

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

Civil
Case No. 24/1971 SC/CIVL

**BETWEEN: JOEL THOMPSON AS
ADMINISTRAROR OF LAVINA JOEL**
Claimant

AND: RODNEY WARSAL
Defendant

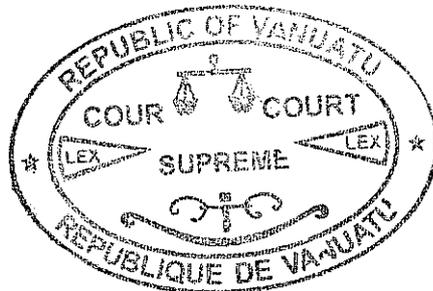
Date of Hearing: 27 November 2025
Before: Justice M A MacKenzie
Counsel: Claimant – Ms J Kaukare
Defendant – Ms B Taleo

JUDGMENT

Introduction

1. Triadically, Lavina Joel aged 17 years, died as a result of injuries suffered in a motor vehicle accident in 2021. Lavina took part in Independence Day celebrations in Luganville on 30 July 2021 and was a passenger in a vehicle returning to a village in Santo after the celebrations.
2. Mr Warsal was driving a motor vehicle in the same direction. He attempted an over taking manoeuvre at high speed. He did not complete the overtaking manoeuvre and instead hit the vehicle Lavina was travelling in. Mr Warsal was not licenced to drive the particular type of vehicle he was driving and was intoxicated.¹ Lavina was thrown out of the vehicle and sustained very serious injuries. Lavina was taken to the Northern Provincial Hospital where she received medical treatment. However, her

¹ Refer to the sentence imposed on 13 October 2023.



condition continued to deteriorate and she passed away.² According to the death certificate, Lavina passed away at 5.15am on 1 August 2021.³

3. Mr Warsal was charged with a number of offences in relation to the incident. On 13 October 2023, he was sentenced to 3 years imprisonment without suspension. In the sentencing remarks, the Honourable Chief Justice noted that Mr Warsal's behaviour was grossly reckless.
4. When she died, Lavina was aged 17 years. She was a student at Matevulu Collage. She completed year 10 in 2020. In 2020, Lavina sat the junior secondary school certificate examination and obtained satisfactory and acceptable grades in a number of subjects. For english and religious education, Lavina's grades were satisfactory. For french, agriculture, basic science, mathematics, social science and technology, Lavina's grades were assessed to be acceptable. She was doing very well at school.
5. Lavina is survived by her father Joel Thompson. Her mother is deceased. There is no evidence as to when Lavina's mother died. The only evidence the Court has about Mr Thompson's circumstances is found in Lavina's death certificate. At the time of her death, Mr Thompson was aged 50 years and was in the Vanuatu Mobile Force ("VMF"). There is no evidence from Mr Thompson himself as to his personal circumstances, whether he is still in the VMF, what his actual income is, or average incomes earned by people in Vanuatu.

The Proceedings

6. Mr Thompson filed a claim for damages arising from Lavina's death. Damages of VT 17 million are claimed under various heads of damages, although in Ms Kaukare's written submissions, the quantum sought was VT 15,800,000. The applicability of the Fatal Accidents Act 1976 [UK] ("the Fatal Accidents Act") and the Law Reform [Miscellaneous Provisions] Act 1934 UK ("the Law Reform Act") were not specifically pleaded, but both Counsel accepted that damages should be assessed under both pieces of legislation.
7. Mr Warsal did not file a defence. Therefore, on 11 February 2025, a default judgment was entered, with quantum of damages to be determined. Directions were made for both Mr Thompson and Mr Warsal to file sworn statements as to quantum of damages. Mr Warsal did not do so. He did though instruct Ms Taleo from the Public Solicitor's office in Luganville, and she filed submissions on his behalf for the quantum hearing.

² Refer to medical certificate annexed to Mr Thompson's sworn statement filed on 3 July 2024.

³ The death certificate is annexed to Mr Thompson's sworn statement filed on 26 November 2025.



Submissions

8. No evidence was called at the hearing. Both counsel filed very helpful submissions. On Mr Warsal's behalf, Ms Taleo accepts that there should be an award of damages. She and Ms Kaukare differ as to the quantum to be awarded.

