

CIVIL APPEAL NO. ABU0005 OF 2001  
(High Court Civil Action No. HBC0330 of 1997)

BETWEEN: NIRANJANS AUTOPORT  
LIMITED *First Appellant*  
(Original First Defendant)

AND: SATEN PRASAD *Second Appellant*  
(Original Second Defendant)

AND: RAM KARAN *Respondent*  
(Original Plaintiff)

Coram: The Rt. Hon. Sir Thomas Eichelbaum, Presiding Judge  
The Rt Hon. Justice John Steele Henry, Justice of Appeal  
The Hon. Sir Rodney Gerald Gallen, Justice of Appeal

Hearing: 12 October 2001

Counsel: Mr Paul McDonnell for the Appellants  
Mr H.K. Nagin for the Respondent

Date of Judgment: 18 October 2001

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#### JUDGMENT OF THE COURT

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This is an appeal against part of the assessment of damages in a personal injury case. In the accident of 6 February 1996 the respondent, a taxi driver, suffered closed head injuries, a fractured nose and a fracture of the left ankle. He was in hospital for two days and off work for three months. At the time of the trial in 1999, his symptoms included headaches, a stuffy nose, chest pain, at times a painful swollen left ankle, and reduced sexual function. His long term disabilities fell under three headings. The nasal injury continued to cause various symptoms, but there was a reasonable prospect that this could be alleviated by surgery, and the damages awarded included the estimated expense of having that surgery carried out in Australia. Secondly, there was evidence that the head injury had affected the respondent's memory. Thirdly, the respondent's left leg was curved and he had a permanent shortening of that leg.

It was mainly the third disability that affected his earning capacity. The respondent found it was more difficult to carry out the work of repairing air conditioners and motor vehicles, which apparently he sometimes carried out. More importantly he could not drive a taxi for long periods because changing the clutch put pressure on his injured left leg. The respondent's evidence was that he found it necessary to take breaks from driving during the day, and to reduce the number of days on which he drove. He also said that apart from the disability of his leg, sometimes he could not drive for two or three days because of headaches.

As we understand the evidence the respondent's problems in driving would be reduced if he acquired a taxi with automatic transmission, but they would not disappear altogether since his work necessarily involves getting in and out of vehicles, and being on his feet for some of the time.


In assessing damages the Judge allowed \$20,000.00 for the estimated cost of the proposed rhinoplasty surgery, and \$50,000.00 for pain and suffering and loss of enjoyment of life. There were special damages relating to loss of earnings and medical and travelling expenses totalling \$5,700.00. In respect of loss of prospective earnings the Judge allowed a multiplier of 14 on a rate of \$150.00 per week, amounting to \$109,200.00. With the addition of interest under various headings, the total award came to \$195,807.00. The appeal however relates only to the prospective loss of earnings.


The respondent produced a certificate from his former employer stating that his earnings had been \$350.00 per week. Appellant's counsel challenged the adequacy of the evidence, but there was some evidence to support the claimed level of pre-accident earnings, and its sufficiency was eminently a matter for the trial Judge. As to post-accident earnings, the respondent said they were \$150.00 per week, but gave contradictory reasons for the reduction. Counsel argued the Judge ought not to have accepted that the reduction in earnings was attributable to the injuries. Clearly however there was material from which it could be inferred that the respondent's disabilities were such as to lead to a significant decrease in his earning capacity. Given the Judge's advantage in seeing the respondent and assessing his credibility we are not in a position to disagree with his finding that the substantial reduction in earnings was due to the residual disabilities stemming from the accident.


In submissions appellant's counsel did not challenge the multiplier of 14. Indeed counsel for the respondent, in support of a cross appeal, maintained that the figure should be increased. However, we are not at all persuaded that the figure taken by the Judge ought to be disturbed.

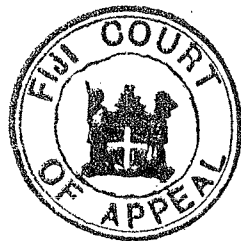
Appellant's counsel frankly accepted his main complaint was that overall, the total amount awarded seemed disproportionate to the injury suffered and the degree of residual disability. Perhaps this impression was influenced by the assessment of 5% placed on the leg injury by one of the medical witnesses, a figure which with respect struck us as conservative. Be this as it may, the award for prospective economic loss must necessarily depend on the relevant evidence. A leading concert pianist could recover large damages for a career crippling injury to one finger, in a case where the element of pain and suffering might be relatively small.

For the reasons given the appeal and cross appeal are dismissed. We award the respondent \$750.00 for costs.

  
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Sir Thomas Eichelbaum  
Presiding Judge

  
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Rt Hon John S. Henry  
Justice of Appeal

  
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Sir Rodney Callen  
Justice of Appeal



Solicitors:

Messrs Cromptons, Suva for the Appellants  
Messrs Sherani & Co., Suva for the Respondent