

FSM SUPREME COURT TRIAL DIVISION

RICKSON HIGGINS, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 KOLONIA TOWN GOVERNMENT and )  
 JOHN JOHNNYBOY, )  
 )  
 Defendants. )  
 )  
 )

CIVIL ACTION NO. 2007-027

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Dennis K. Yamase  
Associate Justice

Trial: June 1, 4, 2010  
Decided: September 28, 2010

APPEARANCES:

For the Plaintiff: Stephen V. Finnen, Esq.  
P.O. Box 1450  
Kolonia, Pohnpei FM 96941

For the Defendants: Marstella E. Jack, Esq.  
P.O. Box 2210  
Kolonia, Pohnpei FM 96941

\* \* \* \*

HEADNOTES

Torts – Damages

A plaintiff must prove his damages to a reasonable certainty. Once damage is factually established to a legal reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts – Damages

Compensatory damages aim to make the victim whole again. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts – Damages

When there is no direct evidence of the amount of damages sustained, the court must assess an appropriate level of compensatory damages for that injury. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts – Damages

When a person is injured through the negligence of another, the victim is entitled to an award of damages for pain and suffering. Analyzing a damage request for pain and suffering is difficult, no fixed rules exist to aid in the determination, and it is solely within the trier of fact's discretion. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts – Damages

In awarding compensatory damages, a court may consider past and future lost wages, medical expenses, and a plaintiff's pain and suffering. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts – Damages

To recover for pain and suffering a plaintiff need only show "suffering." The term includes not only physical pain but: fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. When analyzing a pain and suffering award, it is proper to consider not only past pain, but also future pain and the loss of enjoyment of life. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts – Battery; Torts – Comparative Negligence

Defenses to negligence, such as comparative negligence, which might lessen an award of damages, do not apply to the intentional tort of battery. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts – Damages

Permanent injuries are analyzed by the level of impairment the injury has caused to the whole person. When an injury's effect continues over time, earnings impairment will have two components: the loss sustained from the time of injury until time of trial, designated "loss of time" or lost wages, and the prospective loss that plaintiff will experience after trial due to the injury's on-going impact. The plaintiff has the burden of proof with respect to impairment, which must be demonstrated with a reasonable degree of certainty; however, proof of impairment of earning capacity does not require the specificity necessary to establish lost prospective wages. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts; Torts – Damages

Since, absent a showing of impairment, FSM law is currently silent as to how a court is to define and determine whether an injury is permanent, the court may consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 261 (Pon. 2010).

Torts – Damages

An injured plaintiff is entitled to be reimbursed for any lost-wages he might have reasonably been able to earn had the injury not occurred, that is, as a whole person. To justify reimbursement, a plaintiff must also show that he was unable, because of the injury, to acquire the monies sought as compensatory damages. When he was physically able to perform light duty work for his employer six months after the injury, at a minimum, he is entitled to receive the wages he could have earned during his months of incapacity. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 262 (Pon. 2010).

Torts – Damages

When, once the plaintiff was physically able to work he did not inform his employer of his ability because his assailant remained employed there in a position of authority and he was afraid of being harmed again by his assailant who still would have been in close physical proximity to his victim and

when Kolonia Town stopped paying his salary without any notice to him, the plaintiff's fear of returning to work was reasonable, and therefore, finds he is entitled to receive his back wages for the 36 weeks he was not paid his salary before returning to his job. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 262 (Pon. 2010).

Torts – Damages

When the majority of the plaintiff's weakness and inabilities arose from the atrophy of his muscles through their disuse; when at the time of the trial, he was employed and earning a higher wage than before; and when there was no persuasive evidence about the permanence of his injuries or the loss of function, range of motion or strength in his extremities, and despite the absence of professional physical therapy treatment on Pohnpei, the court is unable to determine a permanent damage award. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 262 (Pon. 2010).

Torts – Damages

When the court has received no persuasive evidence that the care provided to the plaintiff at the Pohnpei State Hospital was negligent or harmful, or that the care provided in the Philippines was unique or necessary to making him whole or that the Pohnpei State Hospital is not adequately equipped and staffed to provide a sufficient standard of care to safely and properly remove the metal plate, the court is unable to find that a return to the Philippines is a reasonable expense necessary to making the plaintiff whole and include this expense in the damage award, but he is entitled to be reimbursed for the costs he incurred traveling to the Philippines and having the metal plate installed in his leg. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 262-63 (Pon. 2010).

