JALLOH v SAMURA (AN INFANT)

CA

COURT OF APPEAL FOR SIERRA LEONE, Civil Appeal 30 of 1974, Hon Mr Justice OBR Tejan PJ, Hon Mrs Justice AV Macauley JA, Mr Justice KO During JA, 8 March 1974

[1] Negligence – Personal Injury – Damages – Award of general damages – Whether itemization of basis for award required

[2] Negligence – Personal Injury – Damages – Proper method to assess damages for personal injury in Sierra Leone – Courts should "start and end" in Sierra Leone and not look for comparable cases in other countries

[3] Negligence – Personal Injury – Quantum of damages – Amputation of right lower limb at mid-thigh level

The respondent, a girl 10 years of age, was injured in an accident which resulted in amputation of the right lower limb at mid-thigh level. The respondent was awarded the sum of Le31 as special damages and Le15,000 as general damages by a judge without jury. The appellant claimed that the quantum of damages was excessive and ought to be reduced.

Held, per Ken During JA, dismissing the appeal:

1. The Court of Appeal could only reverse the assessment of damages by a judge sitting without a jury if it was convinced either that the judge acted on a wrong principle of law or that the amount awarded was so extremely high or so very small as to make such assessment an entirely erroneous estimate of the damages to which the plaintiff is entitled.
2. In the present case the trial judge awarded a global sum for damages without stating the main components of that figure and did not award any interest. Although it was desirable for a trial judge sitting alone to itemize the damages in certain personal injury cases it was not absolutely necessary and failure by the trial judge to do so as in this case did not justify reversing the assessment of damages that were made. *Jefford v Gee* [1970] 2 QB 130 and *George & Anor v Pinnock & Anor* [1973] 1 WLR 118 not followed.
3. The proper method to be adopted when assessing the amount to be awarded as general damages for personal injuries in Sierra Leone was "to start and end in Sierra Leone". The courts of Sierra Leone should not in personal injury matters take an excursion to England, United States of America, Australia, India any Commonwealth country or anywhere else to find out what would have been awarded in comparable cases. *Arthur Massalay v Theresa Beckley* [1960-61] Sierra Leone Law Rep Vol 1 followed.

Cases referred to

Arthur Massalay v Theresa Beckley [1960-61] Sierra Leone Law Rep Vol 1
George & Anor v Pinnock & Anor [1973] 1 WLR 118 (CA)
Jefford v Gee [1970] 2 QB 130
Ross v Coventry (1965) UK Court of Appeal, Lord Denning
Sierra Leone Syndicate Ltd v Amadu Conteh (date and citation unavailable)

Legislation referred to

Administration of Justice Act 1969 s 22 [UK]
Law Reform (Miscellaneous Provisions) Act 1934 s 3 [UK]

Appeal

This was an appeal against the quantum of damages awarded to the respondent, Wonde Samura, an infant suing by father and next friend Foday Samura, on a claim for negligence against the appellant, Alimu Jalloh. The facts appear sufficiently in the following judgment.

ND Tejan-Cole for the appellant.
EL Michael for the respondent.

KEN DURING JA: This is an appeal against the quantum of damages awarded to the plaintiff/respondent (Wonde Samura, an infant suing by father and next friend Foday Samura) on a claim for negligence against the appellant, Alimu Jalloh.

The accident which resulted in the plaintiff/respondent sustaining personal injuries took place on or about the 10th of March 1972 along the Mano junction and the Segbwema Road in the Kenema District.

Short J, sitting as a Judge without a jury, awarded the plaintiff/respondent the sum of Le31.00 as special damages and the sum of Le15,000.00 as General Damages.

The only ground of appeal is that the quantum of damages awarded is excessive.

In the court below the respondent did not give evidence or call witnesses on his behalf and the only issue was quantum of damages.

At the time the accident took place the plaintiff/respondent was a young girl of 10 years of age. On examination by the surgeon specialist at the Government Hospital in Kenema, he found among other things that there was a severe crush injury of the right lower limb involving the region of the right knee and the right thigh; that the area was completely mangled and there was complete disarticulation of the right knee joint. The surgeon said in evidence that the right lower limb was so severely crushed that its amputation at mid-thigh level was necessary. He said that the prognosis of the plaintiff/respondent is that she would require an artificial limb and that everything being equal, the average life span is between 50 and 55 years; that the artificial limb on the right side would have to be changed from time to time and the plaintiff in view of her condition, must need an articulated prosthesis (artificial construction designed to replace a lost part of the body) which is not locally manufactured and this would cost between Le600 and Le800. The surgeon found on further examination a slight distortion of the vaginal introitus (entrance to the vagina) and stated that the prognosis of this injury to the perineum is likely to make labor difficult but not to prevent conception. In the course of his judgment the learned trial judge referred to the English case of *Ross v Coventry* (1965) C.A. where Lord Denning said:

> "It was agreed by both counsels that this figure of Le6000 is the sort of award which is given for an amputation above the knee".

The learned trial judge also referred to English cases dealing with quantum of damages when amputation had to be done.

It is well established that this court would only be justified in reversing the assessment of damages by a judge sitting without a jury, if it is convinced either that the judge acted on a wrong principle of law or that the amount awarded was so extremely high or so very small as to make such assessment an entirely erroneous estimate of the damages to which the plaintiff is entitled.

