

SAMAI v JALLOH

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COURT OF APPEAL FOR SIERRA LEONE, Hon Mr Justice S B Davies JA, Hon Mr Justice M E A Cole JA, Hon Mr Justice M S Turay JA, 20 December 1979

[1] Negligence – Personal injury – Damages – Specialist’s report on gravity of injury not tendered in evidence before High Court – Award of general damages halved

The respondent was thrown off his motorcycle as a result of a collision with the appellant’s vehicle and sustained a fracture of the left ankle and suffered 5% residual disability. The respondent was awarded damages in the High Court against which the appellant appealed.

Held, per Beccles Davies JA, allowing the appeal in part:

1. The High Court was deprived of the opportunity of seeing the Surgeon Specialist’s report on the gravity or otherwise of the respondent’s injury. It was difficult to understand why this had not been tendered into evidence and its absence caused some concern. The award of general damages of Le3,000 was excessive in the circumstances of this case and an award of Le1,500 was substituted.

Appeal

This was an appeal by the appellant, Hinga Samai, against an award of damages made to the respondent, Ibrahim Jalloh, who had been thrown off his motorcycle and injured as a result of the appellant’s negligence. The facts appear sufficiently in the following judgment.

BECCLES DAVIES JA: This appeal is against the award of damages made to the respondent. The respondent had been thrown off his motorcycle as a result of a collision with the appellant’s vehicle. The judge found that the appellant’s driver was negligent. The respondent sustained a fracture of his left ankle. The accident occurred on 26th November 1976. The respondent’s ankle was put in plaster of paris. It was in that state for four weeks. He was treated at Connaught Hospital by a Dr Bong Kim. Dr Bong Kim’s opinion was that the fractured ankle would cause a small disturbance for a time in the respondent’s profession as a driver. The residual disability was 5 percent.

The respondent had tendered in evidence a report from Dr Michael Aboud. Dr Aboud’s report disclosed that the fractured ankle had been treated by a Surgeon Mr Roxy Harris FRCS and that the plaster cast was removed on 14th January 1977. Dr Aboud then said: “For details of the fracture Mr R Harris will give a medical report.”

Dr Aboud’s report went on to disclose that the respondent had fallen off a motorcycle on which he was the pillion passenger on 14th January 1977 – the day on which the plaster cast was removed from the fractured left ankle. The respondent sustained multiple abrasions to the right knee which was badly bruised and swollen. He was treated by Dr. Aboud and by 11th February 1977 the swelling of the right knee had subsided and the abrasions healed.

Dr Aboud’s report had stated that the respondent was fit to resume duty on Monday 21st February 1977. Although the respondent still complained of pain over the outer border of the left ankle the doctor’s opinion was that the ankle appeared to be normal. If the respondent still had any further complaint about the injured knee, he had advised him to see Mr Harris again.

The respondent in his oral evidence made no mention of Mr Harris. Mr Harris’ report was not tendered in evidence in the High Court. The court was deprived of the opportunity of the Surgeon Specialist’s report on the gravity or otherwise of the respondent’s injury. It is

interesting to observe Dr Bong Kim's assertion that the respondent's ankle was in plaster for four weeks. In contrast with that is Dr Aboud's assertion that the plaster cast was removed on 14th January – seven weeks after the injury to the ankle and that it had been done under the treatment of Mr Roxy Harris. One finds it difficult to fathom the reason for not furnishing the court with Mr Harris' report.

Dr Aboud had declared the respondent fit for duty on 21st February 1977. Although he claimed he was still feeling pain in the injured ankle and was advised to see Mr Harris again, there is no report of his having done so.

We now come to the award of Special Damages. We would set aside the award to the following extent:

1. Loss of Wages. We would set aside the award of Le490 and substitute Le280 – that is wages for three months – November 1976 to January 1977. (Le210 – this does not take into account the period 14th January 1977 when the plaster was removed and respondent sustained another set of injuries which laid him off work until 21st February 1977 for which the appellant was not responsible.)
2. Transportation to and from hospital. Under this head the respondent had said he attended hospital every three days for treatment. He had gone by taxi and had paid Le2 return for a month that would mean 10 visits in months which would amount to Le20.

According to Dr Aboud's report, the plaster cast was on until 14th January. The period 26th November-14th January is 50 days. The respondent said he had gone to hospital by taxi for the first month and thereafter by mini-bus at the rate of 40 cents return fare. Having allowed Le20 for the first thirty days, the remaining 20 days at 40 cents per three-day attendance, would be 7 return trips at 40 cents. That amounts to Le2.80. Under transportation, we would set aside the award and allow Le22.80.

We would set aside the award of Le3,000 as we consider it excessive in the circumstances of this case. The absence of Mr Harris' report has caused us some concern. We would substitute an award of Le1, 500. The result is that the appeal succeeds in part.

The final awards therefore are:

Special Damages

1. Loss of Wages – Le210
2. Medical Treatment – Le10
3. Medical Report – Le40
4. Transportation to and from Hospital – Le22.80
5. General Damages – Le1,500

The respondent is to have half of the taxed costs in this court and in the court below.

Reported by Anthony P Kinnear and John Kebbie