

IN THE SUPREME COURT
REPUBLIC OF NAURU

Civil Suit No 24/2010

PRISCILLA HALSTEAD
MARIAH HALSTEAD
KILI CAPELLE
JOANNA CAPELLE

1st Plaintiff
2nd Plaintiff
3rd Plaintiff
4th Plaintiff

And

IVAN BATIOUK

Defendant

JUDGE: Eames, C.J
WHERE HELD: Nauru
DATE OF HEARING: 11 July 2011
DATE OF JUDGMENT: 15 July 2011
CASE MAY BE CITED AS: HALSTEAD & Ors v BATIOUK
MEDIUM NEUTRAL CITATION: [2011] NRSC 13

Assessment of Damages - Negligence - Motor vehicle accident - Liability admitted -
Personal injuries to adult and children - Adult suffering injury to knee.

APPEARANCES

For the Plaintiffs: Mr D Aingimea (Pleader)
For the Defendant: Ms K LeRoy

CHIEF JUSTICE:

- 1 The first, second and fourth plaintiffs seek damages for injuries loss and damage suffered by them in a motor vehicle accident on March 31st 2010. The first plaintiff, Priscilla Halstead, was born on 18 October 1978, and is now 33 years old. She is the mother of the second plaintiff, Maria Halstead, who was five years old at the time of the accident (her date of birth being 22 May 2005). A claim by the third plaintiff was abandoned at the outset of the trial, but she pursued a claim, as next friend, for her daughter Joanna Capelle, who was three years old at the time of the accident (having been born on 16 June 2007).
- 2 I am satisfied that the accident occurred at low speed, the defendant's vehicle having been in first gear, but none of the occupants of the vehicle in which the plaintiffs were travelling were wearing seat belts. There was a degree of exaggeration in the description of the severity of the accident, as recounted by Mrs Halstead. In her memory now, no doubt genuinely believed, it was more severe than I believe an objective bystander would have observed.
- 3 In the accident Priscilla Halstead struck her left knee against the dashboard sustaining a laceration to her left knee. On being taken to hospital, there was a two centimetre by half centimetre laceration on the interior aspect of the left knee. She was treated conservatively, and admitted overnight, but it was not until the following day, 1st April 2010, that her knee injury was explored surgically. X ray examination did not reveal any significant fracture or dislocation.
- 4 Upon exploration, however, there was a two centimetre tear on the anterior capsule, and a two millimetre chip fracture on the antero-medial articulating surface of the patella and minimal hemarthrosis.
- 5 Mrs Halstead was admitted and treated with intravenous antibiotics. She remained in hospital for a further 8 days, being discharged on the 8th of April.
- 6 Dr Isikeli Litidamu, a general surgeon at the hospital, gave evidence before me. He did not examine the plaintiff on the first occasion in March 2010, but he saw her for

the purpose of a medical report in April 2011. She complained that since being discharged from hospital she had been experiencing what amounted to chronic left knee pain, which greatly affected her ability to perform her chores as a housewife and as a community member.

7 A comparison of X-rays taken at the time of the accident and then fifteen months later for Dr Litidamu, revealed a narrowed joint space on the left knee. Dr Litidamu advised Mrs Halstead that she might develop complications such as secondary osteoarthritis, osteochondritis and synovitis.

8 Since being discharged from hospital Priscilla Halstead has been managed conservatively with analgesics and physiotherapy. In his evidence, Dr Litidamu said that when he examined her there was no gross deformity in the knee but she did have tenderness in the medial aspect of the left knee and some reduced movement. X-rays disclosed a narrowing of the joint space in the left knee which was consistent with it being caused by the accident.

9 Dr Litidamu said that a two centimetre chip fracture would not usually be significant in causing the restriction of movement with which she complained, but he accepted that movement could be restricted as a result of new growth at the fracture side. He said that the original surgery did not indicate a disabling injury. He accepted that she was prone to secondary arthritis, osteoarthritis, osteochondritis and synovitis. If that occurred, it would result from new tissue growing at the site of the fracture, thereby causing irritation. As a result, she may have pain whenever she mobilises.

10 Dr Litidamu said that if her pain continued then it could be treated by exploring the joint through arthroscopy or, at worst, by surgery, to install a prosthesis. She might still have pain after an arthroscopy. He said that on the balance of probabilities, there being complaints of significant pain 15 months after the injury, she would continue to have chronic pain. That might be improved with rest and physiotherapy, and if she was to reduce weight.

11 He said the narrowing at the disc space was not significant. She is being treated with

Panadol and Anti-inflammatory tablets. He did not regard the tenderness and reduced movement that he observed as significant. He considered that her weight had affected her mobility and weight in itself could cause irritation at the knee space. He did not think that knee surgery would be required in the future.

12 Dr Litidamu thought that her complaints about the knee were not consistent with the severity of the injury that she'd received, although that injury would contribute, together with other factors, to the pain in her knee. The narrowing observed on X-ray means that there is damage to the cushion between the joints where the meniscus had worn.

13 In cross-examination, he accepted that she may well not develop the complications he had discussed with her. He agreed that the medication she is prescribed is at the lower scale of pain relief. She did have tenderness and reduced movement, on his examination, but it was not that significant, he said. The chip had been removed and not repaired. The narrowing of the space in the joints meant that there was reduced meniscus, but a person might have that degree of reduction in meniscus without it causing pain.

14 In the doctor's opinion, Mrs Halstead's weight had caused more irritation at the knee space and affected her mobility. He agreed that even without suffering this injury she might have had knee pain, caused by her weight. A two millimetre chip was usually not significant. He did not think future surgery would be required, with the possible exception of arthroscopy. In re-examination, he said that he did not think her complaints were consistent with the severity of the injury, but the injury would contribute to the pain, together with other factors, such as weight.

