IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 66 OF 1992
(High Court Civil Action No. 41 of 1992)

BETWEEN:

RATU VILIAME FOKIMOANA DREUNIMISIMISI — **1ST APPELLANT**
SOUTH PACIFIC DISTILLERIES LIMITED — **2ND APPELLANT**

-and-

DAVID NAG RATNAM — **RESPONDENT**

Mr. Ram Krishna for the 1st and 2nd Appellant
Mr. A. Khan for Mr. H. A. Shah for the Respondent

Date of Hearing : 18th May, 1994
Date of Delivery of Judgment : 26th May, 1994

JUDGMENT OF THE COURT

This appeal is against the judgment of Sadal J. given on the 14 August 1992 in the High Court at Lautoka.

The appeal arises in the following circumstances. The plaintiff in the action, David Nag Ratnam, was the father of a young man, Lazaraus David, who died as a result of an accident when a motor cycle on which he was travelling as a pillion passenger collided with a motor vehicle driven by the first defendant, Ratu Viliame Fokimoana Dreunimisimisi, as servant of the second defendant, South Pacific Distilleries Ltd. The accident occurred on the 18 July 1990 and sometime later the driver, Mr Dreunimisimisi, was convicted on a charge of causing death by dangerous driving. The plaintiff Mr Ratnam commenced proceedings in the High Court on the 12 February 1992 based on

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the negligence of Mr Dreunimisimisi as the driver of the motor vehicle and claimed damages under the Compensation to Relatives Act and in terms of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act. An acknowledgement of service of the writ was filed by the solicitors for the two defendants, which indicated that they intended to contest the proceedings, but in the event no statement of defence was filed and on the 26th March judgment was entered by default against the defendants. The terms of the judgment were that it was adjudged that the defendants were to pay to the plaintiff Mr Ratnam such damages as were assessed by the Court. On the 23 April 1992 the issue of the amount of damages was tried before Sadal J., all the parties being represented by counsel. On 14 August 1992 Sadal J. gave a reserved judgment and awarded the plaintiff Mr Ratnam $20,000.00. The two defendants have appealed against that judgment and seek an order that the judgment of Sadal J. be set aside and that the case be remitted to the High Court for a fresh assessment of damages. The grounds relied upon are that the learned trial Judge applied a wrong principle in awarding damages for loss of earnings for lost years in terms of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap. 27, when any award that was made should properly have been made under the Compensation of Relatives Act Cap. 29. A further ground was that the amount awarded was inordinately high in all the circumstances of the case.

The learned Judge made awards of damages under three heads:-

Loss of earnings	$18,195

Loss of life expectancy	$ 1,500
Funeral expenses	$ 300

However, it is unfortunately not clear on what basis the award for loss of earnings was made. Plainly the award for loss of expectancy of life must have been made in terms of the Law Reform (Miscellaneous Provisions)(Death and Interest) Act since such damages are not awarded under the Compensation to Relatives Act. In our view it does not misstate the position to say that the learned trial Judge does not make clear, when the judgment is looked at overall, whether the award of damages is based upon the Law Reform (Miscellaneous Provisions)(Death and Interest) Act or upon the Compensation to Relatives Act or upon both. However, we are of the view that the learned Judge was not proceeding under the Compensation to Relatives Act; he records that the plaintiff had not complied with the requirements of s.9 of the Act to give particulars of the persons for whose benefit the action was brought and he did not determine the share of the damages awarded to be allotted to each of the persons for whom the action was brought as is required by s.6 of the Act. It follows that we think he was proceeding in terms of the Law Reform (Miscellaneous Provisions)(Death and Interest) Act.

We now turn to consider generally the Law Reform (Miscellaneous Provisions) (Death and Interest) Act. It is under that Act that damages for loss of earnings for what are described in the cases as "the lost years" are awarded. To understand the basis upon which such damages are awarded it is necessary to keep in mind the distinction between damages awarded in terms of that

Act and damages awarded under the Compensation to Relatives Act. To explain the distinction between the two types of damages we cannot do better than to set out a passage from the judgment of this Court in **Daya Ram v. Peni Caca & Ors** (Fiji Court Appeal No. 50 of 1982: March 1983). The Court there said:-

