

YONA NGERUANGL, plaintiff
v.
JOSEI RAMANGESAWUL, Defendant
Civil Action No. 44
Trial Division of the High Court
Yap District
February 6, 1968

Complaint for civil damages. The Trial Division of the High Court, Associate Justice D. Kelly Turner, held that while pain and suffering of one subjected to personal injury was an appropriate subject of compensation, hardship to his family resulting from loss of earning could not be awarded as an additional recovery to the injured person's loss of earnings.

1. Torts-Damages-Pain and Suffering

Pain and suffering of one who suffers personal injury is an appropriate subject of compensation.

2. Torts-Damages-Loss of Earnings

The hardship upon an individual's family resulting from loss of earnings is not appropriate *for* additional recovery to the injured person's loss *of* earnings.

3. Torts-Damages-Generally

Pecuniary loss to members of a family are awarded generally when there has been a wrongful death, but not for injuries which result in a loss from which the victim of an injury may recover.

4. Torts-Damages-Generally

An injured person's losses may be included in a recovery of damages caused by personal injury and these losses include medical expenses, including travel costs if the injury requires treatment or hospitalization, loss of earnings or loss of earning capacity if the injury prevents return to former work and pain and suffering.

5. Torts-Damages-Pain and Suffering

There can be no real measurement of the value in dollars of pain and suffering, rather it is a matter within the discretion of the court and is based upon all surrounding circumstances.

Assessors: JUDGE JOSEPH FANECHOOR
Interpreter: THOMAS A. FAIMAU
Reporter: NANCY K. HATTORI
Counsel for Plaintiff: LINUS RUUAMAU

TURNER, *Associate Justice*

Upon motion of plaintiff, default of the defendant was entered, the judgment for the plaintiff to be subject to the plaintiff's showing as to the amount of his entitlement.

Plaintiff's cause of action arose November 20, 1965, when plaintiff, being "sleepy drunk" at a table in the Yap Co-op Snack Bar, was set upon by the defendant who bit off about three-fourths of plaintiff's left ear lobe. Plaintiff denied having spoken to or otherwise incited defendant's attack upon him.

Defendant was tried for the crime of maiming and was found guilty of the lesser offense of assault and battery. Sentence of five months and fifteen days imprisonment plus ten dollars fine and payment of five dollars restitution to plaintiff was imposed.

Complaint for civil damages was filed and served upon defendant March 7, 1966, in the Yap District Court. Thereafter the case was transferred to this court for hearing when defendant left Yap for Palau without having filed an answer.

Plaintiff's special damages resulting from his injury were eighteen dollars (\$18.00) for hospital and medical treatment plus loss of earnings at the rate of fifty-three cents an hour for a three-week period in the amount of sixty-three dollars and sixty cents (\$63.60). Plaintiff's additional claim was for "great pain" as well as hardship upon his wife and child while he was off work.

[1-3] In this connection, it is noted that pain and suffering of one who suffers personal injury is an appropriate subject of compensation but that the hardship upon an

individual's family resulting from loss of earnings is not appropriate for additional recovery to the injured person's loss of earnings. Pecuniary loss to members of a family are awarded generally when there has been a wrongful death, but not for injuries which result in a loss which the victim of an injury may recover. See: Practicing Law Institute, "Damages in Personal Injury and Wrongful Death Cases", p. 48, et seq. 22 Am. Jur. 2d, Damages, § 85 et seq.

[4] It is the injured person's losses that maybe included in the recovery. These include medical expenses, including travel costs if the injury requires treatment or hospitalization in Guam or elsewhere; loss of earnings or loss of earning capacity if the injury prevents return to former work; and pain and suffering.

[5] There can be no real measurement of the value in dollars of pain and suffering. It is a matter within the discretion of the court and is based upon all surrounding circumstances. Various methods for determining "reasonable" compensation are discussed in the Practicing Law Institute's "Damages".

In this case, plaintiff's evidence demonstrated his entitlement to recovery for medical expenses, loss of earnings and pain and suffering, meaning his own and not that to his family resulting from loss of earnings. In view of all the circumstances of this case, two hundred and fifty dollars (\$250.00) is a reasonable sum. It is therefore

Ordered, adjudged, and decreed : –

That plaintiff shall have and hereby is granted judgment against the defendant for the sum of three hundred thirty-one dollars and sixty cents (\$331.60), together with interest on said amount at the rate of six percent (6%) per annum, plus costs as provided by law upon filing an itemized claim.