Torts – Damages

When the plaintiff's injury being knocked unconscious had caused him to suffer; when he spent one week in the Pohnpei State Hospital and approximately four months in a cast; when he was then required to leave his wife and new child to travel to the Philippines to undergo surgery where a metal plate was attached to his right tibia; when because of this treatment, his muscles atrophied since the unavailability of professional physical therapy left him unable to perform regular tasks for an unspecified time; and when the manner that his injuries were incurred and his subsequent condition also left him with a reasonable fear of Kolonia Town's Chief of Police, the plaintiff will be awarded \$21,000 for pain and suffering. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 263 (Pon. 2010).

Attorney's Fees – Court-Awarded – Statutory; Civil Rights; Torts – Damages

In a civil rights action, the court may award costs and reasonable attorney's fees to the prevailing party when a review of the relevant case law and the statute's permissive language indicate that such an award is merited. Higgins v. Kolonia Town, 17 FSM Intrm. 254, 263 (Pon. 2010).

\* \* \* \*

COURT'S OPINION

DENNIS K. YAMASE, Associate Justice:

I. BACKGROUND

This matter was tried on June 1 and 4, 2009. Plaintiff Rickson Higgins was represented by Attorney Stephen V. Finnen. Defendant Kolonia Town Government ("Kolonia Town") was represented by Attorney Marstella E. Jack. Plaintiff's witnesses included: Record Custodian Leon Felix; Plaintiff Rickson Higgins; treating physician Dr. Johnny Hedson; and wife of Plaintiff, Thelma Higgins. Defendants' witnesses included: Defendant John Johnnyboy; treating physician Dr. Johnny Hedson;

Judge Blasio Edward; Steve Scaliem; and Officer Douglas Adolph.

This matter arises out of a civil complaint filed by the Plaintiff on September 7, 2007. The Plaintiff asserts three causes of action: 1) violation of civil rights; 2) assault and battery; and 3) failure to maintain a safe work place. Each cause of action relates to an event that occurred on November 10, 2005. The event included and involved two main participants, Plaintiff Higgins and Defendant Johnnyboy. At the conclusion of that day's events, Higgins's leg had been broken and he had been taken to the hospital.

On October 17, 2008, the parties filed a paper entitled, Stipulation to Liability by Kolonia Town Government. The stipulation was signed by each of the parties' attorneys and provided,

Rickson Higgins and Kolonia Town Government stipulate that Kolonia Town Government is liable to Rickson Higgins on the first cause of action for civil rights violations, in that while John Johnnyboy was in a policy making position, as Chief of Police of Kolonia Town Government, on or about November 10, 2005, he assaulted and battered Rickson Higgins. Additionally, Rickson Higgins and Kolonia Town Government stipulate that Kolonia Town Government is liable to Rickson Higgins, on the second cause of action, in that while John Johnnyboy while in the position as Chief of Police of Kolonia Town Government, on or about November 10, 2005 assaulted and battered Rickson Higgins, and that this assault and battery occurred while John Johnnyboy was at work and on duty, thereby making the Kolonia Town Government liable for his action under the doctrine of *respondeat superior*.

Stipulation to Liability by Kolonia Town Government at 1-2. The stipulation further provided that, "the issue of the amount of damages as to all defendants and the issue of liability of John Johnnyboy, who is not a party to this stipulation, remain contested issues of fact and law and are to be determined by the court in further proceedings." *Id.*

Just before trial, all parties filed a Stipulated Pre-trial Statement. The stipulation lists the contested issues of material fact which were disputed by the parties and were to be decided by the Court.<sup>1 2</sup> Stipulated Pre-Trial Statement at 3. It also contained a list of 12 uncontested issues of law

---

<sup>1</sup> The pre-trial stipulation identified the following contested issues of law and material fact for which a trial was necessary,

1. Rickson Higgins claims salary was owed from May 2006 to February 5, 2007, in the amount of \$240.00 biweekly, totaling \$4,320.00;
2. The nature and extent of injuries suffered on November 10, 2005;
3. Permanent limitations caused by the injuries on November 10, 2005;
4. The need for removal of the metal plate and anticipated costs;
5. Reimbursement of other medical expenses, including \$1,500.00 for payment of airfare and food expenses for a helper to go with him to Quezon City, while he was hospitalized, plus \$150.00 for the metal plate inserted into his leg;
6. Pain and suffering;
7. Attorney's fees and costs per 11 F.S.M.C. 701 *et seq.*

Stipulated Pre-Trial Statement at 3.

