

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil
Case No. 16/648 SC/CIVL

BETWEEN: **Raymond Nasse**
Claimant

AND: **Peter Lui**
Defendant

Counsel:

Mr Eric Molbaleh for the Claimant

Mr Stephen T. Joel for the Defendant appeared in the first part heard trial – no appearance in the second part heard trial

Date of Hearing:

*20 June 2018 (first partly heard) and
5 August 2020 (second partly heard)*

Date of Judgment:

18 January 2021

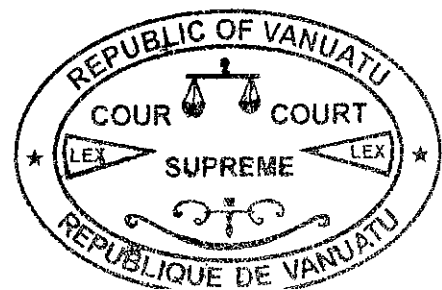
REASONS FOR JUDGMENT

I. Introduction

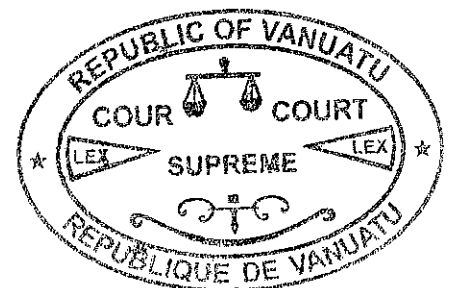
1. This is a claim for liability and damages for personal injuries as a result of negligence and reckless driving of a motor vehicle in Port Vila road on or about 20 June 2008 causing serious damage to the Claimant's body. The Claimant, amongst others, had two (2) broken ribs and lost fifty per cent (50%) of the use of his left arm and shoulder.

II. Background

A. The Claim



2. The initial claim was filed on 20 June 2011. No response or defence was filed. A default judgment was issued as a result. The matter was listed for determination of quantum of damages but was struck out on 14 October 2014 after several unsuccessful attempts of hearing the quantum of damages. The Court was informed and learned that Mr. Stephen Joel Tari, Counsel for the Claimant, got sick for sometimes. On 3rd March 2015, an application was filed to reinstate the claim. The Court granted that application on 9th September 2015.
3. On 11 March, 2016, the Claimant refiled the claim in the Supreme Court alleging that on 20 June 2008 the Defendant who was in possession and control of a motor vehicle on the Lini highway in Port Vila recklessly and negligently hit and collided with the claimant who was attempting to cross the street.
4. The Claimant alleged the Defendant who was driving into town at the Office Pub area was:
 - (i) Speeding;
 - (ii) Driving on the wrong side of the road (left side);
 - (iii) Not apply his brakes when he saw the Claimant on the road;
 - (iv) Not willing and did not make any attempt to stop after hitting the Claimant.
5. The impact of collusion threw the Claimant's body at a distance falling on the hard road surface.
6. As a consequence of the accident the Claimant has suffered injuries which according to Doctor's report include:
 - (a) Abrasions over his face (multiple soft tissue injuries to his scalp), back, left knee, left arm, shoulder and chest;
 - (b) Fracture to his left second and third ribs;



- (c) Dislocation of his left acromioclavicular joint (shoulder);
 - (d) The doctor assessed percentage loss of use of his left arm and should at 50%;
 - (e) Pain, suffering and discomfort to this day continuing.
- 7. The Claimant was admitted to the Surgical Unit at the Vila Central Hospital for days where he had received treatment.
 - 8. The Claimant claims general damages to be assessed and the Claimant claimed VT10,000,000.
 - 9. Although the Claimant seeks orders for special damages, he is not able to maintain receipts and leaves it in the hands of the Court.

B. The Defence

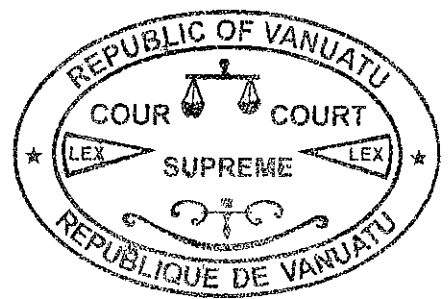
- 10. On 16 March, 2016 the Defendant filed a Defence denying he was driving recklessly and negligently but say it was the Claimant who had run and collided to the side of the truck when he was fully drunk.
- 11. The Defendant denies that the Claimant is entitled to any damages.
- 12. The Defendant denies all the relief the Claimant sought in the claim.

C. Agreed Facts and Issues

- 13. On 30 May, 2018, counsel for the Claimant and that of the Defendant filed a Memorandum of agreed facts and issues.

Statement of agreed Facts

- 14. The Claimant and his wife Rita Nase went to the Office Pub at 8:00pm for a drink.



15. Thereafter they exited the bar when the Claimant was collided with an oncoming vehicle driven by the Defendant.
16. Following the accident the Defendant failed to stop his vehicle and continued to drive towards town.
17. As a result of the accident the Claimant amongst others has suffered multiple soft tissue injuries to his scalp. He suffered fractures to his left second and third ribs. He also suffered dislocation of his left acromioclavicular motion on his left shoulder. His percentage use of his left arm and shoulder is 50%.

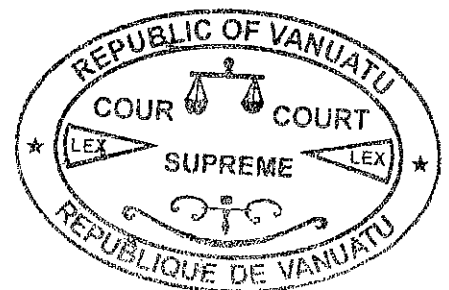
Statement of agreed issues

- 1) Whether or not the Claimant was fully drunk at the time of accident?
- 2) Whether or not the Claimant suddenly carelessly crossed the street colliding with an oncoming vehicle's side where the driver's seat is?
- 3) Whether or not the Defendant negligently and recklessly drove his vehicles at high speed colliding with the claimant who was attempting to cross the road?

