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

CIVIL APPEAL NO. ABU 101 of 2018
[In the High Court at Suva Case No. HBU 112 of 2017]

BETWEEN : **PRITISHNA LATA BHAN**

Appellant

AND : **1. GABRIEL SINGH**
2. NITIN MISHRA

Respondents

Coram : **Mataitoga, RJA**
Andrews, JA
Winter, JA

Counsel : **Mr. V. Kumar for the Appellant**
Mr. R. Prakash and Mr. S. Nandan for the 1st Respondent
2nd Respondent in person

Date of Hearing : **15 February 2024**

Date of Judgment : **29 February 2024**

JUDGMENT

Mataitoga, RJA

1. I concur with reasons and conclusion of this judgment.

Andrews, JA

2. I concur with the judgment of Winter, JA.

Winter, JA

Introduction

3. Gabriel Singh was a back seat passenger in Pritishna Bhan's car on the 7th of September 2008 at Navua when the driver Nitin Mishra lost control during an overtaking manoeuvre causing the vehicle to crash off the road and into a drain.

4. While the driver (the 2nd respondent in this appeal) was unhurt and ran away from the accident scene others were not so fortunate. Mr. Singh, the 1st respondent in this appeal, suffered horrific injuries. The appellant has appealed against the judgment of the Honourable Kamal Kumar, in which she was found vicariously liable for the 2nd respondent's negligence.

5. The cause and negligence in the accident were well secured by the plaintiff's case using: the statement of agreed facts, the driver's conviction for dangerous driving, his caution interview, Ms Bhan's police statement and the account of an eyewitness. The trial Judge had little difficulty in making his primary findings against Mr Mishra that he drove the car, with Mr Singh as a passenger, caused the accident and was negligent when doing so. His negligence and liability to compensate Mr Singh was beyond doubt. His Honour then found that as no evidence was led to establish that the 1st respondent was not wearing a seatbelt, and that no reliable evidence was led that he was drunk, then Mr Singh in no way contributed to his injury from the accident[1].Mr Mishra is the 2nd respondent. He has not appealed that decision and neither filed nor made submissions at this appeal hearing.

6. His Honour then considered Ms Bhan's vicarious liability as owner of the vehicle for the negligence of Mr Mishra.

7. In aid of his findings His Honour in a logical and reasonable way concluded that Ms Bhan and her boyfriend Mr Mishra when separately talking to the police investigating the

[1] Singh v Mishra & Bhan [2018] FJHC 839; HBC266.2011 (31 August 2018).

incident shortly after the event were truthful. However, at trial represented by the same counsel they claimed what each had earlier said was unreliable. Their inconsistent evidence and attempt to avoid compensating the 1st respondent was laid bare in cross examination. His Honour having heard and seen the evidence did not believe them.

8. His Honour having stated the correct law and considered the credible evidence found the appellant owner of the car had given the 2nd respondent the car keys, asked him to drive as he knew the local Navua area best, then, sat next to him in the front passenger seat. His conclusion was to find the appellant vicariously liable for the 2nd respondent's negligence and so award damages to compensate the 1st defendant. The 2nd respondent has not appealed that decision. He did not file nor make submissions upon it.

9. The Trial Court awarded:

   a. *$100000.00 for pain and suffering*
   b. *$15000.00 for loss of amenities*
   c. *$234,000.00 for loss of future earnings*
   d. *$48,375.00 for interest at 6%*

10. Ms Bhan, dissatisfied with the entire judgment, appealed filing eighteen grounds of appeal. They overlapped. Counsel at the appeal hearing categorised them into six subheadings. Many of these simply dissolved at the appeal hearing as they lacked substance, did not accurately reflect the trial record, were not correctly supported by relevant law or were not addressed by submission. This then left the genuine issues as succinctly put by Mataitoga RJA during the appeal of:

    1. Vicarious liability
    2. Quantum of damages

    For completeness I first refer to the dissolved grounds before considering these two key issues.

Dissolved grounds

11. As professionals and advocates, counsel assist the Court in the administration of justice at the appellate level. Through their grounds and oral submissions, counsel must provide a fair and accurate understanding of the facts and law applicable to their case. Counsel, as officers of the court, also serve the Court by respecting and maintaining the dignity and integrity of the system of justice and the appellate process.