<sup>2</sup> The Stipulated Pre-trial Statement provides that John Johnnyboy will be dismissed from the lawsuit without prejudice, but Kolonia Town Government shall assume his liability as outlined in the October 17, 2008 stipulation. *Id.*

and material fact.<sup>3</sup>

On the day of trial, Kolonia Town appeared and requested that it be allowed to introduce evidence which disputed its factual liability. Defendant sought to introduce facts, which among other things, disputed its stipulated liability to the Plaintiff's first two causes of action and supported the defenses of self-defense and contributory negligence. Defs.' Closing Arguments at 2-3. Kolonia Town asserted that the evidence impeached the credibility of Higgins's claims for certain damages and that they were relevant to the contested extent and nature of his damages.<sup>4</sup> *Id.* Higgins objected to the presentation of this testimony and the introduction of the evidence, asserting that it was irrelevant, prejudicial, and otherwise improper. The Court allowed the evidence and has considered it only to the limited extent that it was relevant to the nature and extent of the Plaintiff's damages.

Based upon the Parties' stipulation to liability, the evidence presented at trial, and after carefully observing the witnesses' demeanor, character, appearance, and manner of responding, the Court makes

---

<sup>3</sup> The stipulation reiterated the Parties' October 17, 2008 stipulation of liability and the following facts:

1. The incident occurred on November 10, 2005;
  2. Rickson Higgins was paid his salary by Kolonia Town Government from November 10, 2005 to May 2006;
  3. Rickson Higgins was not paid salary and did not work from May 2006 to February 5, 2007. The total amount of salary in issue is the amount of \$240.00 biweekly, totaling \$4,320.00;
  4. Rickson Higgins returned to work on February 5, 2007, with Kolonia Town Government and his pay resumed;
  5. John Johnnyboy was terminated from his position as Chief of Police for the Kolonia Town Government on May 31, 2007;
  6. Rickson Higgins sought medical treatment for his injuries;
  7. Treatment for Rickson Higgins included casting of his right leg (tibia) for three months post incident. This treatment was performed in Pohnpei;
  8. Rickson Higgins was subsequently referred to Capitol Medical Services in Quezon City, Philippines. An open reduction of the right tibia was performed and Rickson Higgins was hospitalized from March 25, 2006 to April 15, 2006. A metal plate was screwed into the broken bones to hold the bones in place. This metal plate is still in place;
  9. All medical payments to Pohnpei medical care providers and to Capitol Medical Services have been paid by MiCare. No claim has been made for reimbursement.
- Id.*

<sup>4</sup> These arguments were summarized in Defendants closing arguments. Def.'s Closing Arguments at 1-3. Kolonia Town argued that

The amount of compensation however should be an issue that is better suited for the court to decide since several eye witnesses proclaimed John Johnnyboy was only defending himself and that Rickson Higgins might have fabricated is [sic] own version of the events. This was the basis of the admission to liability.

Despite the fact that the admission itself might have waived Kolonia Town's chances of raising a defense, specifically the defense of comparative negligence, the honorable Court was requested to kindly consider this as it regards [sic] the credibility of Rickson Higgins himself.

*Id.* at 2-3.

the following determinations of credibility and specific findings of facts:<sup>5</sup>

II. FINDINGS OF FACTS

1. As supported by the Parties' October 17, 2009 stipulation, on November 10, 2005, Defendant John Johnnyboy, through the use of blunt force trauma to Plaintiff Rickson Higgins's right leg and right eye, intentionally caused Higgins's right leg to be broken, his right eye to be lacerated, and his person to be put into a state of unconsciousness;

2. After his leg was broken, Higgins was admitted to and remained in the Pohnpei State Hospital for approximately one week;

3. Higgins was released from the hospital and medical professionals instructed him to lie down while his leg was healing;

4. After unsuccessfully attempting to heal Higgins's leg for four months through casting, Dr. Johnny Hedson referred Higgins to the Philippines to have a metal plate attached to his leg bone;

