

**JOHN SKEBONG and CAROLINE SKEBONG,
Plaintiffs-Appellees**

v.

**GOVERNMENT OF THE TRUST TERRITORY OF THE
PACIFIC ISLANDS, Defendant-Appellant**

Civil Appeal No. 353

Appellate Division of the High Court

Palau District

January 18, 1984

Appeal from trial court judgment awarding damages in negligence action brought by parents of five-year-old minor child. The Appellate Division of the High Court, Gianotti, Associate Justice, held that award for pain and suffering of the parents was proper, separate award for actual damages incurred in addition to pecuniary damages was proper, and that amount of award for pecuniary damages was erroneous, where the sole explanation of the court in making its award was a reference to Palauan custom which did not appear in the testimony, and therefore the case was affirmed in part and reversed in part.

1. Negligence—Generally

Negligence is a question of fact.

2. Appeal and Error—Scope of Review—Facts

A finding of negligence by trial court will not be set aside on appeal unless there is manifest error.

3. Torts—Damages—Pain and Suffering

On appeal of negligence action brought by parents of deceased child, where transcript of trial contained a detailed summary of the problems incurred by the parents and the anguish they went through as they watched their daughter weaken and subsequently die, trial court's award of \$40,000 for pain and suffering of the parents was upheld. (6 TTC § 203)

4. Torts—Damages—Particular Cases

In negligence action, trial court's award of \$55,000 in pecuniary damages was erroneous, where the sole explanation of the court for making its award was a reference to Palauan custom which did not appear in the testimony, and therefore there was not a sufficient basis for such an award.

5. Torts—Damages—Actual Damages

In negligence action, plaintiffs could recover separate award for actual damages incurred for hospital bills, transportation and daily cost of living, in addition to statutory award allowed for pecuniary damage,

and the aggregate from these damages may exceed the \$100,000 statutory limitation for pecuniary damages. (6 TTC § 203)

Counsel for Appellant: DAVOR Z. PEVEC, ESQ., *Office of the Attorney General, Trust Territory of the Pacific Islands, Saipan, CM 96950*

Counsel for Appellees: DOUGLAS F. CUSHNIE, ESQ., P.O. Box 949, Saipan, CM 96950

Before MUNSON, *Chief Justice*, GIANOTTI, *Associate Justice*, and MIYAMOTO, *Associate Justice*

GIANOTTI, *Associate Justice*

This action was brought in Palau by the parents of a five-year-old minor girl against the Trust Territory and its agents. The first cause of action was for damages for negligence, and the second and separate cause of action was for medical and other expenses incurred by the plaintiffs.

The trial court found defendant's agents, i.e., Palau Hospital and certain of the hospital employees negligent in the diagnosis and treatment of the minor girl, resulting in the minor's death. Damages were awarded to plaintiffs for pain and suffering and pecuniary damages under the Wrongful Death Statute and for actual expenses.

An appeal was taken, raising two issues.

First was whether there was negligence in the diagnosis and treatment of the minor girl by defendant's agents.

The trial court found after extensive testimony that negligence was evident.

[1] Negligence is a question of fact. See 57 Am. Jur. 2d Negligence § 6.

In this case the trial judge concluded, "the evidence overwhelmingly supports the conclusion that there was negligence constituting the proximate cause of minor's death." (See Judgment.)

“Such a finding will not be set aside unless there is manifest error.”
Lajutok v. Kabua, 3 T.T.R. 630, 633 (1968).

[2] Additionally, this court has stated many times in many ways that the findings of the trial court normally will not be set aside.

We therefore affirm the trial court’s findings of negligence and further affirm that the negligence was the direct and proximate cause of the death of the minor child.

The second question raised by this appeal was regarding the payment of damages.

Pursuant to 6 TTC § 203(1), the court awarded damages for pain and suffering and pecuniary damages. In addition, the court awarded damages for actual expenses incurred by the parents in the care and treatment of the minor child until her death.