12. The Court of Appeal Act and Rules, the practice and procedure in England, the common law and common sense provide for good and necessary appellate best advocacy skills which might include the following:

    1. An appellate remedy should not be pursued unless counsel believes in good faith that error has been committed, that there is a reasonable basis for the extension, modification, or reversal of existing law, or that an appeal is otherwise warranted.

    2. Counsel should not misrepresent, mischaracterise, misquote, or miscite the factual record or legal authorities.

    3. Counsel must present the Court with a thoughtful, organized, and clearly written submission.

    4. Counsel must advise the Court of binding legal authorities, including those adverse to their position, and should not cite authority that has been reversed, overruled, or restricted without informing the court of those limitations.

    5. Counsel will be prepared for all Court appearances, and will assist the Court in understanding the record, binding authority, and the effect of the court's decision.

13. We are restating these principles for two reasons. First, the record was duplicated and confusing and it was only at the appeal hearing counsel were able to navigate the court to a point of agreement about such a basic requirement. This preliminary issue took far too long to resolve. That was especially so as the substantive appeal was adjourned to this session date following a pre appeal decision several months ago.

14. In the circumstances we remind appellant's counsel of an overriding obligation to ensure accuracy and clarity in the record. That is the appellant's responsibility.[2] Should this 'difficulty' arise in the future we expect counsel to at least file an explanatory memorandum.

Grounds 1, 2, 3, 4, 5, 8b, 12, 13, 14, 16 and 17

The Submission

15. We accept the general submission of counsel for the 1st respondent that the appellant's grounds of appeal and submissions were poorly drafted. They were not organised or thoughtful even when distilled into a subheading in counsel's appeal submission entitled: "*Apparent Bias and/or Prejudice to the Appellant*." They reach their lowest ebb at Ground 17:

> *"That the learned trial judge has erred in law and in fact in not upholding the oath of his office by failing to act impartially and delivering unfair and unreasonable decision which no reasonable decision maker and or tribunal would have done in all the circumstances of this case has seriously prejudiced the appellant and the appellant seeks and prays for retrial."*

16. Judicial oaths matter. They lie at the heart of justice. Impeaching judicial integrity, while at times necessary, is always a profoundly serious submission to make. Counsel was reminded of this at the appeal hearing. He was asked, repeatedly to link the record he relied on, to the accepted law on judicial bias and so make his case that the learned trial Judge

[2] Court of Appeal Act and Rules s18(1)

had so grossly erred. He could not do so eventually conceding there was no written submission on these serious matters.

17. Counsel failed to improve his argument before us on how the intervention(s) complained of displayed the bias alleged and satisfied any basis for unreasonableness let alone breach of the judicial oath. He was invited to abandon the ground. He would not do so as if this plank fell then so did many of the other trial Judge criticisms around which he had built the appeal by claiming excessive judicial intervention to such an extent that trial Judge 'descended into the arena.'

18. Counsel in oral submission on the reliability of the appellant's and 2nd respondent's interviews submitted that what these two witnesses separately told the police should have been found unreliable as each was in shock and medicated.

19. While post-accident shock is sufficiently common to be accepted on judicial notice its application to reliability is best secured by more than counsel's submission based on his client's post interview regret at what they unwittingly told a police investigator. No independent or expert evidence was led about shock generally or its particular impact on the reliability of either the appellant or 2nd respondent. That was a significant omission for the 2nd respondent as his interview was under caution some time after the accident when his 'shock' after running away from the accident scene required some detailed explanation and linkages to the unreliability claimed.

20. Counsel also submitted that both were medicated, and that the medication must have affected their memory of events. When asked to point to evidence of: what medication, what dosage, when it was administered and what effect the dosage and administration of that medicine had on witness memory to make what each told the police unreliable, counsel eventually conceded there was none.