5. Higgins traveled to the Philippines in March of 2006;

6. Higgins paid a person approximately \$2,425.00, in airfare and living expenses, to care for and assist him during his recovery in the Philippines;

7. While in the Philippines Higgins was hospitalized for 21 days while he underwent surgery to have his fracture cleaned and his bones put back together by attaching them with a metal plate and screws;

8. Higgins returned to Pohnpei on April 15 or 16, 2006;

9. After Higgins return, he was treated by Dr. Hedson; Plaintiff was again placed in a cast which remained on his leg until June or July, 2006; Dr. Hedson visited with Higgins in September, 2006, six month after surgery, and twice again in January, 2007 and January, 2008;

10. As a result of his broken leg and the unavailability of adequate physical therapy on Pohnpei, Higgins's leg muscles atrophied to the degree that he could no longer carry bags of pig feed, climb pwuh trees, go jogging, go fishing or go dancing with his wife; regardless of these injuries, Higgins would have, six months after his return from the Philippines, been able to provide light duty work for his employer;

11. Before his leg was broken, Higgins could earn up to \$20 each day from climbing and harvesting pwuh trees;

12. After his return from the Philippines, Kolonia Town continued to pay Higgins his hourly wage until May, 2006;

13. Kolonia Town paid Higgins his salary from November 10, 2005 to May, 2006;

---

<sup>5</sup> By reference the Court incorporates into its findings the uncontested material facts listed in the Parties' Stipulated Pretrial Statement signed by the parties and filed with the Court on February 19, 2009, as set forth above in footnote 3.

14. Higgins received no notice of Kolonia Town's decision to stop paying his wage;
15. Defendant John Johnnyboy continued to be employed by Kolonia Town Municipality as their Chief of Police from November 10, 2005 until October 17, 2006, when he was suspended with pay from his job. Defendant Johnnyboy continued to receive his regular pay as Kolonia Town's Chief of Police until May 31, 2007;
16. Higgins returned to work for Kolonia Town on February 5, 2007, shortly after Defendant Johnnyboy's suspension;
17. Higgins did not return to work before February 5, 2007, because he was afraid Defendant Johnnyboy might assault him again;
18. The metal plate in Higgins's leg has not been removed; removing the plate in Pohnpei would require surgery and a 3 to 5 day hospitalization;
19. Higgins requested that he be allowed to return to the Philippines to have the metal plate removed, but his medical insurance refused to pay the cost of the procedure in the Philippines;
20. The Pohnpei State Hospital has the ability to remove the metal plate from Higgins's leg;
21. Due to treatment Higgins initially received from Pohnpei State Hospital, which he believes was inadequate, he is afraid to have Pohnpei State Hospital perform the procedure which would remove the metal plate from his leg;
22. At the time of trial, Higgins was gainfully employed and earning a higher wage than he was on November 10, 2005.

### III. CONCLUSIONS OF LAW

After the Parties' stipulations, the Court must determine the scope and the amount of damages for which the Defendant Kolonia Town is liable. Stipulated Pretrial Statement at 1-2; Stipulation to Liability by Kolonia Town Gov't. Pursuant to the Parties' stipulations, Kolonia Town is liable for all damages which directly or reasonably arose out of Higgins's November 10, 2005 injuries. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 238 (Kos. S. Ct. Tr. 2001). Trial was held to determine the nature and extent of the damages that arose out of Defendants' liability to Higgins. *Id.*; Stipulated Pre-Trial Statement at 1-2; Stipulation to Liability by Kolonia Town Gov't. As set forth in the Parties' Stipulated Pre-Trial Statement, the specific unresolved sub-issues related to the nature and extent of damages are whether:

1. Rickson Higgins claimed salary was owed from May, 2006 to February 5, 2007, in the amount of \$240 bi-weekly, totaling \$4,320;
2. Permanent limitations caused by the injuries on November 10, 2005;
3. The need for removal of the metal plate and anticipated costs;
4. Reimbursement of other medical expenses, including \$1,500 for payment of airfare and food expenses for a helper to go with him to Quezon City, while he was hospitalized, plus \$150 for the metal plate inserted into his leg;

5. Pain and suffering;
6. Attorney's fees and costs per 11 F.S.M.C. 701 *et seq.*

A. *Standard of Review*

A plaintiff must prove his damages to a reasonable certainty. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM Intrm. 403, 418 (Yap 2006). In the FSM, once damage is factually established to a legal reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. *Id.* Compensatory damages aim to make the victim whole again. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 50 (Chk. 2001); People of Rull, 14 FSM Intrm. at 418 (general purpose of tort law is to afford a victim compensation for the injuries or damages sustained as the result of another's unreasonable or socially harmful conduct; tort law's purpose is to make the victim whole). When there is no direct evidence of the amount of damages sustained, the court must assess an appropriate level of compensatory damages for that injury. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 418 (Pon. 1998).