> *"We turn now to the larger item namely loss of earnings for what are described as "the lost years". It is essential to remember throughout one's consideration of this topic the basis upon which such an award is made. It is not an award to dependants for the loss of support which they would have been entitled to expect had there not been the death of the breadwinner. Such claims are brought in Fiji under the Compensation to Relatives Act (Cap. 29). In such cases, in this and other jurisdictions, such a claim is calculated by examining the amount of money which dependant relatives had been receiving in the past for their support and which they might legitimately have expected to have received in the future provided the deceased had had the means to make such payments and could have been expected to continue making them. This was a purely mathematical calculation of how much he would have been worth in money terms to his dependants for what ever was the expected period of dependancy. The present item of claim is quite different. It finds its justification in the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap. 27. The claim is brought under section 2 and is for the benefit of the estate in respect of all causes of action which the deceased had at the time of his death. In the case of a person who is injured an action lies by him in tort for such damages as will represent in money terms his loss of future earnings; how he would have spent those earnings in the future is irrelevant to such a claim. By the statutory provision of Cap. 27 in the case of a man who is injured and dies the cause of action for the lost years vests in the deceased when he is injured and in the case of instantaneous death immediately before his death, and after death passes to his personal representative. Such claims*

are authorised in the English legislation by the Law Reform (Miscellaneous Provisions) Act 1934 which is for present purpose the equivalent of the Fiji Statute.

Accordingly the claim on behalf of a deceased estate for loss of earnings for lost years is now firmly established as on the same footing as the same claim by a living person, subject to the reservation as to deduction of personal living expenses."

In the light of the foregoing and of our view, earlier expressed, that the learned trial Judge had proceeded in terms of the Law Reform provision and not the Compensation to Relatives Act, we propose now to consider the grounds of the appeal on the basis that this is a judgment under the Law Reform provision and not the Compensation to Relatives Act. What effect that has upon the plaintiff Mr Ratnam in his capacity of administrator of Lazaraus David's estate, so far as dealing with the proceeds of the judgment is concerned, is a matter he must resolve for himself and that no doubt will be affected by the question of whether the dependents of the deceased are, or are not, the same persons who are the ultimate beneficiaries of his estate. The damages awarded under the Law Reform provision form part of Lazaraus David's estate and do not go to his dependents in terms of the Compensation to Relatives Act.

The main thrust of Mr Krishna's submission on this aspect of the case was that the learned trial Judge was wrong in law in making any award on this basis at all. He accepted that awards for "lost years" were properly made after the decision of the House of Lords in **Gammell v. Wilson** (1981) 1 ALL ER 578 but

pointed out that in England the effect of the decision was reversed by statute by s.4(2) of the Administration of Justice Act 1932. He went on to refer to a case in the High Court at Lautoka, **Sashi Lata & Anor v. Gopal Pillay & Others** (High Court, Lautoka: No. 100 of 1990) where Saunders J., he said, refused to follow the **Gammell** decision. He did not, however, supply us with a copy of that judgment. Mr Krishna then went on to argue that in these circumstances the **Daya Ram** judgment could no longer be held persuasive in Fiji. This submission is quite untenable and entirely misconceived. There has been no legislation in Fiji such as has been enacted in s.4(2) of the Administration of Justice Act 1982 in England and, accordingly, the law as expressed in **Daya Ram's** case stands. It is not a matter of **Daya Ram** being persuasive or otherwise; it states the present law and is binding upon all lower Courts in this land.

Mr Krishna had certain other arguments to urge in relation to the way in which the amount of damages had been determined but he conceded that they were relevant only if the amount of damages had been determined under the Compensation to Relatives Act. In the light of the Court's view that the damages were awarded under the Law Reform provisions Mr Krishna did not pursue the matter. The Court therefore does not need to consider the correctness of the method adopted by Sadal J. in determining what was the proper figure to allow for loss of earnings. We wish merely to record that there are various ways in which a Court could approach the question and it by no means follows that the approach adopted by Sadal J is the only acceptable one. The question is discussed by

this Court in **Daya Ram's** case and we draw attention in particular to the view expressed by Lord Fraser of Tullybelton in a passage cited from **Gammell v. Wilson** (1981) 1 ALL ER 410. It is, however, to be observed that the method he adopted is, broadly, in accord with that accepted by this Court in **Daya Ram's** case and it seems a practical and convenient one. The question of the multiplier to be used, if that method is adopted, requires careful consideration and regard must be had to the age of the deceased person, his health and work prospects. It by no means follows that this Court considers that the multiplier of 15 used by Sadal J. is to be accepted as generally correct.

Finally, and for completeness having regard to Mr Krishna's grounds of appeal, we add that for a young man of 21 years the amount of damages awarded certainly could not be regarded as inordinately high.

The appeal is accordingly dismissed with costs to the respondent on the lower scale.

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Sir Peter Quilliam
Judge of Appeal

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Mr. Justice Savage
Judge of Appeal

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Mr. Justice Peter Hillyer
Judge of Appeal

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