

IN THE SESSIONS COURT AT MIRI
IN THE STATE OF SARAWAK, MALAYSIA
SUMMONS NO. 53-8-2004(MR)

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BETWEEN

AGNES PADAN (F) AND ANOR

... PLAINTIFF

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AND

DR. JAYA PURANY & 6 ORS.

...

DEFENDANTS

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RULING

The plaintiff filed this action against the defendant for damages for the death of one Kam Agong, deceased, allegedly as a result of the negligence of eth defendants'. The action is brought under Section 7 and 8 of the Civil Law Act
20 1956.

The trial commenced on 10.12.2007 and was adjourned to 11 – 15.2.2008. ti must be stated here that on 4.2.2008 the Learned Federal Counsel had written a letter asking for an adjournment of this case as she is attending a course in
25 Kuala Lumpur. However as this is a long outstanding case, that has to be disposed off before the end of the February 2008, I disallow the application.

On 11.2.2008, the case was called but the 2nd plaintiff, having conduct this trial told the Court that he intended to call a specialist to give expert evidence. Again,
30 as I have said earlier on, this is a long outstanding case, I ordered that the case

to proceed and the 2nd plaintiff then called another 4 witnesses to support their case.

5 As the matter stands there is a prima facie evidence that there were some element of negligent on the part of the defendant. This is evident from the fact that she was discharged from the hospital on 16.3.2002 even though her condition had not improved. PW5 testified that the deceased looked pale when she visited the deceased. There was evidence that there was no blood transfusion done even though a form to that effect was prepared.

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Even though there was no medical evidence adduce by the plaintiff to support their claim, the facts pleaded by the plaintiff has not rebutted by the defendant's witnesses as no one appeared for the defendant despite the fact that the hearing dates was pronounced in open Court on 10.12.2008.

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In my opinion the plaintiff has proved their case on a balance of probability. I find the defendant fully liable.

20 As far as damages is concerned, I am of the opinion that the plaintiff had not shown any evidence to support the claim of RM8,000.00 as special damages. I disallow this claim.

However, I allow RM10,000.00 as damages for bereavement pursuant to Section 7(3A) of the Civil Law Act.

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As far general damages, I am satisfied from the evidence that the deceased had suffered pain and suffering prior to her death. It is not unreasonable to infer that she had suffered from 14 – 19.3.2002 due to excessive bleeding. Having considered the said fact I allow RM50,000.00 as damages for pain and suffering.

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As for loss of income, the plaintiff is claiming RM1,500.00 per month as loss of income. However during the trial PW1 told the Court that the deceased was not working and all income for the household came from PW1. In my opinion there is no evidence to support the plaintiff's claim for loss of earning and I disallow this claim.

To conclude the amount of damages awarded on a 100% liability basis is as follows:-


- (1) RM10,000.00 as damages for bereavement
- (2) RM50,000.00 as damages for pain and suffering

With interest at the rate of 4% p.a from the date of Summons until date of judgment and thereafter at the rate of 8% p.a.

Cost to the plaintiff to be taxed unless agreed.

Sgd: Azhahari Kamal Bin Ramli

CERTIFIED TRUE COPY


Azhahari Kamal bin Ramli
Hakim,
Mahkamah Sesyen,
Miri.