Judicial Bias

21. A reading of the authorities tends to the conclusion that an active involvement in the course of trial by a Judge is unacceptable only if it evidences actual or apprehended bias or prevents counsel from adequately putting their case. In *Galea v Galea*[3] the guidelines relevant to determining whether there has been an excessive intervention by a trial Judge such as to deprive a party to a trial according to law was stated by Kirby A-CJ in a series of propositions which we summarise as far as relevant to the present case as follows:

1. The test to be applied is whether the excessive judicial questioning has created a real danger that the trial was unfair if so, the judgment must be set aside.
2. A distinction is drawn between the limits of questioning by a Judge when sitting with a jury and when sitting alone at a civil trial. Greater latitude and questioning would be accepted in the latter case.

3. Where a complaint is made of excessive questioning the appellate court must consider whether such interventions indicate that a fair trial has been denied to a litigant because the Judge has closed his or her mind to further persuasion or moved into counsel's shoes and entered the arena.

4. The decision on whether the point of unfairness has been reached must be made in the context of the whole trial and in the light of the number, length terms and circumstances of the intervention. It is important to draw a distinction between intervention which suggests that an opinion has been finally reached which could not be altered by further evidence or argument and one which is provisionally put forward to evaluate the evidence and invite further persuasion.

[3] *Galea v Galea* (1990) 19 NSWLR 263 at 281. See also *Jones v The National Coal Board* [1975] 2QB 55 per Lord Denning and in New Zealand Court of Appeal *The Queen v Colin Bouwer* [2002] NZCA 146 (24 June 2002).

5. It is relevant to consider the point at which the judicial interventions complained of occur. A vigorous interruption early in the trial or in the examination of a witness may be less readily excused than one at a later stage where it is designed for the legitimate object of permitting the Judge to better comprehend the issues and to weigh the evidence of the witness concerned.

22. Counsel for the appellant was of no assistance to us on any of these principles. We have nonetheless reviewed the entire transcript and judgment and specific references. Rather than demonstrating a closed mind and callous disregard for the judicial oath, the record displays necessary interventions that fall well below the threshold for bias or indicate the Judge had taken sides and 'descended into the arena.' We are not persuaded that the Judge failed to carefully consider the available evidence and make his findings accordingly.

Credibility findings on appeal

23. The appellant may be aggrieved at these adverse findings. However, these were open to the court as both herself and her boyfriend the 2nd respondent were successfully impeached in cross examination upon the inconsistencies between what they told the court and what they had much earlier told the police nearer to the time of the accident. His Honour's acceptance of the police statements as true and rejection their trial testimony was a decision fairly made on the available evidence.

24. The circumstances in which this court will interfere with such credibility findings are well known. This is not an occasion to do so as once again the advantage that the trial Judge had in seeing and hearing these witnesses must be emphasized. In short, I find it was open to the trial Judge to make the credibility finding against the appellant and the 2nd respondent he did. It was then open to His Honour to make such factual findings as the car key being given to the 2nd respondent by the appellant, his return to the driver's seat after the visit with the 1st respondent's parents and the appellant's request of him to drive as he knew the

area well. Telling matters, it seems, adding to the main issue of the appellant's vicarious liability as owner of the car.

25. The judgment and court record speak for themselves. The adverse findings were fairly made. I find it an almost irresistible inference that, after talking to the police, when represented by the same counsel, appellant and the 2nd respondent, once sued, later reconstructed convenient stories together for the court case in an effort to avoid responsibility to compensate Mr. Singh for the profoundly serious injuries he suffered. These grounds of appeal must fail.

<u>Vicarious liability</u>

26. The law for fixing vicarious liability for a driver's negligence on the owner of a motor vehicle has been frequently considered by Courts in Fiji and overseas.

27. The Australian High Court in *Soblusky v. Egan*[4] considered a case where Mr. Lewis was driving a 1938 Ford of which Mr Soblusky was bailee to a meeting of the Royal Antediluvian Order of Buffaloes. Mr. Soblusky who was sitting next to Lewis asked him if he minded if he went to sleep. Mr. Lewis ran into a guidepost while Mr. Soblusky was having his nap. It was found that the crash was due to some negligence by Mr Lewis. Mr Egan was severely injured.