III. Evidence

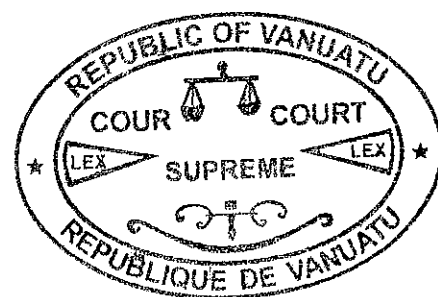
A. Evidence on the claim

18. The Claimant, Raymond Nase, filed a sworn statement on 2 June 2017 in support of the claim and he was cross-examined. Mrs Rita Nase, the de-facto wife of the Claimant, filed a sworn statement on 2 June 2017 and was also cross-examined.

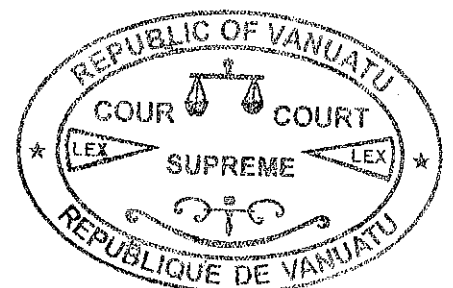


19. The evidence in support of the claim was called on 7 September 2017. The summary of the evidence in support of the claim is set out as follows:

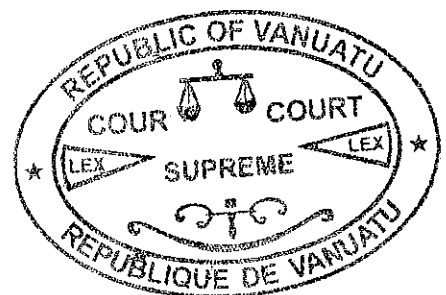
- On Friday 20 June 2008, the Claimant and Rita Nase (his wife), went out to Flamingo Bull (Office Pub) for a drink at about 8:00pm;
- There were only few customers, claimant ordered a jar of beer. The Claimant and his wife told stories. The Claimant drunk the jar of beer slowly;
- They then decided to go to Club 21 at Nambatu for the Claimant to play casino;
- They came out the door of the Flaming Bull – Rita Nase crossed the road and stood on the side of the road on the other side (facing Flaming Bull);
- The Claimant came out and talked to a security officer – Graham Osea – as he knew him while he was walking toward the tar road he was surprised as people called out to him “truck, truck ...”;
- The Claimant turned around to look and he saw the truck was speeding and came direct to him to his direction;
- The Claimant said he has a small time to decide what to do. He was on the side of the road near the security officer of the side of the building. His wife was far away on the other side of the road;



- The Claimant decided to jump back to Office Pub (road side) as it was the closest. But he was not successful as the truck hit him first;
- He was unconscious and he was thrown some distance away;
- The Defendant, Peter Lui, continued to drive. He did not stop;
- The Claimant confirmed the accident and the injuries he sustained as the result of the accident. He relied on his statement;
- His left shoulder was dislocated. He was admitted in the hospital and got treatments;
- After his treatment at the hospital, he felt pain when he did heavy work. His shoulder was painful during the cold weather. His two ribs were painful. He regularly went back to hospital to get the relief tablets;
- Before the accident, he was a teacher and worked as an education officer. He stopped being education officer after the accident. He was 49 years at the time of the accident in 2008;
- After the accident and after he finished as a teacher and education officer, he was driving a bus to make a living. He felt painful driving the bus as he had to move the steering of the bus. His knee was painful and his left shoulder too. He stopped driving the bus. He did no longer work;
- He had two (2) children attending secondary education. They stopped their schooling as he could not afford anymore;

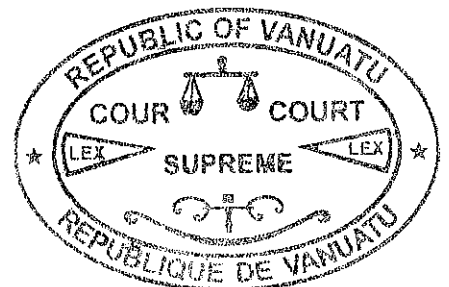


- Mr. Raymond Nase was cross-examined. He confirmed his evidence in chief. He and Rita Nase went into the bar at 7:00pm and got out again at 9:00pm to go to Club 21. Rita did not consume alcohol. He drunk the jar of beer alone. He was not drunk. It was a litre;
- The two (2) children he mentioned were Rita's own children;
- The security officer (Graham Osea) he talked to was his cousin brother; when he was just started crossing the road Graham Osea talked to him and he talked to him;
- He denied he was drunk. He said if he was drunk, the truck will go over him as he would not have the power to jump away. But the truck got him. Graham Osea was just two (2) meters away;
- The only door of the Flaming Bull(Office Pub) looked to the sea;
- He was not at the footpath. He was standing in the tar road but he was not standing in the middle of the tar road. He was standing on Flaming Bull side of the road. He was one (1) meter from the entrance door. The door was very close to the road. He stood one and the half (1 ½) meter from the entrance door.
- Rita was four (4) meters away on the other side of the road;
- The truck hit him between one and the half meter from the entrance door of the bar (Office Pub);
- He confirmed he sustained serious injuries as the truck was in high speed. He said Peter Lui speared him with his truck and swung to the other side of the road and drove away without

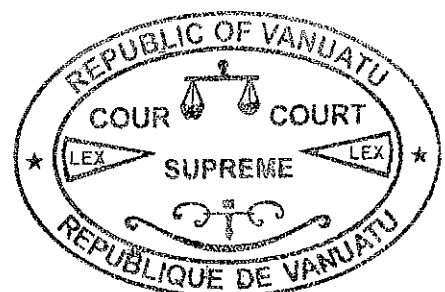


stopping, otherwise, he will bang the oak tree mentioned by counsel in his cross-examination;

