IN THE SUPREME COURT OF **Civil**

THE REPUBLIC OF VANUATU **Case No. 19/1848 SC/CIVL**

(Civil Jurisdiction)

BETWEEN: **Dominique Leszczyna**

Claimant

AND: **George Kalkau Taleo**

Defendant

Date of Hearing:	26 May 2020
Before:	Justice V.M. Trief
Counsel:	Claimant – Mr E. Molbaleh
	Defendant – Mr S.E. Willie, holding papers for Mr L.J. Napuati
Date of Decision:	9 June 2020

JUDGMENT

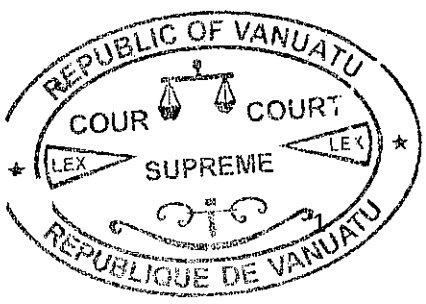
A. Introduction

1. This is a claim for damages from a motor vehicle accident. The Defendant Mr Taleo admitted liability. The matter then proceeded by way of a hearing as to the assessment of damages. This judgment determines the damages claim.

B. The Proceedings

2. Ms Leszczyna claims:

   a) Payment for repairs for the damage and labour – VT5,332,150;
   b) Loss of business income and opportunities – VT7,154,000;
   c) General damages – VT1,000,000;
   d) 5% interest;
   e) Costs; and
   f) Any other order the Court deems fit.



3. Mr Taleo admitted liability for the Claim. In the Defence, he accepted that he had negligently caused a road traffic accident by hitting the truck with the government vehicle he was driving. Further, he accepted that he was driving under the influence of alcohol and caused serious damage to the truck.

4. Despite ample opportunity, Mr Taleo did not file any sworn statements or written submissions, and counsel did not wish to cross-examine Ms Leszczyna. Mr Molbaleh spoke to his written submissions as to quantum. Mr Willie did not respond.

C. Evidence

5. In 2017, Ms Leszczyna owned a Mitsubishi double cabin vehicle Registration number H16355 (the 'truck'). This was part of her hire car business Rent Me's fleet of vehicles.

6. In the night of 6 December 2017, Mr Taleo caused a road traffic accident on Teouma Road resulting in damage to the truck. Mr Taleo was the Director General of the Ministry of Health and was driving a vehicle Registration number G1079.

7. Ms Leszczyna spent VT25,000 on towing the truck back to Port Vila.

8. The truck has not made any income to Rent Me since the accident and is still under repair. It is asserted that repairs started on the truck in October 2018 however no details of the repairs were given. Ms Leszczyna has two quotations for the repairs – one for parts from Intra Pacific Trading Co. Ltd ('Intraco') for VT1,497,473 and one for mechanical services from her own garage for VT6,074,473.

9. The Vanuatu Investment Promotion Authority ('VIPA') approval certificates that Ms Leszczyna adduced into evidence show that she has VIPA approval to operate vehicle rental and hire services, as well as a motor vehicle repair shop.

10. The daily hire charge for the truck was VT9,800 per day. Ms Leszczyna deposed that in September 2017, her business earned VT250,000 per month per truck. The busiest months every year are November, December and January during which she makes more than VT250,000 per month per truck. She calculated her loss of earnings since the accident as VT7,154,000 (at VT9,800 per day for 2 years).

11. Mr Taleo did not have insurance that could pay for the damage to the truck. Ms Leszczyna filed her Claim.

D. Discussion

12. I accept that Ms Leszczyna owned the truck and it was used in her business Rent Me. She also has a motor vehicle repair shop.

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Payment for Repairs

13. Ms Leszczyna deposes that repairs to the truck began in October 2018. However, no evidence is given as to what damage was caused to the truck, what those repairs were, how much they cost or the outcome of those repairs. In his submissions, Mr Molbaleh states that, "... the Claimant had no money to repair her vehicle and so that vehicle was sitting there unrepaired until now." I consider that the true position is that the Claimant has not undertaken any repairs to the truck.