28. The High Court of Australia, finding Mr Soblusky liable, held that:

> *"It means that the owner or bailee being in possession of the vehicle and with full legal authority to direct what is done with it appoints another to do the manual work of managing it and to do this on his behalf in circumstances where he can always assert his power of control. Thus, it means in point of law that he is driving by his agent.*
>
> *It appears quite immaterial that Soblusky went to sleep. That meant no more than a complete delegation to his agent during his unconsciousness. The*

[4] *<u>Soblusky v. Egan (1960) 103 CLR 215</u>*, at 231.

principle of the cases cited is simply that management of the vehicle is done by the hands of another and is in fact and in law subject to direction and control."

29. The decision of the New Zealand Court of Appeal in *Manawatu County, v. Rowe*[5] approved by the Privy Council *Rambarran v. Gurrucharran*,[6] along with the aged but definitive case of this court of appeal from *Shiu Prasad v Bhagwandei &Ors*.[7] establishes the following propositions:

    1. The onus of proving agency rests on the party alleging it.
    2. The fact of ownership of a vehicle gives rise to an inference that the driver was the agent of the owner; in other words, that fact alone in the absence of anything else, provides some evidence to go to a jury.
    3. This inference can be drawn in the absence of other evidence bearing on the issue or where such other evidence as there is, fails to counter- balance it.
    4. For the plaintiff to make the owner liable, the plaintiff must establish that the driver was driving the car as a servant or agent of the owner and not for the driver's own benefit and for his own concerns.

30. Appellant counsel's reliance on the newer authority of this court in *New World Limited v Vusonitokalau & Ors*[8] dismissing a claim of vicarious liability misunderstood this authority. First, *New World,* was primarily decided in the limited context of an employment relationship. Second, the case pivoted around the indisputable fact that mere registration of a motor vehicle is not evidence of ownership. Third, in *New World* the defendant who was the owner of the car had sold it to a third party who had possession at the time of the incident so whilst still being the registered person he no longer had control, procession, or beneficial interests in the car to sheet home vicarious liability.

31. In the case under appeal the appellant's ownership of the car was never seriously disputed. The ownership of the car creates a presumption that the driver was acting as agent of the

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[5] *Manawatu County, v. Rowe*, [1956] NZLR 78,
[6] *Rambarran v. Gurrucharran*, [1970] 1 WLR 556, 560
[7] *Shiu Prasad v Bhagwandei &*Ors [1978] FJCA11; Civil Appeal 45 of 1997(22 March 1978)
[8] *New World Limited v Vusonitokalau & Ors* [2018] FJCA 20; ABU 0073.2012 (8 March 2018)

owner. That presumption was supported by her relationship with the driver, her handing him the keys, her sitting in the front passenger seat alongside him during the journey and finally the finding that the appellant wanted him to drive as he knew the local area well.

32. The cluttering of the appeal case with irrelevant references to the previous journey from Suva to the 1st respondent's parents' home in Navua, or the 1st respondent's state of sobriety when he joined that car ride, or her discomfort at his presence in her car was unhelpful. The focus for vicarious liability was on what happened between the appellant and the 2nd respondent as they left that home.

33. The evidence and counsel's concessions established that Ms Bhan and Mr Mishra were in a boyfriend/girlfriend relationship. They along with Mr Singh and another travelled in her car from Suva with her driving and first visited Mr Singh's parents' home. The Judge accepted that as they left the car to go inside Ms Bhan gave the car keys to Mr Mishra. The couple said as much in their police statements. Further Mr Mishra in his caution interview said Ms Bhan authorised him to drive the car. That was corroborated by Ms Bhan's police statement. Mr Mishra on coming out of the home got into the driver's seat, Ms Bhan sat next to her boyfriend. He drove for her purposes as she wanted him to drive because "he knew Navua well."

34. Mr Mishra ran from the accident scene; he was not breathalysed. There was no evidence of the probable level of alcohol in his system when he drove. His intoxication when driving was not put to Mr. Mishra during appellant counsel's cross-examination. There being no such evidence ground 8, is redundant and fails. For similar reasons ground 9 (contributory negligence on the part of the 1st respondent as he failed to wear a seatbelt or was drunk) did not find support in relevant and reliable evidence. Not only was there no evidence before the court that the 1st respondent was not wearing a seatbelt and drunk, but also the issue was not squarely put to him in cross examination.