- When the truck hit him, he was talking to Graham Osea. He was facing him;
- He denied he run toward the truck and banged the driver's side of the door. He said it was not true as the truck banged him on his left side;
- He accepted he did not have receipts of medical treatment and report consequent upon the accident;
- He said a police officer told him the Defendant was charged with reckless driving and he was sentenced to pay fine. He could not say whether it was true or not. Peter Lui also told him he had already been dealt with and he paid a fine. The Claimant insisted that was the reason why Peter Lui refused the claim and documents that were served on him;
- He used his VNPF benefits to fix the school fees of the two children before they passed to secondary school education. But he accepted he did not have record of that;
- He has also his own children who stayed with him when he was separated from his wife in 2012 before he stayed with Rita Nase;
- He confirmed after the accident he got suspended. He finished work after he sustained injuries;
- Rita Nase was the second and the last witness for the Claimant;



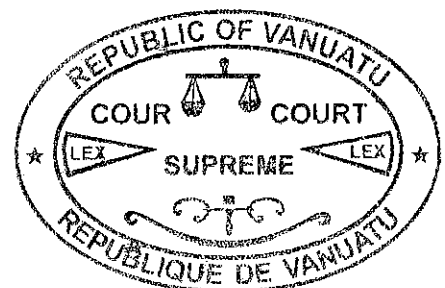
- She gave her evidence on 7 September 2018. She went into the Office Pub with Raymond Nase at about 8:00pm;
- Raymond ordered a jar of beer. She did not consumed alcohol;
- When they came out from Office Pub, she came and crossed the road first and when on the other side;
- Raymond talked to a security officer who is a family relative of his. Raymond talked to this security on the footpath;
- The truck which collided with Raymond was from Chantilly's direction toward Funkuei store (town direction); the truck was first parking.
- The truck which collided with Raymond was the Defendant's and driven by the Defendant.
- She saw Peter Lui's truck was parking. She saw Peter Lui there in the truck. She confirmed at the time, she saw Peter Lui parked his truck at the parking. When Raymond talked to the security Peter Lui drove his truck and speared Raymond. She was asked and she insisted that she saw the truck parked on the same side of the road as she was. When she crossed the road, she saw Peter Lui drove his vehicle from seaside direction to where Raymond was. Peter hit Raymond with his truck. She looked at the parking area, Peter Lui parked his truck at Telecom parking area. She saw Raymond standing on the road near the entrance door of Flaming Bull;
- Raymond was not drunk. Raymond turned his back to her as he was talking to the security officer;



- Peter came this way swinging from right to left side of the road. She was not drunk. Lights were on. She knows Peter Lui. He is a relative of her;
- She denied Raymond crossed the road;
- She gave evidence that sometime before the accident, the Defendant Peter Lui approached her and asked her to be his girlfriend and to be his wife but she refused. The Defendant had already a wife;
- She gave evidence that she started to have man–woman friendly relationship with the Claimant after she had refused to be the Defendant's wife. She said they did not keep their friendship secret; she gave evidence to the effect that people from North Tanna, including Peter Lui and others knew of her relationship with the Claimant.
- She confirmed her evidence in chief that the day after the accident, the Defendant Peter Lui, police officer Willie Benson, Yalitan Yanki approached her about the case. She said they came in the night in a bus to her house at Malapoa. They told her to make an agreement to just tell one story regarding the accident of her husband (the claimant). They realized she cannot accept so they left. Her sister Mary Sam was also there at the time and questioned them as to why they speared Raymond with the truck.

20. Rita was re-examined and she gave evidence to this effect:-

- She clarified the Defendant Peter Lui, police officer Willie Benson, Yalitan Yanki and others came to make an agreement with her to just tell one version of the evidence (talem same



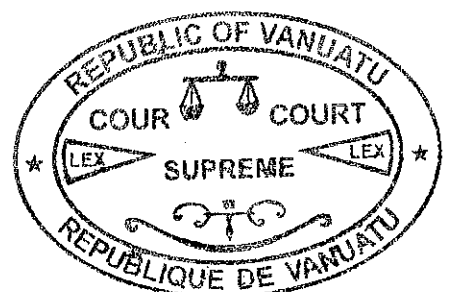
toktok nomo long accident blo Raymond) while Raymond was at the hospital;

- She confirmed her evidence that when she crossed the road, she saw the Defendant's truck was parked there. She saw Peter Lui in his truck. She knew Peter Lui very well. She recognized the truck belonged to Peter Lui and she knew Peter Lui who was inside the truck;
- She said she then saw Peter Lui drove his truck but did not run on the middle of the street. Peter Lui was following the side of the road. She showed to the Court that Peter Lui was driving on the left side of the road;
- She saw him when she was on the other side of the road (on the right side) and she was looking at Raymond who was talking to a member of his family (security officer Osea). And Raymond coming into the tar road. Raymond did not go to the middle of the road. Raymond was just on the side of the road (left side);
- She confirmed Raymond Nase was not drunk as he had only a jar of beer.

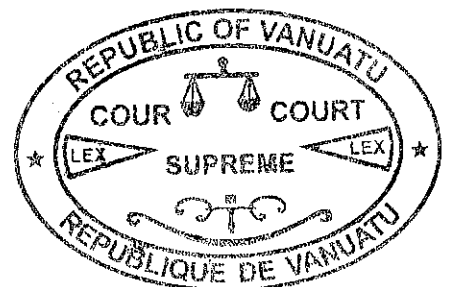
21. The evidence in support of the claim was heard and completed on 7 September 2018.

B. Evidence on the defence

22. The defence filed two sworn statements in support – one by Mr. John Morris filed 21 March 2016 and the other by Yalitan Yanky filed 8 March 2018.