14. Ms Leszczyna adduced photos of the truck at the scene of the accident and afterwards. The Claim states that serious damage was caused to the truck however no evidence is given about what that damage was. Ms Leszczyna adduced a quotation from Intraco that she stated is for the parts needed to fix the truck; no labour included. The other quote is for mechanical services from her own garage. These total VT7,571,946. However, without any evidence as to what damage was caused to the truck, I cannot assess whether or not these quotes are reasonable.

15. In addition, Ms Leszczyna cannot recover more than the replacement value of the truck. There is no evidence as to the purchase price of the truck, its age, depreciation or its value. Notwithstanding that, I cannot fathom that the price of a brand new Mitsubishi Sportero would be as much as VT7,571,946. This claim is exaggerated.

16. I would have been assisted by evidence from a qualified mechanic as to the damage caused and the cost of repairs required. Unfortunately Mr Molbaleh has not seen fit to bring that evidence on behalf of his client.

17. Like Sey J in *Mael v Joseph t/a DJ Auto Repair & Septic Tank,* Civil Case No. 14/97, I would refer to Lord Goddard CJ's statement in *Bonham-Carter v Hyde Park Hotel Ltd* (1948) 64 TLR 177*:*

> *On the question of damages I am left in an extremely unsatisfactory position. Plaintiffs must understand that if they bring actions for damages it is for them to prove their damages, it is not enough to write down the particulars and, so to speak, throw them at the head of the Court saying this is what I have lost I ask you to give me these damages. They have to prove it.*

18. Regrettably, this is what has occurred here. It is not enough that Ms Leszczyna asserts that VT7,571,946 worth of repairs are required. She has to prove the damages sought. In the circumstances, no award will be made for this head of damages.

Loss of Income

19. I accept that the truck has made no income since the accident. Ms Leszczyna deposed that her loss of earnings are VT7,154,000. That is, at VT9,800 per day for 2 years. I accept that the daily hire charge for the truck was VT9,800 per day. However, I cannot accept that the truck would have been hired every single day of both 2018 and 2019.

20. Ms Leszczyna asserted that in September 2017, her business earned VT250,000 per month per truck and made more per month during November, December and January

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each year. However, there is no evidence as to what the truck in particular earned, its past hireage and its profitability, nor indeed for the business as a whole. There is no independent evidence to support Ms Leszczyna's assertions.

21. In addition, there is no evidence of what the running expenses of the truck were in terms of registration, fuel/oil usage, insurance, tyres and general depreciation, as well as salary for the drivers of the truck. Mr Molbaleh submits that the running costs for the truck over two years would have been between VT200,000-VT300,000. That submission is not substantiated by any evidence.

22. In the absence of evidence, it is impossible for the Court to assess the Claimant's net earnings and thus her loss of income. It is regrettable that Mr Molbaleh did not see fit to put the required evidence before the Court. In the circumstances, Ms Leszczyna has not proved any recoverable loss of income. No award will be made for this head of damages.

General Damages

23. Mr Molbaleh invited the Court to follow the authority of *Mala v Byugman Mun (trading as G-Trading)* [2019] VUSC 25 to award common law damages depending on the seriousness or the aggravating circumstances of the case and emotional stress, pain and suffering caused to Ms Leszczyna.

24. There is no specific evidence adduced in this case as to any stress, pain or suffering caused. Again, Mr Molbaleh has not seen fit to bring that evidence on behalf of his client. In the circumstances, no award will be made for this head of damages.

E. Reference to the Law Council

25. Given Mr Molbaleh's conduct of this matter, I consider that it warrants the attention of the Law Council and Disciplinary Committee.

F. Result and Decision

26. Ms Leszczyna is not entitled to the damages sought. The Claim is dismissed.

27. There is no order as to costs.

28. I draw to the Law Council's attention that this is a matter which I consider warrants its attention.

DATED at Port Vila this 9th day of June 2020
BY THE COURT

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Viran Molisa Trief
Judge

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