

SUEMALO (FOGASAVAII ATIOO) v WESTERN SAMOA
TRUST ESTATES CORPORATION (No. 2)

Supreme Court Apia
Bremner J
14 November, 6 December 1985

ASSESSMENT OF DAMAGES - fatal accident - quantum of damages -
loss of future earnings

HELD: Widow's claim on behalf of herself and five children
allowed at \$50,000 loss of future earnings and \$2,000
loss of consortium.

C J Nelson for Plaintiff
R Drake for Defendant

Cur adv vult

In this Action which is brought by a widow on behalf of herself
and her children, damages are claimed under 3 heads:

- (a) funeral expenses in the sum of \$720.64;
- (b) the sum of \$50,000 for the loss of earnings;
- (c) the sum of \$5,000 for the loss of consortium and
companionship.

The statement of claim is dated the 13th July 1981 and the action
has taken until December 1985 to obtain a hearing and bring the
matter to a resolution. There have been interlocutory
applications including a motion that the Action be dismissed
which was unsuccessful and there has been an application for
further particulars.

At the hearing the Defendant attempted to establish either
contributory negligence or the negligence of a third party in
relation to the motor vehicle accident which resulted in the
death of the husband of the Plaintiff. No third party was joined
in the Action, and as the hearing progressed it was ascertained
that the present Defendant had previously in another Court action
admitted full liability for the collision. Counsel for the
Defendant at this point in time (some years later than it should
have) conceded liability and the Action proceeded on quantum
only.

As far as the factual situation is concerned, the husband of the Plaintiff was a pastor living at Fusi, Safata. On the 13th July 1979 the husband was a passenger in a bus which came into collision with a truck driven by an employee of the Defendant. Although liability was admitted it was clear from the evidence that the sole cause of the accident and the death was the negligence of the driver of the Defendants vehicle. At the date of death namely the 13th July 1979 there were Dependent upon the deceased his widow and five children of the marriage.

The difficulty which arises is in assessing an income of a pastor. Evidence was heard that the congregation contributed on average to the pastor per month the sum of \$240 made up of congregations contributions, the weekly visits by the pastors to his families and payments made when he was called to a faalavelave.

Evidence was heard as to the morning tea and evening meals which were supplied together with the presentation of pigs and fine mats. I asses this figure at \$80 per month. Then there was an income from the plantation which was provided by the village for the use by the pastor. Part of the produce of the plantation was sold and near as it can be assessed, there was income from taro of \$200 per month; from coconuts \$80 per month and from bananas \$130 per month. In addition the family and staff would use produce from the plantation which I have assessed at \$120.00 per month. The total monthly income therefore is \$850 or \$10,200 per annum. From this is to be deducted the pastors cigarettes and clothing \$30 per month or \$360 per annum leaving a total annual income of \$9840, of which I understand \$2880 is taxable depending on the number of dependents. No allowance has been made for housing, as although the pastor was provided with a house, on his death the widow and the dependents were housed in accordance with Samoan Custom. Further no evidence was called on the point.

This figure was given to counsel so that they could make the calculations which are always required in this type of case bearing in mind the age of the deceased, the age of the widow and the age of the dependent children. The deceased had no income other than as a pastor and he had no assets or liabilities. Counsel proceeded to have calculations made and after sometime they advised me that they and their accountants agreed at a figure of \$98,628 as being the figure payable in respect of the wife and dependent children. However this figure does not allow for the husbands share of the income, the widow remarrying, the widows early death or that any of the dependents may die and I am now required to make these calculations. In my opinion there should be allowed for the husbands share and use of the income 33%, for the widows early death - 5%; for the widows early marriage - 2% and for the early death of dependents - 5%, giving a total deduction of 47%. By deducting 47% which is \$46,356.00 I am left with a figure of \$52,272.00 which is the calculated sum

payable to the widow and her dependents. However as the claim is in the sum of \$50,000 the Plaintiff is limited to that amount. As to the loss of consortium the figure to be awarded is \$2,000. In view of the foregoing there will be judgment for the Plaintiff as follows:

- (a) funeral expenses in the sum of \$720.64;
- (b) for future earnings - \$50,000
- (c) the sum of \$2,000 for the loss of consortium.

In addition the Defendant is ordered to pay the Plaintiffs costs, disbursement and solicitors fees (including the full costs on the Motion for dismissal of the proceedings) as are fixed by the Registrar. Further there will be an Order that the full costs of the accountant employed by the Plaintiff in respect of the calculations be paid by the Defendant. Finally as to interest I have carefully considered the file and note that the Plaintiff set the Action down for hearing in November 1982 and from there on most of the delay has been that of the Defendant. I consider without hearing from counsel that the Defendant should pay interest on the amount of the judgment for 3/4 of the period from the 13th May 1981 until todays date at the rate of 8%. Leave is reserved for counsel to apply in respect of interest should they so wish.