23. On 7 September 2018, at the end of the Claimant's evidence, Mr. Molbaleh counsel for the Defendant informed the Court that the defence is not going to call Yalitan Yanki to testify orally. The defence will only call John Morris.
24. The trial was adjourned to Tuesday 18 October 2018 at 9:00am for the defence evidence.
25. On 18 October 2018 Mr. Stephen Joel Tari, Counsel for the Claimant did not turn up. Mr. Molbaleh did. Wasted costs orders were ordered against the Claimant. The Court was informed later on that Mr. Joel Tari was sick. Attempts were made to re-schedule the part-heard trial to hear the defence witness without success until the Court orders dated 22nd July 2020 listing the part-heard trial on 5 August 2020 at 4:00pm.
26. On the 5th August 2020 at 4:00pm Mr. Molbaleh informed the Court that the defence has changed his mind and that he is going to call Yalitan Yanky. He obtained leave to do so from the Court. Mr. Stephen Joel Tari was not present. The Court proceeded to hear the defence witness without cross examination from the Claimant's Counsel.
27. Yalitan Yanki gave evidence that he lives at Teouma Bush. He filed a sworn statement on 8 March 2018. He said the content is true.
28. Mr. Yalitan Yanki was not cross-examined on his statement as Mr. Joel Tari was not present to cross-examine him. Mr. Yalitan Yanki did not deny but he said he could not recall that a day after the accident he followed the Defendant Peter Lui, Police officer Willie Benson to Rita's house in the night and asked Rita to just say a version of the accident causing serious injuries to the Claimant's body.
29. John Morris did not testify as he was not available. He was outside the jurisdiction.

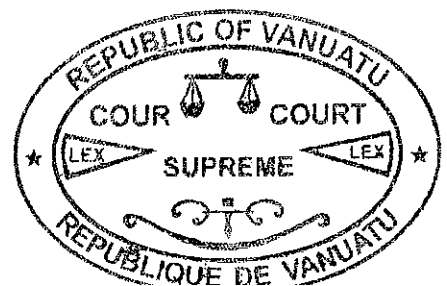


30. That is the end of the evidence.

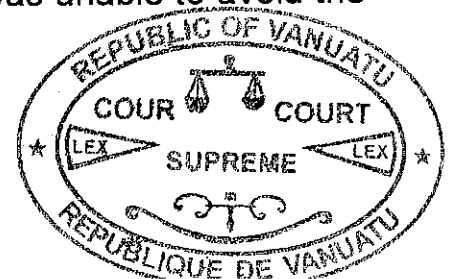
IV. Fact Findings and Credibility

31. Below are the findings of the Court on the disputed version of facts:

- a) Mr. Raymond Nase had consumed a jar of beer (equivalent to 3 glasses of beer or a litre). He was not drunk. He was not drunk in the sense of losing his self-control and common sense. I accept that evidence of the Claimant. Rita Nase gave evidence to this effect also that Raymond Nase was not drunk on Friday 20 June 2008 at the time of the accident. This evidence is not challenged by the defence;
- b) It is accepted as fact that when Raymond Nase and Rita Nase came out from Flaming Bull(Office Pub), Rita crossed the road to the other side waiting for Raymond;
- c) Raymond was talking to a security officer (Graham Osea, now deceased) his cousin brother, on the side of the road. While talking to Graham Osea, the Claimant was standing on the road on the left side of the tar sealed road. Raymond was turning his back to the main road as he was facing Graham while talking to him. There were not much traffic at that point in time before the accident.
- d) The evidence of Rita Nase that the Defendant was inside his truck parked at Telecom parking few distance from the Flaming Bull (Office Pub) is unchallenged. Rita's description of how the Defendant drove his vehicle out from the parking and run in the direction of the Claimant and collided with the Claimant on the left side of the road. The truck was in a high speed motion. This evidence is not challenged.



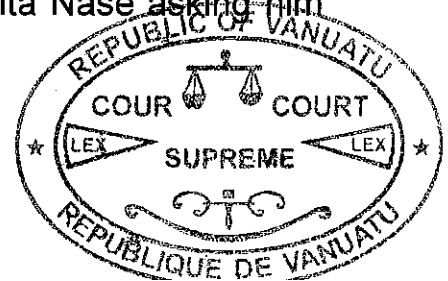
- e) The other evidence of the speed of the vehicle driven by the Defendant at the time of accident was the Claimant's evidence that he had attempted to run back to the Office Pub side of the street when he heard warning shouts and turned to see the vehicle coming straight at him when he was hit by the Defendant and his vehicle; This evidence was not challenged despite an attempt by the defence to give a different picture of the incident. I found the Claimant's was truthful in his evidence.
- f) The further evidence of speed of the Defendant's vehicle at the time of accident was the doctor's report referred to multiple injuries amongst others to his left knee, left second and third ribs and left shoulder dislocation which is consistent with the point of impact on the Claimant's left side of the body and the Claimant's positioning at the time of impact.
- g) The allegation of drunkenness raised by the Defendant in his defence (paragraph 3) which states that at that time the Claimant was fully drunk, was not supported by factual evidence. The sworn statements filed in support of the defence do not make reference or support this contention. The closest allegation made was by John Morris in his sworn statement filed 21 March 2016 who says that he saw the Claimant came out of the night club and suddenly crossed the road when he ran into a vehicle the Defendant was driving on his left side of the vehicle straight at the door of the driver. This factual contention does not tie up with the factual reality of this case. It is beyond sense. It is therefore rejected.
- h) It is also accepted as fact that when the security officer shouted the Claimant turned his head to his left side to see the Defendant's vehicle driven straight at him at high speed. It is accepted that the Claimant only had seconds to decide to try and make it back to the Office Pub side of the street. As the Claimant said even with his attempt he was unable to avoid the



collision. Rita Nase stated that the Defendant drove his vehicle straight at her husband at high speed. Those evidence are uncontested.

