

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court]

CIVIL APPEAL NO.ABU 0069 of 2020
[High Court Civil Case No. 153 of 2016]

BETWEEN : **SHAKUNTALA RAJU**

Appellant

AND : 1. **SITAR INDIAN & THAI RESTAURANTS (FIJI) LTD**
2. **DULCINEA LIMITED**
3. **NADI TOWN COUNCIL**

Respondents

Coram : Almeida Guneratne P
Jitoko, VP
Dayaratne, JA

Counsel : Mr. R. Vananalagi for the Appellant
Ms. R. Lal for the 2nd Respondent
Mr. S. Nair with Ms. S. Khan the 3rd Respondent

Date of Hearing : 11 July, 2023

Date of Judgment : 28 July, 2023

JUDGMENT

Almeida Guneratne, P

[1] I agree with the judgment of Justice Dayaratne including the reasons and the orders proposed by His Lordship.

Jitoko, VP

[2] I concur with the judgment of Dayaratne JA that this appeal ought to be dismissed.

Dayaratne, JA

[3] By this appeal, the Appellant seeks to have the quantum of damages awarded by judgment dated 17 July 2020 enhanced.

The case in the High Court

[4] The Appellant instituted action in the High Court against the Respondents claiming damages for injuries suffered by her consequent to an accident that occurred inside a restaurant operated by the 1st Respondent. The accident occurred on the 8 November 2013 and the action was instituted on 25 July 2016. She was 55 years old at the time of the accident.

[5] As morefully enumerated in the Statement of Claim, negligence was imputed on the 1st Respondent as the operator of the restaurant, 2nd Respondent as the owner of the premises in question and the 3rd Respondent as the local authority where the premises was situated. The Appellant claimed general damages, special damages, interest and costs. All Respondents in their Statements of Defence denied liability.

[6] At the end of the trial, the learned High Court Judge found the Respondents liable for the injuries sustained by the Appellant in the manner explained in the judgment and awarded a sum of \$ 10,000 as general damages for pain and suffering and a sum of \$270 for medical expenses as special damages. The Respondents have not filed any appeals against the finding of liability.

The Grounds of Appeal urged by the Appellant

[7] Although four Grounds of Appeal had been urged in the Notice of Appeal, learned Counsel for the Appellant informed this court that he was pursuing only the first two Grounds of Appeal. They are;

Ground 1

The Learned Trial Judge erred in law and in fact in:

- i. *Concluding the Appellant sustained only superficial injuries;*
- ii. *In holding the Appellant was entitled to nominal damages only;*
- iii. *Holding that the appellant did not suffer any permanent impairment when she was violently thrown on the ground as a result of the collapse of the wooden decking;*

without correctly assessing and/or analyzing and/or comprehending the medical and/or other evidence before the court as to the nature and extent of injuries suffered by the Appellant.

Ground 2

The Learned Trial Judge erred in law and in fact by awarding extremely conservative damages under the various heads and/or which were not in parity with awards for similar injuries given by the Courts in Fiji.

- [8] At the hearing before us, learned counsel for the Appellant did not refer at all to the evidence led at the trial. He made submissions generally with regard to damages that courts can grant in personal injury cases and the interest that can be awarded on such damages. A series of authorities were cited which dealt with the computation of damages and the award of interest on damages so granted.
- [9] He referred to inflation over the years in this country and highlighted that in the grant of damages, courts have to be mindful of inflation and that damages should be adequate for the affected party.
- [10] Having heard such submissions of learned counsel for the Appellant, this court was compelled to request him to point out the nature of the injuries or any impairment suffered by the Appellant and to address court as to why he was taking up the position that damages awarded by the High Court was inadequate.
- [11] In response learned counsel for the Appellant simply stated that the injuries suffered by the Appellant were not serious and that they were superficial in nature. He did not refer to the

evidence led at the trial or any findings of the High Court pertaining to the injuries. The admission by him that the injuries were superficial in nature clearly cuts across the premise on which (i) of Ground 1 has been framed.

Are the damages awarded inadequate?