Regarding the award for pain and suffering, 6 TTC § 203, which provides for damages awards not exceeding \$100,000, states:

“. . . such damages shall include his mental pain and suffering for the loss of such child without regard to provable pecuniary damages.”

The language of this section of the Code allows parents to recover damages for pain and suffering in addition to their pecuniary damages.

The trial court awarded damages for pain and suffering in the sum of \$40,000.

[3] A reading of the transcript allows us to find a detailed summary of the problems incurred by the parents and the anguish they went through as they watched their daughter weaken and subsequently die, while being unable to secure proper care for her. Clearly, the court’s award of \$40,000 is justified.

[4] However, regarding the court’s award of \$55,000 for pecuniary damages, the sole explanation of the trial

court for making its award appears to be a reference to Palauan custom which did not appear in the testimony. While we do not dispute the trial court's knowledge of Palauan custom, there should have been some testimony presented to the court by competent witnesses.

"The law does not permit unfettered discretion in awarding damages." *Jones v. Carvell* (Utah), 641 P.2d 105, 108.

"Different standards approved should be used in establishing these losses." *McCard v. Muir* (Kan.), 641 P.2d 384, 392.

To recover for a pecuniary loss:

"It is the loss of society, love, companionship, protection, and affection which usually constitutes the heart of the action." *Jones v. Carvell*, supra, citing *Van Cleave v. Lynch*, 109 Utah 149, 166 P.2d 244.

The *Jones* case goes on to say:

"Concededly, such losses are difficult to quantify and impossible to fit into a mathematical formula which translates them into any precise fashion, into monetary values."

Our statutes allow for recovery for pecuniary loss; however, we cannot agree there was sufficient basis for the \$55,000 award for pecuniary damages by merely saying such an award was justified by the custom of the island.

We therefore affirm the finding of negligence and the court's award of \$40,000 for the parents' pain and suffering, but we reverse and remand the award for \$55,000 pecuniary loss to the trial court for further testimony justifying pecuniary loss.

Finally, a separate award of \$34,587.04 for plaintiffs' expenses incurred for hospital bills, transportation, and daily cost of living was awarded. We find this amount to be proper and allowable, and we affirm this award.

[5] We are of the opinion that appellees' expenses are not included in pecuniary damages awarded under 6 TTC § 203 but are separate and apart from those damages. The

inclusion of actual expenses in § 203 could result in a hardship to the successful litigant if the actual expenses exceeded the sum of \$100,000, then recovery for pecuniary damages or pain and suffering would not be possible. Therefore, we hold that appellees may recover actual damages despite the \$100,000 limitation of § 203. This position is sustained in *Graul v. Adrian*, 49 Ill. App. 2d 101, 199 N.E.2d 631, *affirmed* 205 N.E.2d 444, which held that if medical and funeral expenses result from injuries inflicted on minor child by wrongful act of another, parents may recover such expenses incurred by them from wrongdoer in separate action, in addition to any recovery under Wrongful Death Act.

Affirmed in part; reversed and remanded in part.

**BIRASH JOASH and the MUNICIPALITY OF DUD,
Plaintiffs-Appellants**

v.

**THE CABINET OF THE GOVERNMENT OF THE MARSHALL
ISLANDS, SHIRO RIKLON, CHIEF ELECTORAL OFFICER,
and WILFRED KENDALL, MINISTER OF INTERNAL
AFFAIRS, Defendants-Appellees**

Civil Appeal No. 388

Appellate Division of the High Court

Marshall Islands District

January 18, 1984

Appeal from trial court denial of complaint seeking a declaration that Local Government Act of 1980 was unconstitutional, and order of the Cabinet pursuant to that Act, amalgamating two municipalities. The Appellate Division of the High Court, Miyamoto, Associate Justice, held that the delegation of legislative authority to the Cabinet and Minister, giving them the power to amalgamate municipalities, was a proper delegation of authority, but reversed and remanded the case to allow further consideration on three other relevant issues of the case.