- i) High speed was also demonstrated by the seriousness of the Claimant's injuries; two left broken ribs, dislocation of left shoulder joint, which saw 50% loss of use of extension of arm and shoulder, injuries to his left arm and knee.
- j) It is also a fact that Rita Nase gave evidence in chief, she maintained in cross-examination and she further confirmed in her re-examination that the day after the accident which is a Saturday during the evening she stayed at home (at Malapoa) when the Defendant Peter Lui, Police Officer Willie Benson and Yalitan Yanky (son of North Tanna Paramount Chief Yanky) and some other persons she could not identify came to her house. They called her out of the house and asked that they will make an agreement with her just to say one story (version) regarding her husband's accident. She understood it to mean fabricate or make up a lie about the true circumstances of the Claimant's accident. She refused and she gave her reasons for not accepting the deal. Her sister Mary Sam was there and she asked them why they had ran down the Claimant with a vehicle. She had no reason to conspire against the Claimant in any way. She gave detailed explanation as to why she refused to conspire with them.

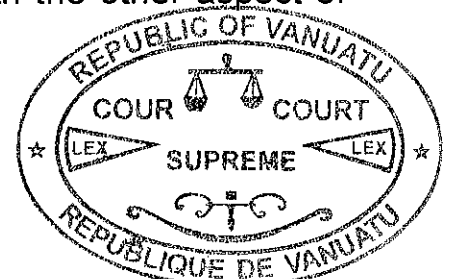
J(1)) The Defendant Peter Lui did not make any sworn statement nor gave oral evidence in this trial. Others filed sworn statements and gave evidence on his behalf. John Morris filed a sworn statement but did not give oral evidence. Yalitan Yanky gave evidence that he did not recall that he and the police officer Willie Benson had been to see Rita Nase and asked her to make an agreement just to say one story about the accident. He did not recall Marie Sam the sister of Rita Nase asking him



as to why they run down the Claimant. He reiterates he could not recall going to Rita Nase's house and discussed the accident and injury sustained by the Claimant. He knows Willie Benson and Peter Lui as they come from the same place at North Tanna but he could not recall Peter Lui, Willie Benson and him discussed the accident of the Claimant with Rita Nase at her house at Malapoa.

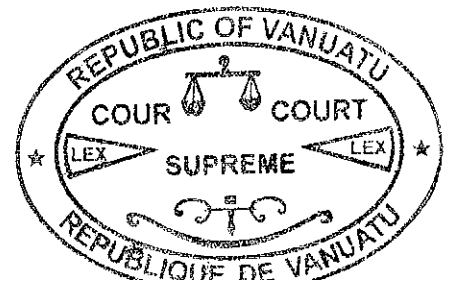
J(2)) I find the evidence of Yalitan Yanky is not truthful. It was not a denial. It was something akin ("I cannot recall" "whether it happened" "or did not happened" "I cannot recall") without specific particulars. Rita Nase gave detailed particulars of her version of fact that Peter Lui, police officer Willie Benson and Yalitan Yanky (Son of North Tanna Big chief Yanki) and others she could not identified came to her house at Malapoa in the night on board a bus. They called her out and asked her to agree with them to say just a story about the accident. She gave detailed reasons as to why she refused. Her evidence is consistent with that of the Claimant (Raymond Nase) throughout. The evidence of Yalitan Yanky is rejected as not believable. Rita is a trustworthy witness, I accept her evidence as truthful.

k) This lead Rita Nase to say that the Defendant Peter Lui meant or intended to hit the Claimant with his vehicle that night. Judged from the manner, conduct and driving of the vehicle by the Defendant Peter Lui in the evening of 20 June 2008 before the impact, the Defendant was in his vehicle parked on the other side of the road (right side) whilst the Claimant was on the left side of the road; the Defendant drove his vehicle on the road and swung on the left side at the direction of the Claimant (where the claimant was still at that moment before the impact), the Defendant drove his vehicle straight on to the Claimant at a high speed and hit or speared him as Raymond Nase and Rita Nase testified; coupled with the other aspect of



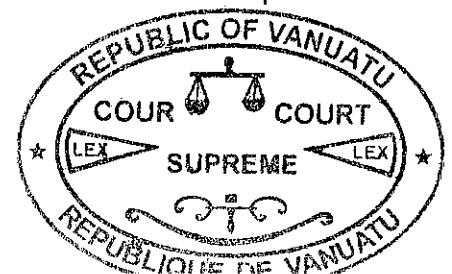
Rita's evidence of being approached by the Defendant (before the accident) to be his girlfriend and wife but she refused; the fact of being approached in her house a day after the accident (when the Claimant was in hospital) to tell lies about the true factual circumstances of the accident, reflected, the knowledge of doing something that it was wrong, knowing that it was wrong but taking the risk of doing it in any event, demonstrated the intention of the Defendant in such a conduct. Further, a conscientiousness of guilt demonstrated with an attempt to conceal the true facts of the accident. This leded, on inference, to this conclusion that the Defendant meant or intended to hit the claimant with his vehicle. I accept Rita's evidence to that effect. It was a piece of gross and deliberate reckless driving, a criminal offence though. It was a fact that the criminal complaint did not progress or proceed or whatever despite speculations on its outcome on the pleadings and the evidence. Counsel for the Claimant recognized, however, his shortcoming on the outcome of the Criminal complaint and asked the court to disregard it or amended it. But the speculations persisted in the mind of the Claimant as a witness and a lay person of his complaint to the police.

32. But here, it is not a criminal court but a civil court. It is of course Mr. Raymond Nase who carries the burden of proof in respect of the nature and extent of his injuries and disability and his past and future loss resulting from them. I consider that, on the evidence before me, Mr. Raymond has discharged that burden and proven that the injuries he sustained on his body (including the 2 broken ribs, the dislocated left arm and shoulder with 50% permanent incapacity) are more likely than not arose as a result of the accident when he was hit and collided with the vehicle driven by the Defendant Peter Lui in the night of 20 June 2008. And this was also an aggravated act as it was deliberately done or intended by the Defendant Peter Lui in the night of 20 June 2008.