It has not been suggested that the trial judge was guilty of an error of principle. The complaint of the appellant is that the quantum of damages awarded is excessive, that the amount awarded was extremely high and ought to be reduced.

During the course of his argument before us learned counsel for the appellant stated that the trial judge simply awarded a global sum of Le15,000 as General Damages and ought to have stated in his judgment the main components of that figure as the modern practice in England since *Jefford v Gee* [1970] 2 QB 130 (decided in March, 1970) is to adopt the second course. He referred us to the case of *George & Anor v Pinnock & Anor* [1973] 1 WLR 118. In that case Sacha LJ commenting on the position of the "modern practice" in England which counsel for the appellant urged this court to adopt said, inter alia:

> "It is true that that adoption has a considerable extent come into being because of the differing rates of interest applicable to differing heads of damages under the *Jefford v Gee* decision. On the other hand, it is also in part due to the general adoption of that considerable body of judicial opinion which held that plaintiff and defendant alike are entitled to know what is the sum assessed for each relevant head of damages and thus to be able on appeal to challenge any error in the assessments. In my judgment this court should be slow to emasculate that right of litigants."

In the case *Jefford v Gee* [1970] 2 QB 130 referred to by Sacha LJ, Lord Denning MR delivering the judgment of the court dealing with the "modern practice" in England above mentioned, in conclusion said that in order to carry out the Administration of Justice Act 1969 (which does not apply in this country) the court will, in future have to itemise the damages in most personal injury cases and that the court should, in general, award interest on the items on lines which he went on to state in the judgment. The Master of the Rolls observed that the power of the English court to award interest in cases of personal injury cases was originally contained in s3 of the Law Reform (Miscellaneous Provisions) Act 1934 and said that it should be noticed that the power of the court was then discretionary, but that since January 1 1970, it has became compulsory in personal injury cases by reason of s22 of the Administration of Justice Act 1969 which added two sub-sections to sub-section 1 of the 1934 Act.

In the present case the trial judge did not award any interest. In our view though it may be desirable for a trial judge sitting alone to itemize the damages in certain personal injury cases it is not absolutely necessary and failure by the trial judge to do so as in this case will not necessarily justify reversing the assessment of damages by the trial judge. In the case the *Sierra Leone Syndicate Ltd v Amadu Conteh* referred to in the judgment of Amos PJ in *Arthur Massalay v Theresa Beckley* [1960-61] Sierra Leone Law Rep Vol 1, the Court of Appeal for Sierra Leone and the Gambia said that in assessing damages in cases of personal injury, the court should do so as if "Sierra Leone was the only country in the world" and then proceed on "a matter of assessing damages in the world"; it should then proceed on "a matter of assessing damages in that case by a search for a comparable injury in England to see how much the English court has awarded"; and then the assessment was to be varied to the extent that they were not exactly like those in *Conteh's* case and then it was considered how much, if at all, the judgment should be reduced owing to different circumstances prevailing in Sierra Leone. In the case *Arthur Massalay v Theresa Beckley* referred to above, Amos PJ in dealing with what he described as "misunderstanding" as to what was meant in *Conteh's* case when the existing Court of Appeal said that the matter should be considered as though Sierra Leone were the only country in the world said:

> "It seems to me to be common sense. It only referred to General Damages."

In that case, Amos PJ is reported to have said obiter:

> "The method adopted in that case adds to the admitted difficulty of assessing the amount to be awarded. If it is followed, it means looking for a 'comparable case' reported in England. Well cases usually are not exactly alike, so the English case which has been found has to be adjusted, up or down, to guess what a court or jury in England would have awarded had the case been exactly alike. Then it is owing to the "special condition"

existing here. One is then supposed to have arrived at the proper figure. Is it not much better to start and end in Sierra Leone? In England, courts do not find out what would have been awarded in comparable cases in the United States of America, Australia, India or anywhere else and then translate it into terms of England. They start and end in England. In this country, there are very few reported cases of this kind, and it may be necessary to create a precedent in any particular case."

We hold the view the method suggested by Ames PJ in the case *Arthur Massalay v Theresa Beckley* mentioned supra, to wit "to start and end in Sierra Leone" is the proper method the court below should adopt in assessing the amount to be awarded as general damages for personal injuries. Our courts should not in such matters take an excursion to England, United States of America, Australia, India any Commonwealth country or anywhere else to find out what would have been awarded in comparable cases.

In our view the damages awarded could not in anyway be regarded as excessive.

Mr Michael, counsel for the respondent has informed us that the damages awarded and the taxed costs have been paid to him on behalf of his client the respondent/plaintiff.

We think the proper order to make as the respondent/plaintiff is an infant is that her solicitor do forthwith pay the amount awarded as damages and interest (if any) to the Master and Registrar of the High Court of Sierra Leone, who shall forthwith invest the said amount on receipt in the Sierra Leone Post Office Savings Bank with him as Trustee for the respondent/plaintiff until she attains the age of 21 years with liberty to the said Master or any interested party to apply for any proper order or direction from the said High Court as from time to time, and we so order.

We further order that the appellant do pay the costs of appeal of the respondent, such costs to be taxed. The appeal is accordingly dismissed.

Reported by Anthony P Kinnear