15 In her evidence, Priscilla Halstead said that her time in hospital was stressful, and she had been crying frequently with the pain. After being discharged she still felt pain, and when she was home she just lay down because of pain in the knee. She said her life was now different to what it had been before the accident. She can't do her household chores and she needs someone to help her do the work, the burden

falling on the children. She has five children, the eldest just 13. She says she can only stand for 5 to 10 minutes while performing chores but then the pain causes her to hand over to her children. She can't do cleaning, laundry or lift water, to the degree she had before. She takes painkillers, which don't always work. She is currently taking two in the morning and two in the evening. Whereas she used to enjoy going for a walk, she now can't go far, because of pain.

16 In cross examination, Mrs Halstead agreed that she had been capable of exercising, and had been doing so; last weekend she had walked up a steep hill at Buada. Since the accident she has tried to lose weight, she said. She had enjoyed walking before the accident but now she can't go far, because of pain.

17 She said the knee injury has affected her relationship with her husband, she wakes up at night needing to have her knee massaged. He starts work early in the morning and her pain disturbs his rest. She calls on the children, also, to massage her leg.

18 The 1st plaintiff's husband, Creedence Halstead, said that his wife was crying almost every day because of pain. She was not looking after the children as she had in the past and they are sometimes missing school. Most nights she cries and asks for a massage.

19 I turn to the claim for Mariah Halstead, the now 6 year old daughter of the 1st plaintiff. She was 4 years of age at the time of the accident. The medical report disclosed that she had a superficial abrasion to the forehead with soft tissue swelling. She was treated with icepack and antibiotics and a dressing was applied. She was discharged from hospital on the day of the accident.

20 Although Mrs Halstead claimed that her daughter had suffered continuing headaches and nightmares since the accident, those claims fell away under cross-examination. The first headache was said to have occurred in November 2010 and the second (and last, so it seems) in May 2011. There may have been headaches on those occasions but I am not persuaded as to the frequency or severity of headaches, nor as to their connection with the accident. Likewise, claims of constant nightmares

were greatly exaggerated, and have not been shown to be attributable to the accident, in any event. Mrs Halstead did not seek treatment for her daughter in response to these complaints.

21 Joanna Capelle, the fourth plaintiff, was 2 years old at the time of the accident. She had suffered a skin wound of 1.5 millimetres on the forehead. She was admitted and remained overnight and discharged the next morning.

22 Mrs Kili Capelle gave evidence with respect to the injury to the daughter Joanna . She said her daughter received 3 or 4 stitches and had been placed on a drip and remained overnight at the hospital. Since returning from the hospital, she did not want to leave her mother's side. The child is now 4 years old, and it was said by her mother that she was having nightmares and headaches. Her mother had given Joanna paracetamol. She had first complained about her headache about a week after the accident and then in April 2010 she again complained of pain. There have been no more complaints of headaches since last year.

23 She had told her mother that she had nightmares, the last time such complaint was made was in April 2011, where she was "scared of someone".

24 As Mr Aingimea fairly conceded, the evidence with respect to the injuries to the two children disclosed much more modest consequences than had been suggested in statements before the trial. He said that he would not press the Court to award damages to either child in excess of the sum of \$150.00 which each child was awarded in the criminal proceedings against the defendant, and which he promptly paid.

25 It is, of course, important that the Court have particular regard to the potential for long term injury of child plaintiffs. In my opinion, however, the evidence does not disclose that the complaints of headaches and nightmares can be attributed to the accident. Even if that was the case, the severity of those occurrences is very modest, and there is no evidence to suggest any long term consequences for either child resulting from this accident. Having regard to the economic context of Nauru the

concession of Mr Aingimea was appropriately made, , in my opinion, and no further award of damages is appropriate with respect to the two children.

26 With respect to Mrs Halstead's injuries, there's little doubt that she feels that her life has been blighted by this accident, but the medical evidence does not suggest that this was a severe injury. Nonetheless, she suffered a painful knee, and restriction of movement, both of which conditions continue. There may be other factors contributing to those chronic symptoms, but I am satisfied that the accident remains one such factor.

27 I am not satisfied on the balance of probabilities that complications such as secondary osteoarthritis, osteochondritis and synovitis will result, but I can not discount that possibility, and the increased risk must be taken into account.

28 Although her husband described his wife as being a strong person, in effect, determined to push through pain and disability, it seems to me that she has allowed the injury to dominate her life, at times. In evidence, she presented as an extremely sad and depressed figure. In contrast, however, she is to be commended for her efforts to exercise and lose weight. I accept that she has suffered and continues to suffer pain and some limitation of movement, and that her lifestyle has been adversely affected by the accident. Nonetheless, all the objective signs suggest that this was a relatively minor injury, with limited consequences. I hope that once this case is concluded she will be able to face the future with more optimism than she feels at the moment.

29 In assessing damages, Mr Aingimea conceded that the Court must have regard to the economic realities of Nauru. Any damages award will be paid by the defendant personally. He earns \$247.00 per fortnight. He paid compensation of \$500.00 to the 1st Plaintiff and \$150 to each of the two children, which sums used up all his savings.

30 In my opinion, the 1st plaintiff has suffered pain and loss of enjoyment of life to a degree that merits compensation in a sum greater than \$500.00 already paid to her. Nonetheless the injuries and their consequences are at the low end of the scale of

damages. She will incur no further medical expenses, and has suffered no economic loss.

- 31 In my view, an award of \$400 damages over and above the sum already paid by the defendant would be adequate for the plaintiff's injuries and loss. The defendant should be granted time to pay this sum if required.
- 32 I will hear the parties as to costs and any further orders.

Dated this 15th day of July 2011

Geoffrey M Eames AM QC

Chief Justice