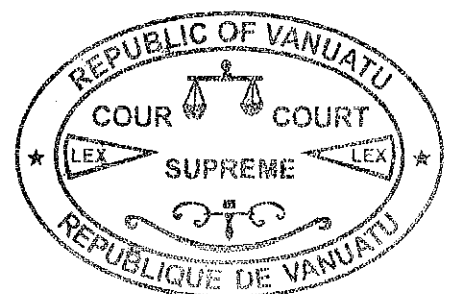
V. Determination of Issues

33. The Court is therefore in the position to answer three (3) issues placed before it in the following way:
34. Issue 1: Whether or not the Claimant was fully drunk at the time of accident?
35. On the material evidence and findings, the answer is no.
36. Issue 2: Whether or not the Claimant suddenly crossed the street colliding with an oncoming vehicle's side where the driver's seat is?
37. On the material evidence and findings, the answer is no.
38. Issue 3: Whether or not the Defendant negligently and recklessly drove his vehicle at high speed colliding with the Claimant who was attempting to cross the road?
39. On the material evidence and findings, the answer is yes. The Claimant was standing at the left side of the tar sealed road a meter and half from the entrance door of the Office Pub where the security officer (Graham Osea) was standing when talking to the Claimant before the accident. Mr. Raymond was looking at the security officer (Graham Osea) when he was talking to him. There were no oncoming vehicles on the road at the time. The Defendant firstly, parked his vehicle at the Telecom parking few distances away (on the right side of the road). Secondly, when the security officer shouted ("*truck truck*") the Claimant turned on his left side to see the Defendant's vehicle driven straight at him at high speed. The Claimant only had seconds to decide to try and make it back to the Office Pub side of the street (road). Even with this attempt he was unable to avoid the collision. The Defendant was speeding when he knew very well that in the middle of town there would be pedestrians and attempts to



cross the street. Rita Nase also stated the Defendant drove his vehicle straight at her husband at high speed. This evidence is unchallenged. High speed was also demonstrated by the seriousness of the Claimant's dislocation of shoulder joint which saw 50% loss of use of extension of arm and shoulder, injuries to his left arm and knee.

40. Negligence was also demonstrated in the Defendant's failure to apply his brakes or slowing down on seeing a person on the road. A driver on the public road, has a paramount duty of care at all times.
41. Driving a vehicle straight at the Claimant as Rita Nase stated (see paragraph 7 of her sworn statement) and as the Claimant said (paragraph 6 of the Claimant's sworn statement) elevates the manner of driving from negligence to recklessness. It is no longer a matter of failure to observe traffic regulations and duty of care but a complete ignorance of the traffic law and law in general.
42. Recklessness is also demonstrated by the fact the Defendant driving on the public road should be driving on the right side of the road instead he decided to steer his vehicle to the left side (Office Pub side) where the Claimant was at that time. As a consequence the Defendant had hit and collided with the Claimant.
43. The Defendant Peter Lui was not only negligent but he was also deliberately reckless. I found that Peter Lui was grossly reckless as he was deliberately/intentionally in breach of the duty of care that he owed to Mr. Raymond Nase and hat this was without fault (contributory negligence) on the part of the Claimant, Mr. Raymond Nase.
44. The Claimant is entitled to damages against the Defendant Peter Lui. I am now going to assess.



VI. Damages and assessment

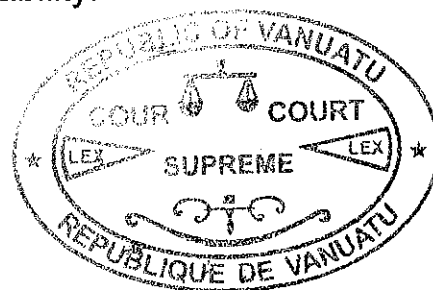
45. When I turn to the assessment of damages it is necessary to have regard to the classic statement by Lord Blackburn in ***Livingstone v. Rawyards Gold Company*** [1880] 5 App. Cas 25, 39, which was referred to in ***Bernard v Black*** [2013] VUSC 217:-

"I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get that sum of money which will put the party who has been injured, or who has suffered, in the same position that he would have been in if he had not sustained the wrong for which he is now giving his compensation or reparation".

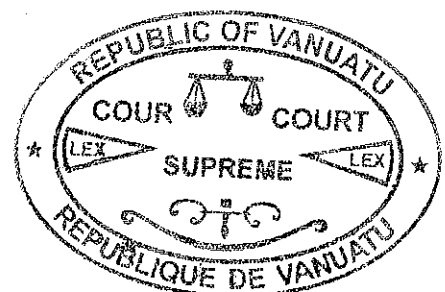
46. Damages for personal injury have 2 elements; first, an award of general damages for pain, suffering and loss of amenity; secondly, an award of special damages for past and future pecuniary loss which can include past and future medical and care cost. What governs both awards of damages is the overlying need for "reasonableness".

A. General Damages

47. The purposes of general damages is to compensate for pain, suffering and loss of amenities. Five (5) factors to be considered when considering an assessment for general damages being:
- i. The nature of the injury;
 - ii. Its severity;
 - iii. The duration of any disability on the claimant; and
 - iv. The impact of the injury and any continuing disability on the claimant; and
 - v. The awareness of the claimant of the disability.



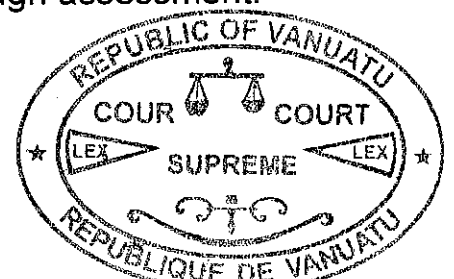
48. What would be appropriate to compensate Mr. Raymond Nase for his injuries in so far as general damages are concerned?
49. The doctor's report annexed to the Claimant's sworn statement referred to as Annexure "CRN1" dated 10 November, 2010 set out the injuries as follows:
- a) There was multiple soft tissue injuries to the scalp, back, left knee, left arm, shoulder and chest;
 - b) Fractures of the second and third left ribs;
 - c) Hospitalization for 3 days with Panadol;
 - d) Pain continues on his rib cage went to custom surgery on Tanna;
 - e) Dislocation of his left acromioclavicular joint reduced ranged of motion;
 - f) Estimate percentage loss of use of left arm and shoulder at 50%.
50. Raymond is now a disabled person (handicap) with only limited ability to carry out usual chores. Rita, as a wife, has done most gardening work as they rely on marketing of their garden produce at the market in Port Vila. This is not challenged.
51. The Claimant's life style has changed from usual comforts he used to enjoy like going out with Rita Nase or putting the children at schools.
52. Because of the circumstances the Claimant is in his transport business had failed as he could not make any savings from the income to buy another one.