- [12] The trial judge has taken great pains in analyzing the evidence of the Appellant and the doctors who testified at the trial regarding the injuries suffered by the Appellant. He has also duly considered the medical reports that have been marked at the trial. All authorities cited by the parties have been referred to (paragraphs 88- 108 of his judgment). He concludes by saying; *'I have reviewed cases cited in the Plaintiff's submissions. In those cases, the plaintiffs have suffered grievous injuries such as fractures and lacerations and some permanent incapacity. Nothing of that sort is suffered by the Plaintiff in this case. I am of the view that if anything, all that the plaintiff will be entitled to is rather nominal damages to compensate her for the pain and suffering she obviously suffered from the superficial injuries sustained'* (paragraphs 88- 108 of his judgment).
- [13] As stated earlier, learned counsel for the Appellant did not dispute this finding of the trial judge other than to merely say that the damages were inadequate.
- [14] On the contrary, learned counsel for the Respondents submitted that the damages awarded were more than adequate considering the non-serious nature of the injuries suffered by the Appellant.
- [15] Time and again appellate courts have dealt with the issue of computation of damages pertaining to personal injury cases and I do not think it is necessary for me to refer to them in detail particularly in view of what I have observed herein before.
- [16] I will nevertheless refer to the case of **Attorney General of Fiji v Kotoiwasawasa [2003] FJCA 56; ABU0004.20003 (14 November 2003)**. The Court of Appeal noted here as

follows; *'In considering this matter we record that we have been assisted by the helpful joint judgment of Barwick CJ, Kitto J and Menzies J in Planet Fisheries Pty v La Rosa [1968] HCA 62; [1968-69] 119 CLR 118. At page 124 their Honours said: 'It is the relationship of the award to the injury and its consequences as established in the evidence in the case in question which is to be proportionate. It is only if, there being no other error, the award is grossly disproportionate to those injuries and consequences that it can be set aside. Whether it is so or not is a matter of judgment in the sound exercise of a sense of proportion. It is not a matter to be resolved by reference to some norm or standard supposedly to be derived from a consideration of amounts awarded in a number of other specific cases. The principle to be followed in assessing damages is, in our opinion, not in doubt. It is that the amount of damages must be fair and reasonable compensation for the injuries received and the disabilities caused. It is to be proportionate to the situation of the claimant party and not to the situation of other actions, even if some similarity between their situations may be supposed to be seen'.*

[17] I am mindful that in the computation of damages courts cannot go by archaic standards and calculations and that they must change with the times. Inflation no doubt is a matter that courts ought to take into consideration and so is the necessity to award interest in suitable instances.

[18] I am in full agreement with the sentiments expressed in the case of Nasese Bus Company Ltd v Chand [2013] FJCA 9; ABU 40. 2011 (8 February 2013) where court observed that *'In the absence of any legislation in Fiji in providing guidance for assessing damages in personal injury actions, the observations of the Court of Appeal, in my judgment, can be regarded as an endorsement of the statement made by Lawton LJ in Cunningham v Harrison [1973] QB 942 at page 956:*

'..... If judges do not adjust their awards to changing and rising standards of living, their assessments of damages will have less contact with reality than they have had in the recent past or at the present time'.

[19] I equally endorse the following citation by the Court of Appeal in **McCaig v Manu [2012] FJCA 20; ABU0010.2011 (21 March 2012)**; *'I would have had no hesitation in following what Mr. Justice Byrn, as he then was said in Iowane Salaitoga v Kylie Jane Anderson (CA 26/94; 17.10.1995) that it is high time the awards of damages in Fiji for personal injuries threw off its swaddling clothes and faced the reality of the real world'*.

Conclusion

[20] The trial judge was in the best position to arrive at the quantum of damages which had to be commensurate with the injuries suffered by the Appellant and I am convinced that the figure arrived at by him is not inadequate considering all circumstances. Therefore, I do not think this court should interfere with that determination and vary the quantum of damages awarded by him.

[21] Accordingly, I dismiss the Appeal.

[22] In all the circumstances of this case, I do not award costs.

Orders of Court

(1) Appeal dismissed.

(2) No costs.



Hon. Justice Almeida Guneratne
PRESIDENT, COURT OF APPEAL

Hon. Justice Filimone Jitoko
VICE PRESIDENT, COURT OF APPEAL

Hon. Justice Viraj Dayaratne
JUSTICE OF APPEAL