

IN THE COURT OF APPEAL

AT SUVA, FIJI

[Civil Appeal No. ABU 022 of 2009]

BETWEEN : THE ATTORNEY GENERAL OF FIJI
1st Appellant/Respondent

AND : MINISTRY OF HEALTH
2nd Appellant/Respondent

AND : LORAINI DRE
Applicant/Respondent

BEFORE THE HONOURABLE
Acting President : Mr. JUSTICE JOHN E. BYRNE

: D. SINGH for the Applicant/Respondent

: S. LEVACI for the Respondents/Appellants

Date of Hearing : 16th February 2010.

Date of Ruling : 8th June 2010.

RULING

- [1] On the 24th of June 2009 Inoke, J awarded the applicant/respondent the sum of \$101,660.00 for general damages and interest together with the sum of \$2,500 for costs on the applicant's claim for damages for negligence by the Appellants.
- [2] The judge began his judgment with these words: "This is the sad story of a 66 year old woman who left her village and went to the Nabouwalu Hospital in October 2006 for treatment of the infection of the area behind her right ear and came home about two months later without her right arm below the elbow".
- [3] With that brief statement of facts which have never been denied by the appellants it is obvious that some satisfactory explanation for the applicant's misfortune was required. The learned trial judge found that no such explanation had been given and consequently found the appellants liable to the applicant in damages.

THE AGREED FACTS

- [4] The agreed facts quoting from page 2 of Inoke, J's judgment, were:
- a. "The Plaintiff on 16th October 2006 was a patient at Nabouwalu Hospital and was admitted for treatment of swelling over the right mastroid region (behind the ear).
 - b. "The Plaintiff was treated with intravenous antibiotics (1g cloxallin) through an IV cannula inserted over her right hand.
 - c. "After the said treatment at the said Hospital, the Plaintiff's right hand developed pain over the IV site and her right hand and the skin below the elbow became red and swollen and the palm, fingers and the thumb turned completely white.
 - d. "On the same day, the Plaintiff was moved to Labasa Hospital as an inpatient and was admitted till 26th October 2006.
 - e. "On 21 November 2006, below elbow amputation was done with primary wound closure".

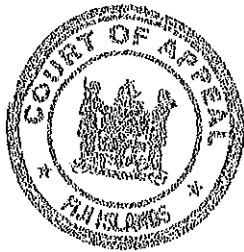
- [5] The significant features of the case in my judgment were:
- 1) There were specific findings of facts made by the Trial Judge.
 - 2) The appellants/respondents did not call any evidence of any nature to challenge the respondent's evidence.
- [6] In my view there was clear evidence on which the Judge was justified in finding for the applicant/respondent. This is to be found in paragraphs 23, 24, 25, 26 and 27 of the judgment of Inoke, J. I will say no more here lest it might be thought I was endeavouring to pre-empt the judgment of the Full Court but one has to be realistic in these matters.
- [7] Presently before me is an application by the plaintiff Mrs Dre for an interim payment of \$50,000 of her judgment.
- [8] The applicant in an affidavit sworn on the 3rd of November 2009 in support of her application states that she has been deprived of the fruits of her judgment since 24th June 2009 and there will be a further delay pending the determination of the appeal.
- [9] She states that she is unemployed and has no means of income, has only one hand as her working hand had been amputated and she needs a full time caretaker to look after her. She requests an interim payment of \$50,000 to meet her living expenses.

THE LAW ON INTERIM PAYMENTS

- [10] This has been stated in many cases over the years but there are two basic principles involved. First that normally, unless there are exceptional reasons for not so doing, where it is reasonable to award an interim payment of damages the courts will make such an award. Secondly, there is no requirement for a plaintiff to show need or hardship before an order for interim payment can be made by a Court.
- [11] In *STRINGMAN (A MINOR) v. McARDLE (1994) 1W.L.R 1653* the English Court of Appeal held, dealing with the equivalent of Order 29 of the High Court Rules of Fiji, that a plaintiff was not required to demonstrate any particular need beyond the general need to be paid his damages as soon as reasonably possible, and the Court should not, when considering to order such a payment, investigate how the money was to be used.
- [12] At the end of the day I have to look at the fact that this case was about a 66-year old healthy lady who now has to depend upon others for her daily care. I can also take due notice of the fact that in all probability this appeal will not be heard until at least the November session of this Court, and more likely until the first session of the Court in 2011.
- [13] The courts do not operate in a vacuum. They are aware of conditions in Fiji and, particularly as far as the elderly are concerned, that there is no system of social services which would enable a person in the circumstances of the applicant to receive some income from the state.

[14] For these reasons I am satisfied that the applicant should receive the interim payment requested in her summons. Accordingly I order that the sum of \$50,000 be paid to the applicant within 21 days of the delivery of this Ruling. Costs will be in the cause.

Dated at Suva this 8th day of June 2010.



A handwritten signature in cursive script, reading "John E. Byrne", is written over a horizontal dotted line.

JOHN E. BYRNE, Acting President