53. I decide to include also under this head loss of past and future earning capacity as the material evidence is not specific but need to be considered and assessed. However, I will only add the estimate for the past earning capacity for interest calculation in this case but not the estimate for future loss (pre-judgment type).

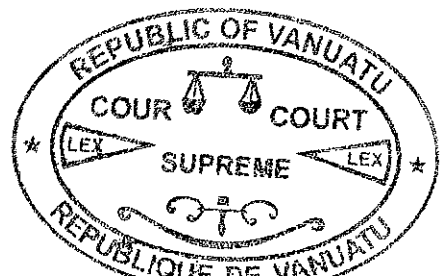
1. Damages for pain, suffering and for loss of amenity (pleasantness)

54. Damages for pain and suffering and loss of amenity of enjoyment of life are normally considered together as they deal with related matters and to avoid any doubling effect. They are awarded as an aggregate lump sum. This is a conventional sum which is taken to be the sum which society deems fair, fairness being interpreted by the Court in the light of previous decisions. Under this subhead, three (3) million vatu was claimed and there being few locally decided cases on the issue of personal injuries particularly on quantum.
55. In this case, Mr. Raymond Nase who is not only able to show the Court the swelling that persisted to this day on his arm and knee and the permanently dislocated left shoulder by 50% but says he had tried to work, even as bus driver, but the pain to his body was quite unbearable when he turned on the steering wheel almost for an entire day. Mr. Raymond knew that he could no longer do what he used to do and enjoyed life as he used to do. He could no longer send his children to schools as he could no longer pay for their education fees because of his disability as a result of the accident. He was distressful about his new condition.
56. The pains and discomfort will persist with age. He was 49 years at the time of accident. However, I take note of any risk or uncertainty that might happen to the Claimant independently from the accident and will likely reduce his amenity of enjoyment of life. On balance, I allow an award of damages for pain, suffering and loss of amenities of enjoyment of life at VT1,500,000. This is a rough assessment.



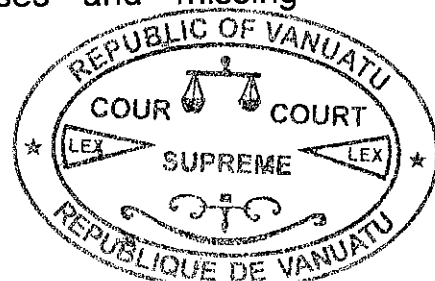
2. Loss of past earning capacity

57. Loss of past earning capacity (claim for loss of salary from the period of his suspension which (curiously) was also on the same time when the cause of action arose (20 June 2008) to the period he was early retired on June 2009 because of the accident. The Claimant was a former teacher and was employed by the Government as a senior education officer. As a senior education officer, he got paid more than the applicable minimum wage salary.
58. However, no specific evidence of the amount of salary per month was given. He was early retired after the accident in June 2009. Due to the 50% incapacity of his left arm and shoulder and his two broken ribs, he has suffered a lot of damages. The accident compounded his existing employment issues. The Claimant was suspended from his employment at the time of the accident with no payment of salary. He had no way to earn money other than his transport business operations on Tanna Island.
59. At the time of accident, he was 49 years of age. He was early retired on June 2009 as a consequence of the injuries he sustained. I estimate the period he did not get his salary to be of 11 months (from June 2008 - date of accident to May 2009 – Before June 2009 which is the date of his early retirement) because of or as a consequence of his injuries.
60. In the absence of a specific amount of monthly salary, I use the amount of the minimum wage of vatu 26,000 per month as a reasonable base for calculation (pursuant to the Minimum Wage and Minimum Wages Board Act (Cap. 182) [See Minimum Wage and Minimum wages Board (Amendment) Order No. 46 of 2008). An amount of 26,000 vatu x 11 months = 286,000 vatu for this loss of salary for that period of 11 months. I allow this award of VT286,000 for the Claimant's past earning capacity.



3. Loss of future earning capacity

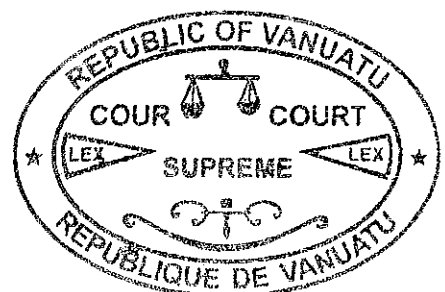
61. Loss of future earning capacity, the Claimant had five (5) years yet to work before his retirement age at 55 in 2014 but because of the accident. He was a fit person and in good health. For this future economic loss, I will have recourse to the Minimum Wage of VT30,000 applicable at the time of the trial in 2018. [See Minimum Wage and Minimum Wages Board (Amendment) Order No. 109 of 2012]. This will represents a consideration of VT30,000 per month x 12months= VT360,000 per annum. For 5 years, he will expect a future loss earning capacity of VT360,000 x 5= VT1, 800,000 in addition to allowances, any increase in salary, investments in his VNPF benefits and potential promotion.
62. The Claimant has withdrawn his VNPF benefits before his early retirement to sustain his life and that of his de facto wife and children. There is no evidence of specific amount shown. The Claimant had a transport business before the accident and had used it to earn money to support his family after the accident. His transport business was no longer operational as he used it to sustain his family needs. He intended to buy a bus but he could not as he did not make enough money to buy one (Rita's evidence).
63. The Claimant had children of his own and those of Rita. They went to schools before the accident. They stopped schooling after the accident as he could not afford to pay for their school fees. They are now grown up children with some missing opportunities for further education and assistance to the Claimant in this time of needs.
64. Two of his children are working. The Claimant continues to make a living with the market produce of their garden (Rita's evidence).
65. In addition to the amount of VT1,800,000, (as future salaries) I add an estimate amount of VT1,200,000 (for expenses and missing