Approach to assessing damages following a fatal accident

9. The applicability of the Fatal Accidents Act and the Law Reform Act are discussed in *Hungtali v Kalo* [2024] VUSC 136 as follows:

17. *The claim is brought under the Fatal Accidents Act 1976 (UK). The Act is one of a series of Acts dating back to 1846 which sought to remedy two common law principles. The first is actio personalis moritur cum personae – a personal action dies with the person. The second is that the killing of a human being is not a ground for an action for damages. As a result of these principles, when a person died either instantly or as a result of the wrongful act or omission of another, the wrongdoer could not be held liable to the deceased's estate for damages he sustained before death, for damages to his estate due to the loss of his life, or for damages to third parties (in this case the deceased's parents) who had an interest in his life for damages for their losses resulting from his death. A good summary of the origin and development of these common law principles can be found in T A Smedley, "Wrongful death - bases of the common law rules" 13 Vanderbilt Law Review 605.*

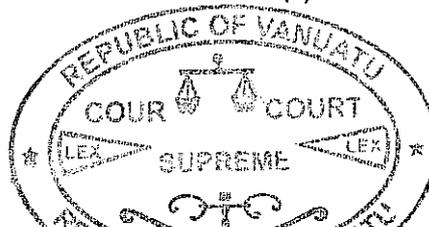
18. *The Fatal Accidents Act 1976 (UK) abrogates these common law principles by creating a statutory right of suit. This claim is brought under s 1 which provides as follows:*

1. *(1) If death is caused by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.*

(2) Every such action shall be for the benefit of the dependants of the person ("the deceased ") whose death has been so caused.

.....

21 *It has been the practice in Vanuatu that claims under the Fatal Accidents Act 1976 (UK) are accompanied with claims under the Law Reform (Miscellaneous Provisions) Act 1934 (UK). That Act is also in effect in Vanuatu by virtue of Article 95 of the Constitution. Section 1(1) of the latter Act provides:*



on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate.

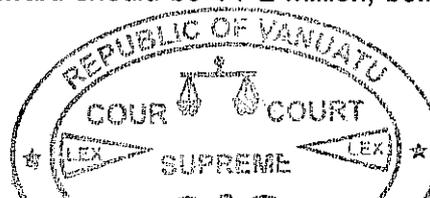
22. Section 1(5) of the Law Reform (Miscellaneous Provisions) Act 1934 (UK) states:

The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Acts . . .

23. The intention of the Law Reform (Miscellaneous Provisions) Act 1934 (UK) then is to widen the ambit of the Fatal Accidents Acts, although s 1(2)(a) the Law Reform (Miscellaneous Provisions) Act 1934 (UK) expressly states that exemplary damages are not recoverable.

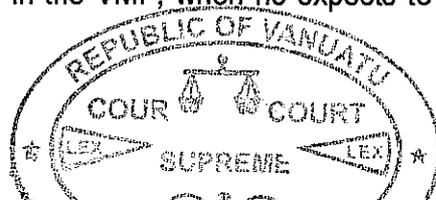
Damages under the Fatal Accidents Act

10. The Fatal Accidents Act entitles any dependant of a deceased to issue proceedings for damages in any circumstances where the deceased's death is caused by "any wrongful act, neglect or default" which would have entitled the deceased to issue a claim for damages against the person liable for the death had death not ensued. The dependents of the deceased therefore step into the deceased's shoes.
11. A dependant includes a parent of the deceased. Relevantly, pursuant to s 1(2) of the Fatal Accidents Act, every action shall be for the benefit of the dependants of the deceased. Thus, in accordance with s 1(2) of the Act, the award of damages must be for the benefit of Mr Thompson, Lavina's father. As such there can be no claim for loss of Lavina's future earnings, as Ms Kaukare contended in her written submissions. The case cited in support of that proposition, *Rovo v Republic of Vanuatu* [2020] VUSC 138, does not apply, because it did not involve a fatal accident. In that case, Mr Rovo was assaulted and sought damages for hearing loss and loss of employment prospects arising from the assault.
12. Both Counsel have correctly identified cases which assist in assessing damages under the Fatal Accidents Act, and the Law Reform Act, being *Elsey v Toara* [2000] VUSC 78, *Wilbur v Wotu* [2017] VUSC 171 and *Iokahauto v South Island Shipping Cooperative Ltd* [2011] VUSC 434.
13. Mr Thompson seeks damages under the Fatal Accidents Act of VT 14,700,000 being a reasonable contribution to the family. Mr Warsal's counsel agrees that an award should be made. Ms Taleo contends that the award should be VT 2 million, being



VT 100,000 over a 20-year period which appropriately reflects the approach taken in *Esley v Toara* and *Wilbur v Wotu*.

