

**Bristol v Sodepak Industries Limited
(2005) SLR 123**

Anthony JULIETTE for the Plaintiff
Serge ROUILLON Defendant

Judgment delivered on 19 October 2005 by:

KARUNAKARAN J: The Plaintiff is a young man and a resident of Takamaka, Mahe. At all material times, he was employed as a general helper by the Defendant, which is a company engaged inter alia, in the industrial production of toilet papers. In the instant action, Plaintiff claims the sum of R350,000 from the Defendant towards loss and damage, which the former allegedly suffered due to personal injuries sustained as a result of an accident whilst at work on 9 November, 2000.

Herein, the case of the Plaintiff is that the said accident was caused by the fault and negligence of the Defendant, in that the Defendant as an employer failed to provide a safe system of work for the Plaintiff to perform his duties in the course of his employment. Hence, the Plaintiff claims that the Defendant is liable to compensate him for the consequential loss and damages.

Although the Defendant, in the written statement of defence, as denied liability, subsequently on 16 March 2005, it changed the stand admitted liability. Consequently, counsel on both sides narrowed down the issue invited the Court to make assessment on the quantum of damages payable to the Plaintiff and hence is this determination.

In the year 2000, the Plaintiff was employed by the Defendant as a general helper and was at all material times assigned by the Defendant to work on a wet paper machine. On 9 November 2000, the Plaintiff was working on the said machine. He was fixing the paper rolls. As the rolls suddenly got jammed, the machine started to swallow up the paper rolls. His hand got stuck into the cleft between the two rollers of the machine. The hand was crushed and flattened by the machine. The Plaintiff suffered terrible shock and pain. He screamed and cried for help. Some of his colleagues rushed to the scene, turned off the machine and tried to pull out the crushed hand of the Plaintiff. However, they couldn't succeed. It was a prolonged struggle that lasted for 30 minutes. Eventually, with much difficulty they could reverse the rotation of the rollers and managed to pull out his hand. The Plaintiff fainted. He was immediately taken to hospital.

As per the medical report, the right hand and distal part of the right forearm of the Plaintiff had been completely crushed. There was a massive tissue loss on the palmar aspect of the right arm. There was moderate bleeding from artery radius and artery ulna. There was bone loss from distal end of radius to metacarpal bones. The remaining part of the right hand was cold and blue due to lack of blood circulation. As a

case of emergency, the Plaintiff was swiftly taken to the operating theatre. Under general anesthesia, amputation of distal part of the right forearm was performed. He was in hospital for 8 days. As a result of the said trauma the Plaintiff has now lost his right forearm. This loss, according to the prognosis of the Senior Consultant Orthopedic Surgeon Dr A. Koritnikov, has resulted in permanent disability of 50% of the Plaintiff's upper limbs.

As a result of the said injury and the consequential disability, the Plaintiff suffered immense pain and suffering. He also suffered inconvenience, anxiety, and distress as well as loss of amenities and enjoyment of life. On the shock of amputation and phantom limb, it is pertinent to quote the testimony of the Plaintiff, which reads:

Then they (doctors) took me upstairs to the theatre and when I woke up, they had already amputated my hand. When I woke up I thought I was in a nightmare, in a dream but when I reached for my hand, it was not there.

In view of all the above, the Plaintiff now claims compensation for the resultant loss and damage from the Defendant. The particulars of loss and damage are pleaded in the plaint, as follows:

(i)	Moral damage for pain and suffering	R200,000
(ii)	Moral damage for inconvenience, anxiety, and distress	R 50,000
(iii)	Moral damage for loss of amenities and loss of enjoyment of life	R100, 000
	Total	<u>R350,000</u>

Needless to say, the Plaintiff is relatively young. He is only 25; presently, unemployed and is getting a monthly subsistence allowance of R1100 from the Means Testing Board. However, whilst in employment with the Defendant company, he was earning a salary of R1700 per month. He has studied electrical engineering and refrigeration at the Seychelles Polytechnic. Apart from loss of employment at present, the Plaintiff's employability and prospects of getting a normal job in the world of work, is not as bright as that of any other young and able man with two good arms, because of the disability.

Regarding the principles applicable to assessment of damages, it should first be noted that in a case of tort, damages are compensatory and not punitive. As a general rule, when there has been a fluctuation in the cost of living, any prejudice the Plaintiff may suffer therefrom, must be evaluated as at the date of judgment. But damages must be assessed in such a manner that the Plaintiff suffers no loss and at the same time makes no profit. Moral damage must be assessed by the Judge even though such assessment is bound to be arbitrary. See, *Fanchette v Attorney-General* (1968) SLR. On the question of stare decisis, it is pertinent to note that the fall if any, in the value of money leads to a continuing reassessment of the awards set by previous decision of our Courts in order to meet the changing needs of time and economic life style (*Sedgwick v.*

Government of Seychelles (1990) SLR).

In the instant case, for the right assessment of damages, I take account of the guidelines and the quantum of damages awarded in the following previous decisions:

- (1) *Harry Hoareau v Joseph Mein* CS No 16 of 1988, where the Plaintiff was awarded a global sum of R30,000 for a simple injury caused by a very large stone. That was awarded about 16 years ago.
- (2) *Francois Savy v Willy Sangouin* CS No 229 of 1983, where a 60 year old Plaintiff was awarded R50,000 for loss of earning capacity. That was awarded about 20 years ago.
- (3) *Antoine Esparon v UPSC* CS No 118 of 1983, where R50,000 was awarded for hand injury resulting in 50% disability. The Plaintiff was restricted to light work only. This sum was awarded about 22 years ago.
- (4) In an English case, *Robinson v Leyland Motors Ltd* - see *Kemp & Kemp on Quantum of Damages* vol 2 - the Plaintiff was aged 21 years and was employed by the Defendant. As a result of the accident at work the Plaintiff's left arm was amputated above the elbow. The Court awarded a total sum of £13,000 as damages in respect of pain and suffering and loss of earning capacity.

The injuries in the present case are obviously, of severe nature and nature. The Plaintiff's crushed hand has remained clutched for about 30 minutes in the machine. Obviously, the Plaintiff should have struggled with pain and shock for the last 30 minutes in his life. Indeed, a terrible torturous experience in anyone's life for that matter! For pain and suffering I would therefore, award R60,000. In respect of moral damage for inconvenience, anxiety, and distress the sum of R30,000 would in my view, be reasonable and just. For loss of amenities and loss of enjoyment of life, I would award the sum of R70,000, which figure in my considered opinion, is reasonable, in view of the fact that the Defendant has been a right-handed person and has sustained 50% disability of his upper limbs.

For these reasons, I enter judgment for the Plaintiff and against the Defendant in the sum of R160,000 with interest on the said sum at 4% per annum - the legal rate - as from the date of the plaint, and with costs.

Record: Civil Side No 126 of 2002