opportunities) making a total allowance of VT3, 000,000 as the overall and the maximum for this future economic loss. There is some element of uncertainty into the future as Mr. Raymond may not reached the age of 55 years to retire as some incident independent to the accident might happened and some contingencies have to be applied to take those into consideration. I decide to give a reduction of 20% of the total allowance under this future economic loss to reflect these uncertainties. The balance remaining will be of VT 2,400,000. I sense that it is a rough assessment though, however, I allow this award of VT 2,400,000 for future earning capacity as a reasonable assessment.

B. Special Damages

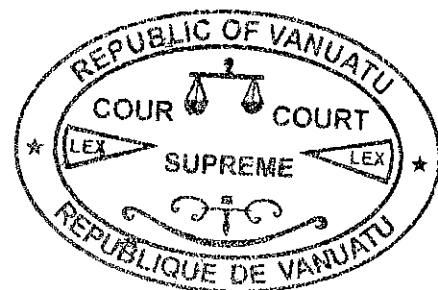
65. The Claimant's claim seeks by way of relief special damages. This would normally include costs of doctors, medicines, treatments and the like for which receipts are normally issued. However, in this case, none of those evidence was produced as no receipt was kept even though the Claimant still required pain killers to this date. The Claimant leaves it to the Court to decide whether a reasonable amount is payable otherwise he would accept the Court's ruling.
66. It is difficult or impossible to assess without specific evidence of amounts actually paid or spent or to be paid. I can only do my best by giving a nominal figure in an award of special damages for the following, based on evidence of injuries sustained, of being admitted in the Vila Central Hospital for 3 days for treatments:-
- medical treatment expenses;
 - hospital expenses;
 - ongoing medications; and
 - Voluntary services & assistance_ past & future – as the *need* for them is created by Defendant's tort.



- a) Medical treatment and ongoing medication expenses and family visits and assistance during the Claimant's medical treatment assessed together at VT50,000;
- b) Interest- I award a pre-judgment interest at 5% from the date the cause of action arose to the date of early retirement) on past earning capacity and expenses only $[(VT286,000 + VT50,000 = VT336,000)]$ which gives an amount of $VT336,000 \times 5\% = VT16,800$. The pre-judgment interest is calculated at VT352,800.

C. Aggravated and punitive Damages

67. In the present case, there is overwhelming evidence of aggravated evidence as being deliberate/intentional act of tort by the Defendant toward the Claimant's right warranting for compensatory and aggravated damages and also punitive damages to be awarded. The purpose is to compensate the Claimant for the serious injuries he had sustained at the deliberate or intentional act of the Defendant in flagrant breach of the Claimant's right. The purpose is also to deter him and others not to do the same intentional tort negligence and recklessness in future.
68. I note also it is not pleaded and I take note of the relevant part of the CPR (Rules), here, rule 10(1)(2)(3). In the interest of justice based on overwhelming evidence before me, after the liability of the Defendant has been overwhelmingly established, taking the rules as a guide, this case must be assessed on its own particular facts, I decide to allow an award of VT 1,000,000 for aggravated damages and VT 500,000 for punitive damages for the flagrant breach of the law or aggravated act or tort of the Defendant Peter Lui against the right of the Claimant causing serious injuries with 50% permanent incapacity as a consequence on the body of the Claimant on the public road of Port Vila on the night of 20 June 2008.



69. In summary, the following damages are awarded:-

- Pain and suffering for 2 broken left ribs and dislocated left arm and shoulder with 50% incapacity and loss of amenities of life assessed at VT 1,500,000;
- Loss of past earning capacity at VT 286,000;
- Loss of future earning capacity at VT 2, 400,000;
- Medical Expenses at VT 50,000;
- Pre-judgment interest at VT 352,800;
- Aggravated damages at VT 1,000,000;
- Punitive damage at VT 500, 000

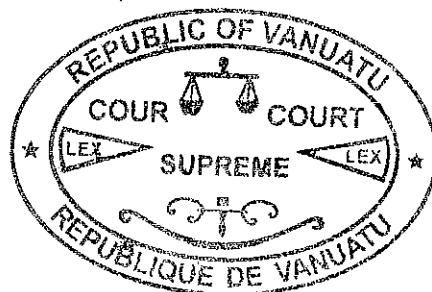
70. Total judgment on damages awarded to the Claimant, Mr. Raymond Nase, is of VT 6,088,800.

71. Interests: Interests are awarded at 5% per annum on the said sum of VT 6,088,800 from the date of the judgment to the date of payment;

72. The Claimant is entitled to costs against the Defendant on the standard basis. I assess the costs at VT80,000.

VII. Orders

1. The judgment on damages is entered in favour of the Claimant, Raymond Nase, against the Defendant, Peter Lui, in the sum of



VT 6,088,800 plus interest of 5% on that sum (from the date of the judgment to the date of payment).

2. And Costs of VT 80,000.
3. A conference is scheduled on 1February 2021 at 8.30 am for the Defendant Peter Lui:-
 - (i) to advise the court that he has paid the said sum of VT 6, 088, 800 and the costs of VT 80,000 as ordered; or
 - (ii) to advise the Court as to how he wishes to do so;
 - (iii) If there is an unsatisfied conclusion, then, this matter shall be transferred to the Master of the Supreme Court for enforcement action to begin.

DATED at Port Vila, this 18th day of January, 2021

BY THE COURT

Vincent LUNABEK
Chief Justice.