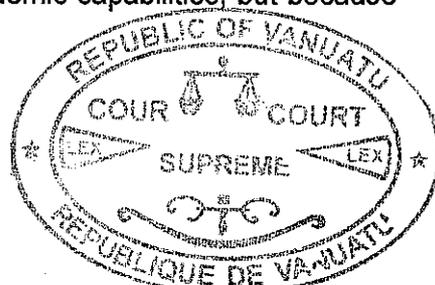
14. In assessing what Lavina could reasonably be expected to contribute to the family, Ms Kaukare contended that Lavina was attending Matevulu Collage in year 10, one of the highest performing colleges in Vanuatu and where students who complete their secondary education through grade 13 are well positioned to enter universities. It is submitted that by 2024 Lavina would have completed year 13 and 2025 should have marked the beginning of her university studies. Ms Kaukare contended that there is no doubt Lavina would have succeeded at university and achieved her aspirations. Accordingly, Ms Kaukare calculated future earnings as follows:
 - Monthly minimum wage of VT 35,000. This is VT 420,000 annually.
 - Annual wage of VT 420,000 multiplied by 35 years (remaining years to reach retirement age of 60) is VT 14,700,000.
15. In the written submissions, it is contended that Lavina should have enrolled at the University of the South Pacific in 2025 to complete a Bachelors Program intending to complete studies by age 25. She would have then started a career earning a minimum average wage of VT 35,000 per month, continuing until she reached the retirement age of 60 years. Damages under the Fatal Accidents Act, however, are not assessed with reference to Lavina's projected working life, but what Lavina could reasonably be expected to contribute to the family over a period of time.
16. I need to consider whether there was a reasonable prospect of Lavina helping to support her father, how long that period should be, and what the amount should be per annum? Due to the limited evidence about these matters, they are difficult to assess, so the assessment will be imprecise.
17. Lavina was 17 when she died. She was in year 11 at school. Lavina had achieved well in year 10 as evidenced by her grades. Beyond that though, there is no evidence at all as to when may Lavina may finish school, whether she had planned to go to university or what type of career aspirations she had. There are extensive submissions as to those matters. But I cannot treat what is said in the submissions as evidence. Submissions are not evidence. There is no evidence that Lavina was actually supporting her father at the time but based on the limited evidence I have about her educational achievement up until the time that she died, I accept there was a reasonable prospect of her doing so.
18. An assessment of a reasonable support period and the appropriate amount to award is not easy. That is due to a lack of evidence as to average life expectancies of a man in Vanuatu, whether Mr Thompson remains in the VMF, when he expects to



retire, his income or average incomes in Vanuatu. So necessarily, the assessment will be imprecise. The only evidence the Court has to assist in that regard, is that when Lavina died, as I have said, Mr Thompson was aged 50 years and was in the VMF.

19. In *Esley v Toara* and *Iokahauto v South Island Shipping Cooperative Ltd*, the support period considered reasonable was 20 years. In *Esley v Toara*, a period of 20 years support was said to be within the life expectancy of the deceased's parents and two younger siblings. In *Iokahauto*, the 20-year support period was based on an average life expectancy in Vanuatu. In *Wilbur v Wotu*, Geoghegan J adopted the approach in *Iokahauto* and established the average life expectancy which was then used as the basis to consider a reasonable support period. Given the age of the deceased's parents, the period for the assessment of damages was 17 years, rather than 20 years. In both *Iokahauto* and *Wilbur v Wotu*, the Court adopted an average life expectancy (both males and females) of 64 years.
20. As noted, there is no evidence before the Court as to the average life expectancy of males in Vanuatu. The World Health Organization data regarding life expectancy as at 2021⁴ is 63.4 years for a male in Vanuatu. On Wikipedia, the average male life expectancy in Vanuatu is 67 years. Averaging out those two figures, I adopt an average life expectancy for a male in Vanuatu of 65 years.
21. Mr Thompson was aged 50 when Lavina died. So, the maximum period for an award of damages for support is 15 years based on the average life expectancy of a Vanuatu male. In *Esley v Toara*, the deceased was aged 17 years. The award related to the support for the deceased parents and two young brothers. There is nothing in the judgment about the ages of the deceased parents, but the 20-year support period was said to be within the life expectancy of both parents and two younger brothers. In *Wilbur v Wotu*, the deceased was aged 20 when he died. There was evidence that he had been working and paid VT 30,000 a month to his family but based on average life expectancy and the age of his mother at the time of his death, the reasonable support period was assessed at 17 years.
22. As I have said, one difficulty is that there is no evidence as to whether Lavina would have continued her education at school to grade 13 and gone on to attend university. There is no evidence about career of aspirations or when she may have started working. I consider that a reasonable period of support is 14 years. That is an imprecise assessment but is on the basis that Lavina may have started working say at the end of year 12, and Mr Thompson's age at the time of Lavina's death, which was the approach taken in *Wilbur v Wotu*. I do not think it right to assume that Lavina would have gone to university, which would mean that the support period was less than 14 years. That is not because of Lavina's academic capabilities, but because

⁴ Which is the most recent World Health Organization data I could find.



of a lack of evidence about her intentions, and the fact that many factors (including financial) can impact on whether a university education is pursued.