When a person is injured through the negligence of another he/she is entitled to an award of damages for pain and suffering. Talley, 10 FSM Intrm. at 238. Analyzing a damage request for pain and suffering is difficult, no fixed rules exist to aid in the determination, and it is solely within the discretion of the trier of fact. *Id.* However, in awarding compensatory damages, the court may consider past and future lost wages, medical expenses, and a plaintiff's pain and suffering. Amayo v. MJ Co., 10 FSM Intrm. 244, 251 (Pon. 2001), *rev'd sub nom. on other grounds*, Panuelo v. Amayo, 10 FSM Intrm. 558 (App. 2002).

Moreover, to recover for pain and suffering a plaintiff need only show "suffering," the term includes not only physical pain but: fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Talley, 10 FSM Intrm. at 238. When analyzing a pain and suffering award, it is proper to consider not only past pain, but also future pain and the loss of enjoyment of life. Sigrah v. Timothy, 9 FSM Intrm. 48, 54 (Kos. S. Ct. Tr. 1999). Defenses to negligence, such as comparative negligence, which might lessen an award of damages do not apply to the intentional tort of battery. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997).

In the FSM, permanent injuries are analyzed by the level of impairment the injury has caused to the whole person. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM Intrm. 23, 26 (Yap 1999). In Mathebei, the court explained that

Where the effect of an injury continues over time, earnings impairment will have two components: the loss sustained from the time of injury until time of trial, designated "loss of time" or lost wages, and the prospective loss that plaintiff will experience after trial due to the on-going impact of the injury. The plaintiff has the burden of proof with respect to impairment, which must be demonstrated with a reasonable degree of certainty; however, proof of impairment of earning capacity does not require the specificity necessary to establish lost prospective wages.

*Id.* (citation omitted). Absent a showing of impairment, FSM law is currently silent as to how the court is to define and determine whether an injury is permanent. When appropriate, such as when FSM law is silent as to an issue, the court may consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002).



B. *Whether Plaintiff is entitled to 36 weeks of back pay, commencing approximately May 29, 2006 to February 5, 2007, in the amount totaling \$4,320.*

Under the above standard, Higgins is entitled to be reimbursed for any lost-wages he might have reasonably been able to earn, had the injury not occurred, that is, as a whole person. *Cf. Moses*, 10 FSM Intrm. at 50. To justify reimbursement, a plaintiff must also show that he was unable, because of the injury, to acquire the monies sought as compensatory damages. *Id.* In this case, approximately six-months after Higgins returned home from having a metal plate attached to his right tibia, he was physically able to perform light duty work for his employer. Higgins returned from the Philippines on April 16, 2006 and returned to work the first week of February of 2007. He would have been able to return to work on or about October 16, 2006. At a minimum, he is entitled to receive the wages he could have earned during his months of incapacity.

After Higgins was physically able to work he testified that he did not request or inform his employer of his ability because his assailant Johnnyboy remained employed as Kolonia Town's Chief of Police. While Johnnyboy retained this position of authority, Higgins was afraid of being harmed again by him. Higgins had been knocked unconscious, had his right eye lacerated, and his right leg broken, all through Johnnyboy's intentional use of blunt force trauma. Had Higgins returned to work, Johnnyboy was still in his position of authority and while he might have been placed in a different office, he still would have been in close physical proximity to Johnnyboy.

Moreover, Kolonia Town stopped paying Higgins his salary the last week of May, 2006. Kolonia Town made the decision without any notice to Higgins. Based upon this and the other evidence received at trial, the Court finds that Higgins's fear of returning to work was reasonable. The Court, therefore, finds that Higgins is entitled to receive his back wages for the 36 weeks he was not paid his salary before returning to his job. *Id.*

C. *Plaintiff's permanent limitations caused by the November 10, 2005 injuries.*

In this case, the Court is not persuaded that Higgins's injuries are permanent. Dr. Hedson testified that the majority of Higgins's weakness and inabilities arose from the atrophy of his muscles through their disuse. Higgins was at the time of the trial, employed and earning a higher wage than he received from Kolonia Town. There was no persuasive evidence about the permanence of Higgins's injuries or the loss of function, range of motion or strength in his extremities, despite the absence of professional physical therapy treatment on Pohnpei. Absent this, the Court is unable to determine a permanent damage award. *Mathebei*, 9 FSM Intrm. at 26.

