

IN THE FIJI COURT OF APPEAL AT SUVA
ON APPEAL FROM THE HIGH COURT

CIVIL APPEAL NO. ABU0019 OF 1998
(High Court Civil Action No.HBC0225 of 1994)

BETWEEN:

ATTORNEY-GENERAL OF FIJI

Appellant

AND:

CHARLES VALENTINE

Respondent

Coram:

The Rt. Hon. Sir Maurice Casey, Presiding Judge
The Hon. Mr Justice R. Savage, Justice of Appeal
The Hon. Mr Justice J.D. Dillon, Justice of Appeal

Hearing:

Monday 24 August 1998

Counsel:

Mr N. Barnes with Ms N. Basawaiya for the Appellant
Mr J. Flower for the Respondent

Date of Judgment:

Friday 28 August 1998

JUDGMENT OF THE COURT

The only issue in this appeal is over the interest on damages awarded to the respondent for injuries he suffered in a traffic accident on 25 February 1993. In the High Court at Suva *Scott J*, assessed them on 12 March 1998 as follows:-

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| Special Damages (comprising net loss of earnings, medical and associated expenses and other expenses) | \$36,000.00 |
| General Damages for pain, suffering and loss of amenities | 55,000.00 |
| General Damages for future loss of earnings | 14,428.82 |

He awarded interest at 6% from the date the writ was issued (13.3.94) on the special damages and on the general damages of \$55,000 but nothing on those for future loss of earnings. The appellant complains that this was excessive and asked this Court to lay down guidelines with a view to ensuring consistency.

The power to award interest in the High Court is contained in s3 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act, Cap.27:

“In any proceedings tried in the Supreme Court (now the High Court) for the recovery of any debt or damages the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment.”

There is a proviso in s3(a) forbidding interest on interest. The fundamental principle is that interest is to compensate a party for having to stand out of the money to which he or she was entitled.

Section 3 gives an unfettered discretion to the Court and although guidelines may assist it is not for this Court to circumscribe that discretion by specific rules. However, it must be exercised rationally and in *Jefford v Gee* [1970] 2 QB 130 the Court of Appeal analysed the logic behind the assessment of interest in personal injury claims in a way which may assist the High Court in the proper exercise of its discretion. Its relevant conclusions are summarised at p.151 and we set them out together with our comments:-

1. Special damages. Interest should be awarded from the date of the accident to the date of trial at half the appropriate rate. (Usually special damages such as hospital expenses, loss of wages etc, accrue on a day-by-day basis. Rather than the Court making a series of interest calculations from the time each was incurred, it can achieve a broadly appropriate assessment by taking a figure representing a mean or average for the period. Half the interest over that time may be accepted as a suitable compromise figure in most cases.)
2. Loss of future earnings. No interest should be allowed. (This is because the plaintiff does not become entitled to this money until the award is made and so has not been kept out of it to justify giving interest.)
3. Pain and suffering and loss of amenities. Interest should be awarded at the appropriate rate from the date of service of the writ to the date of trial.

It will be seen that the award in the present case was in line with the approach suggested in *Jefford v Gee*, except that interest in full was given on the special damages instead of at half the rate of 6% adopted by His Lordship. On the other hand, in the Appellant's favour he awarded interest on the special damages from the date of the writ rather than the date of the accident - i.e. over a year later.

The Appellant's principal complaint concerned the rate of interest. We do not accept its submission that for general damages a so-called "conventional" rate of 2% should be accepted. This is based on the opinion of *Lord Diplock* in *Wright v British Railways Board* [1983] 2 All E.R. 698 (HL), involving a consideration of the relationship between inflation (then running at a high rate) and compensation and risk as elements in fixing interest. With respect this may have been

appropriate for conditions in the United Kingdom in the early nineteen eighties, but we do not think it affords a useful guide for assessment of interest in present-day Fiji. In normal circumstances the accepted approach here for calculation of interest on general damages (apart from future economic loss) is to take the average interest which could have been earned on the money in an appropriate low-risk or risk-free investment for the term the plaintiff has been without it, calculated from the date the writ was issued. Counsel referred us to a range of interest rates which have been awarded in the High Court, going up to 10% (which we would find hard to justify); our impression is that most have been between 5% and 7%.

A practical problem may well arise in respect of the future earnings loss component of the general damages awarded. Frequently all the heads of general damages are included in one total sum, thus presenting difficulty in determining what should be the appropriate interest rate. If the judge does specify the amount allowed for the future earnings loss no difficulty arises; if he does not we suggest he should have regard to the fact that future earnings loss does not qualify for interest and so he should make an allowance for it by reducing the rate of interest for the total sum that he would otherwise have allowed. This is, no doubt, a somewhat broad brush approach but is preferable to expecting all courts to make precise assessments of future earnings losses. The amount of the reduction made would no doubt reflect the amount of the total award attributable to future earnings loss. In the case of a young person that might be a substantial part of the total award with a consequentially large reduction in the interest rate; in an older one it may be but a small part which a consequentially small reduction on the interest rate.

The Appellant has not satisfied us that the High Court was wrong in fixing 6% as the appropriate rate of interest in this case, and although the learned Judge could have given only 3% on the special damages as indicated in Jefferd v Gee, he benefitted the appellant by allowing an interest-free year in awarding it from the date of the writ. The overall award is reasonable bearing in mind the delay for which the Respondent does not appear to be responsible and we are not disposed to interfere with it.

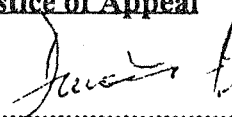
The appeal is dismissed with costs to the Respondent of \$500 together with disbursements.



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Sir Maurice Casey
Presiding Judge



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Justice R. Savage
Justice of Appeal



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Justice J.D. Dillon
Justice of Appeal

Solicitors:

Office of the Attorney-General of Fiji, Suva for the Appellant
Messrs. Q.B. Bale & Associates, Suva for the Respondent