ARE PAPUA NEW GUINEAN WIVES LIKE AUSTRALIAN WIVES?

The Full Court has recently been called upon to determine whether damages in tort actions should be assessed similarly, whether the plaintiff is a Papua New Guinean or an Australian.[1] The appellant and the deceased in the case were both from Bougainville, and had married on 6th December 1969. At the time of his death the deceased was twenty-three and the appellant was nineteen. The deceased was a motor mechanic employed by the administration at Alotau. He was killed on 20th May 1970 in the crash of an aircraft belonging to the respondent. The trial court decided that there was negligence on the part of the respondent, and entered judgment for the appellant and her son for $10,000, which is about one-fourth of the amount usually given by Australian courts to young working-class widows. Because the amount of damages was thought inadequate, this appeal was entered, and the Full Court was called upon to decide whether the amount of damages awarded was sufficient.

The court, in trying to determine that issue, was faced with several problems, arising from the approach the trial judge adopted in assessing the amount of damages. He regarded the widow's situation as quite unlike that of an Australian or English wife. Thus he held that to apply Australian precedents in assessing pecuniary loss would be unrealistic. On the Full Court, only Minogue C.J. could not altogether agree with this view: "For myself I have observed many indications of what I would consider to be imitations of Australian suburban type of living ..."

The trial judge considered a number of factors, which he thought the circumstances of the case warranted, in diminution of damages. He first established a starting sum based on the present and future earning capacity of the deceased, and the amount from his pay that he gave and would have given to his wife over the rest of his working life. Up to this point, the trial judge followed Australian precedent. But he then departed from it. The judge made deductions in the sum based on the likelihood of appellant remarrying, her freedom to live in a cheap village economy, claims of further children of the marriage and claims of members of the deceased's extended family for financial support. Thus, most of the items he used to

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1 *Mary Gugi* v *Stol Commuters Pty. Ltd.*, (1973) Full Ct. No. FC52.

reduce her award were circumstances that would affect Papua New Guineans but not Australians.

The trial judge held that the appellant's freedom to remarry was a gain consequent upon the death of her husband. In the Full Court, Williams and Prentice JJ expended much discussion on whether it was the sort of gain that should not be considered in diminution of the compensation available to the appellant, as provided by section 13(d) of the *Law Reform (Miscellaneous Provisions) Act*. After a review of the authorities and a construction of the section on the basis of the authorities, they concluded, "It was proper for the trial judge to make some allowance for the possibility of remarriage of the appellant in diminution of her award." Minogue, C.J. agreed with this view.

The freedom to leave the urban monetary economy and live inexpensively in the subsistence economy was a factor wrongly taken into account by the trial judge, the Full Court held. Williams J. said that it was not relevant in assessing the appellant's entitlements. Prentice J. held that "If the possibility of such recourse were considered a benefit it was already subsisting, and could not be said to have accrued in consequence of the death of the deceased."

Since the appellant and her husband had only one child, the trial judge concluded that the wife would have received most of her husband's income, but had there been more children, she would have received proportionately less. He lowered her award, on the assumption that more children would have been born, had the husband lived, and the Full Court concurred. In addition the deceased was under a real obligation to meet the claims for financial support made by members of his extended family, and the Full Court agreed that this would have lessened the amount of money he gave to his wife. Williams J. said that the obligation to family members is a matter of which judicial notice might be taken, and is a contingency which might properly be taken into account in determining what amounts might have been available to the appellant in the future if her husband had lived. Prentice J. agreed, provided "It was undertaken in the setting of the evidence actually given." Minogue C.J. concurred.

The Full Court allowed the appeal, but it varied only slightly the judgment of the court below, raising the appellant's damages from $10,000 to $12,000. The Full Court agreed with the trial judge that Papua New Guinean widows and Australian widows should not be treated alike by the courts. The Full Court disagreed with the trial judge only over the details of which aspects of Papua New Guinean life should be taken into account.

- Samson Kaipu