

IN THE SUPREME COURT OF TONGA
Civil Jurisdiction

CV 59-2008

VILIAMI TOKI

KALONIKALI TUKANEKAI TOKI
Plaintiffs

V

TONGA SIMIKI
Defendant

BEFORE THE HON JUSTICE SHUSTER
MR C. F. EDWARDS FOR THE PLAINTIFF
THE DEFENADNT DID NOT ATTEND THE HEARING
DATE OF HEARING 18th FEBRUARY 2009
DATE OF JUDGMENT 27th FEBRUARY 2009

JUDGMENT

This case is a claim for damages in respect of the loss suffered by the plaintiffs, and their two daughters, arising from a collision between a three-ton truck registered number J5774 (the truck) driven by the defendant, and- the plaintiff's 1993 Delica motor van registered number L9797 (the van) driven by HEFA FATONGIA 'ANA TONGA TA'E'ILOA TUTANEKAI TOKI.

The said motor vehicle accident occurred at the intersection / roundabout of Tupoulahi and Salote road on the 10th August 2007.

The plaintiff's statement of claim indicates at paragraph 5, that the defendant was prosecuted in the Magistrates Court at FASI under case number 2151/07 on ~~6th December~~ 2007 for careless driving. The Magistrate's court records indicate the defendant was convicted- and was fined \$100 and he was ordered to pay compensation of \$200 to the victim, and he was disqualified from driving from the 6th December 2007 the date of the court hearing. The conviction for an offence of careless driving in the Magistrate's court on the 6th December 2007 proves liability on behalf of the defendant.

According to the court records compensation of \$200 was paid by the defendant on 18th December 2007 against receipt number R#88170 and I have seen proof of payment. Because the defendant has in fact paid the Magistrate's order for compensation in the sum of \$200, then that amount must of necessity be deducted from the assessed damages by the Supreme Court.

An Ex-Parte Application Notice was served on the Supreme Court on 22 August 2008 at 2.18pm by the plaintiff's lawyer, asking for Judgment in Default under Order 14 Rule 1 of the Rules of the Supreme Court 2007, and for damages to be assessed upon hearing formal proof, on the grounds that the defendant has failed to file a statement of defence. The timing for the filing of a statement of defence- had expired at close of business on the 5th August 2008.

Judgment in default was entered on the 28th August 2008 in reliance upon Order 14 Rule 1 of the Supreme Court Rules 2007 with a date to be notified for formal proof of the plaintiff's claim. The Court Order was served personally on the Defendant on the 5th September 2008. A date was subsequently set for formal proof of the damages claimed by the plaintiffs, for 14.00 on the 18th February 2009

THE CLAIM FOR DAMAGES

The plaintiffs claim for damages is as follows:-

1. Loss of vehicle	\$13,000
2. Injuries pain and suffering by the second defendant -	\$10,000.00
3. Injuries pain and suffering by the daughter HEFA -	\$4,000.00
4. Injuries pain and suffering by the daughter ANA -	\$1,000.00
5. Costs of and incidental to these proceedings/action	
6. Such further or other relief as the court deems just	

CHRONOLOGY

- A writ of summons was issued in the Supreme Court on 2nd July 2008
- The formal Notice of Directions, writ of summons and the statement of claim were properly served upon the defendant on the 9th July 2008
- A certificate of service was served on the court on the 14th July 2008
- The time for filing a defence expired on the 5th August 2008
- No defence to the action was filed by 5th August 2008-the expiry date
- An Ex-parte application for judgment by default was issued and dated 19th August 2008
- Judgement by default was entered by the Court on the 28th August 2008
- A certificate of service regarding the Court Order and Bill of Costs was served on the defendant on the 5th September 2008
- Fixture request for date to hear formal proof of damages 19th January 2009
- Plaintiff bundle of Documents served 18th February 2009 Exhibits P1-P9

EVIDENCE BOTH DOCUMENTARY AND TESTIMONIAL

- Evidence of the Marriage certificate of Viliami Tokai and Kalonikali Tutanekai certificate 22916 was adduced in evidence P-1
- Evidence of the birth certificates of HEFA TOKI born 01-01-1988 was adduced by certificate 089121 P-2.

- Evidence of the birth certificate of ANA TOKI born 15-01-1997 was adduced by certificate 015510.P3.
- Evidence of the existence of the registration of the motor vehicle L9797 was adduced by production of form 1A a certificate of registration P4
- Evidence of an Asco motor repair quotation number 1996 and evidence of its authenticity was adduced by the writer as Exhibit P5.
- Evidence of the injuries and the time Mrs. Kalonikali TOKI D of b 26-06-1964 spent in hospital was adduced by a doctor's report signed and dated 14th December 2007 by Dr Kolini VAEA -P-6.
- Evidence of the injuries and the time Mrs. Lesieli TOKI D of b 01-01-1988 spent in hospital was adduced by a doctor's report signed and dated 14th December 2007 by Dr Kolini VAEA- P-7
- Evidence of the injuries and the time Ms 'ANA TOKI D of b 15-01-1997 spent in hospital was adduced by a doctor's report signed and dated 14th December 2007 by Dr Kolini VAEA- P-8
- Evidence of the use of a taxi hired by the plaintiffs from the 10th August 2007 to the 10th August 2008 as transport to replace their vehicle is exhibited by receipt No 0136518 dated 10th August 2008 in the sum of \$2016.00 and given in evidence by the first plaintiff Exhibited P-9

DAMAGES AND RELIEF SOUGHT.

Having heard evidence on oath from both the plaintiffs, in the absence of the defendant, and studying the plaintiff's bundle of documents dated 18th February 2009 which are EXHIBITS P1-9- I am satisfied that the claim made by the Plaintiff's in this case- as against the defendant is properly made out. I am satisfied the claim has also been properly evidenced in court by both testimony and documentary evidence. I am also satisfied the defendant had knowledge of all of the dates of the proceedings and fixtures.

ORDER

I assess and award the plaintiff damages as follows-

1. Judgment for the first plaintiff in the sum of \$13,000.00, being the cost of the damage caused to the plaintiffs delica van L9797, for its replacement.
2. Judgment for the second plaintiff in the sum of \$10,000.00 however this figure, has to be adjusted – to take into account the \$200 awarded as compensation by the Magistrates Court in December 2007, making a total of \$9,800.00

3. Judgment for the plaintiffs in the sum of \$4,000.00 damages in respect of the injuries to Hefa Fatongia Ola 'Ana Tonga Ta'e'iloa Tutanekai TOKI
4. Judgment for the plaintiffs in the sum of \$1,000.00 damages in respect of the injuries to "Ana Tohu'ia TOKI
5. Judgment for the plaintiff's in the sum of \$2,016.00 being the hire of a replacement vehicle for one year from 10-08-07-10-08-08 as evidenced by Exhibit P-9
6. Costs against the defendant, which are to be taxed by the Chief Registrar.



Shuster J
Shuster J

Judge of the Supreme Court