensation Act 1952 (N.Z.) for the said Mikaele Filipo and Francis, the infant children of the said deceased, upon the trusts above set out;

(5) that the sum of $460 be paid to Amela Sefo subject to the payment by her to the solicitor for the plaintiff of one-third

of the amount by which the solicitor's costs of the action and disbursements as taxed and fixed by the said Registrar shall exceed the amount of the party and party costs recovered from the defendant; the sum of $51 special damages be paid to Amela Sefo;

(6) that the Trustee pay out of the said sum of $900 the remaining two-thirds of the amount by which the solicitor's costs of the action and disbursements as taxed and fixed by the said Registrar shall exceed the amount of the said party and party costs recovered from the defendant; and

(7) that leave is hereby reserved to the Trustee, the said Amela Sefo, and the two infant children, or any one or more of them, to apply to this Court for further or other directions pursuant to section 17 of the said Deaths by Accidents Compensation Act 1952.