23. As to how much the support should be per annum, in both *Esley v Toara* and *Wilbur v Wotu*, the amount awarded was VT 100,000 per annum. In *Esley v Toara*, the Court noted that all the evidence showed that the deceased would have been able to obtain employment in the middle range of wages. At that time, the minimum monthly wage was VT 16,000. As the Court also said, out of his wages, the deceased undoubtedly would have paid for things for himself and probably in time supported a wife and children of his own. Coventry J said that the claimed amount of VT 100,000 per annum equalled to a contribution of VT 8,333 per month. The Court considered that was a reasonable figure and the kind of sum it is likely he would have contributed.
24. The current minimum wage in Vanuatu is VT 300 per hour.⁵ Under s 2 of the Minimum Wages Act [CAP 182], a monthly wage is calculated on the basis of 22 working days per month and 8 working hours in a day. So, based on the minimum hourly rate of VT 300, and applying the calculation set out at s 2 of the Minimum Wages Act, the minimum monthly wage currently in Vanuatu is VT 52,800.
25. A factor to be considered is that the award for loss of reasonable prospect of contribution relates only to Lavina's father, as her mother is deceased. There is no evidence before the Court as to whether Lavina had any siblings that might also require support. Another factor is that, as was pointed out in *Esley v Toara*, Lavina would have her own expenses and most likely a family of her own to support in time. That needs to be factored into the monthly support amount. Based on the minimum monthly wage of VT 52,800, a reasonable contribution amount is one third, VT 17,500 per month. That is VT 210,000 per year. I consider a contribution amount of one third of the minimum wage to be reasonable as the support is for Mr Thompson only. In *Esley v Toara*, the monthly support amount was about half of the minimum wage at the time, but the support related to the deceased's mother and father and two younger siblings. In *Wilbur v Wotu*, the support was for the deceased's parents and his six siblings.
26. Over a 14 year period, the total amount is VT 2,940,000, based on an annual amount of VT 210,000. I award Mr Thompson VT 3 million for loss of a reasonable prospect of contribution from Lavina to the family.

⁵ As per the Minimum Wage and Minimum Wages Board (Amendment) Order no.127 of 2023



Law Reform (Miscellaneous Provisions) Act

27. Under the Law Reform (Miscellaneous Provisions) Act all causes of action vested in a deceased person survive for the benefit of his or her estate.
28. Mr Thompson seeks VT 500,000 for pain and suffering experienced by Lavina following the accident and until the time she died. He seeks VT 600,000 for loss of expectation of life. Mr Warsal accepts that the award for pain and suffering should be VT 500,000 and submits that the loss of expectation of life award should be VT 500,000

Pain and Suffering

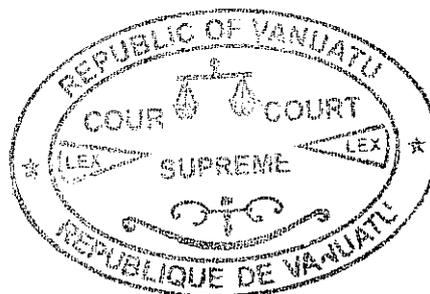
29. An award for pain and suffering is appropriate. Lavina suffered life threatening injuries and while initially stabilized, her health deteriorated over a 24-hour period until she sadly passed away. The amount sought is VT 500,000, which Mr Warsal's Counsel agrees is appropriate. Based on the medical report, an award of VT 500,000 is reasonable and appropriate. Accordingly, VT 500,000 is awarded for pain and suffering.

Loss of expectation of life

30. Lavina was aged 17 years when she died. She had her whole life ahead of her and was doing well at school. I see no reason to limit the award under this head to VT 500,000, as contended by Mr Warsal's counsel. Mr Thompson seeks an award of VT 600,000 and that is reasonable in the circumstances. Accordingly, there is an award of VT 600,000 for loss of expectation of life.

Result – Quantum of damages

31. In summary, the damages awarded are as follows:
 - a. Fatal Accidents Act – VT 3,000,000.
 - b. Law Reform (Miscellaneous Provisions) Act – VT 1,100,000.
 - c. Total – VT 4,100,000.



32. Interest is awarded at the rate of 5 % per annum on the sum awarded from the date the claim was filed until the judgment sum is paid in full.
33. There is an order for costs in Mr Thompson's favour as either agreed or taxed.

**DATED at Port Vila this 4th day of December 2025
BY THE COURT**

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Justice M A MacKenzie