D. *Costs for installation and removal of the metal plate.*

Higgins argues that his damages should include the costs of having the metal plate removed in the Philippines. In support of this argument, Higgins relies upon the testimony of Dr. Hedson. Defs.' Closing Arguments at 9-10. He asserted that the procedure of removing the metal plate can be done at the Pohnpei State Hospital. *Id.* Higgins asserts that because of the treatment he received at the Pohnpei State Hospital before it referred him to the Philippines, he will only have the plate removed in the Philippines.

Reviewing this issue under the appropriate standard, the Court is unable to support a finding that a return to the Philippines is a reasonable expense necessary to making Higgins whole. *Moses*, 10 FSM Intrm. at 50. The Court received no persuasive evidence that the care provided to Higgins was negligent or harmful, or that the care provided in the Philippines was unique or necessary to making him whole. It also received no persuasive evidence that the Pohnpei State Hospital is not adequately

equipped and staffed to provide a sufficient standard of care to safely and properly remove the metal plate. Absent this, the Court is unwilling to include this expense in Higgins's damage award.

Higgins also requests that his damages include the costs he incurred to pay for an assistant while he was in the Philippines having the plate inserted. Kolonia Town made no persuasive showing at trial that this cost was not reasonable and necessary to repairing the damage caused by it. The Court finds that Higgins is entitled to be reimbursed \$2,425 for the costs he incurred traveling to the Philippines and having the metal plate installed in his leg.

E. *Pain and suffering.*

Higgins and his witnesses testified in many instances about how this injury had caused Higgins to suffer. Specifically, after being knocked unconscious he spent one week in the Pohnpei State Hospital. Before referral to the Philippines, Higgins spent approximately four months in a cast. In this condition, he was then required to leave his wife and new child to travel to the Philippines to undergo surgery where a metal plate was attached to his right tibia. Upon his return home, Higgins had to spend another month in bed.

Dr. Hedson testified that because of this treatment, Higgins's muscles had atrophied. The unavailability of professional physical therapy left Higgins, for an unspecified time, unable to perform regular household tasks, care for his children to the same degree, carry pig feed, climb pwuh trees, fish, go jogging or dancing. The manner that Higgins's injuries were incurred and his subsequent condition also left him with a reasonable fear of Kolonia Town's Chief of Police.

Based upon these facts, the Court finds it is reasonable to award the plaintiff a judgment amount of \$21,000 for pain and suffering.

F. *Attorney's fees and costs.*

Higgins also requests that, pursuant to statute, the Court order that Defendant pay his attorney's fees and costs. Section 701 of Title 11 of the FSM Code provides, "[i]n an action brought under this section, the court may award costs and reasonable attorney's fees to the prevailing party." A review of the relevant case law and the permissive language of the statute indicate that such an award is merited in this case. Estate of Mori v. Chuuk, 10 FSM Intrm. 123, 124 (Chk. 2001); Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 538 (Chk. 2003) (when both the civil rights claim and the wrongful death claim arose from a common nucleus of operative fact, for purposes of enforcing the judgment, and to be consistent with the principle that plaintiffs are entitled to all of their attorney's fees under 11 F.S.M.C. 701 even though they prevailed on a state law claim as well as a civil rights claim, the court will treat the judgment as though it is in its entirety based on a civil rights claim).

IV. CONCLUSION

For the above reasons, Higgins is entitled to a judgment for Kolonia Town pay 36 weeks of back pay in the amount of \$4,320, reimbursement for the costs associated with having the metal plate inserted in the Philippines in the amount of \$2,425, an award for pain and suffering in the amount of \$21,000, and the cost of the reasonable attorney's fees and costs necessary to this action. The total award, without the reasonable attorney's fees and costs, is \$27,745. In accordance with this decision, Higgins shall have 30 days from the entry of this order to submit his request for attorney's fees and costs.

\* \* \* \*