35. For reasons I have earlier discussed, having fairly rejected Ms Bhan's and Mr Mishra's trial evidence and preferring what they originally told the police as true, such a finding was

open to and a reasonable decision to be made by His Honour. This court finds no reason to overturn it. Grounds 7 and 8 (a) fail.

36. We are not persuaded that the trial Judge erred in finding the appellant is vicariously liable for the negligence of the 2nd respondent.

Excessive damages

Applicable legal Principles

37. How can money put a victim back in the same position as s/he would have been in had the injury not been suffered? Obviously, it cannot. Given that the courts do not have the power to turn back time to before the accident in question, they must do the best they can to place a value on injuries in monetary terms. In making awards, fairness to an individual plaintiff and fairness in the eyes of the community has to be balanced with the need to be fair to plaintiffs generally. An important part of achieving this end is the need to make similar awards for comparable injuries.[9] All personal injury damages will depend on some of the following factors:

- The severity of the injury
- The presence and degree of any pain
- How it has affected day-to-day living
- Degree of dependence on others
- How long the symptoms will last
- Any other side effects being experienced, such as depression
- Ability to continue working
- Age and life expectancy

[9] *Longa v Solomon Taiyo* [1980/81] SILR 239, *Wright v British Rail Board* [1983] 2 All ER 698. *Sun Insurance Company Limited v Three Others* [ABU 0035 of 2013] (30 September, 2016) *Vimla Wati v Two Others* [ABU 0002 of 2014] (27 May, 2016); *Daunivalu v Dalip Chand & Others Ltd.* [2017] FJCA 147 (30 November, 2017)

38. Evidence on these matters was led at trial by the 1st respondent including medical records. At that time Dr. Su Hong was in charge of the ENT Unit of CWM Hospital in Suva and so prepared the medical notes after the 1st respondent's admission and then relevant reports on treatment progress in Fiji. Two of those medical reports dated 5 November 2008 and 24 February 2009 were produced.

39. The First Report records the 1st respondent was admitted over the period 7/9/06 to 13/10/08 at ICU and Acute Surgical Ward and lists the injuries sustained by which were:-

> *"1. Severe Head Injury (Basal Skull Fracture – anterior and posterior wall of maxillary sinus) secondary to motor vehicle accident (MVA)*
> *2. Multiple Rib Fractures (Right side - #'s 4 and 5; Left Side - #'s 2, 4 through to 9) with bilateral lunch contusions and hemothorax secondary to MVA.*
> *3. Fracture right clavicle secondary to MVA.*
> *4. Compression fracture to Thoracic spine # 9 – stable.*
> *5. Spinous process fracture to Cervical Spine #6 – stable."*

40. The Second Report recorded that the 1st respondent:

> *a) Was admitted at Tamavua Rehabilitation Centre from 13/10/08 to 17/12/08.*
> *b) The patient was readmitted over the periods 28/12/08 – 1/1/09 and 21/1/09 – 26/1/09 with the ENT Unit at the Plastic ward. The principal complaint for admission being stridor of which upon investigation revealed left vocal cord paralysis probable to be secondary from prolonged tracheal intubation. Accorded was repeat tracheostomy on 23/1/09 under general anesthesia.*

41. Mr Singh suffered greatly, he was unconscious or semi-conscious for more than a month, intubated, had to receive intimate cares and tube feeding for a prolonged period, underwent extensive surgery and had his ability to communicate forever challenged.

42. There was no evidence that the 1st respondent returned to his normal life following this accident. Far from it. As a result of the severe injuries including his vocal chord and brain damage his relationship with his family, former friends and social circle from his active sporting life playing soccer was severely compromised. He really could not do much at all during his 3 years of treatment.

43. The Trial Court made these awards:

"For loss of future earning capacity	*$234,000.00*
For pain and suffering	*$100,000.00*
For loss of amenities	*$15,000.00*
plus interest of 6% per annum	*$48,375.00"*

44. The appellant contends that His Honour the trial Judge made 'unreasonable awards' and later by reference to comparator cases criticised the awards as inconsistent. In his Appeal submissions counsel addressed only the following grounds and in a scatter gun approach raised other points. Those grounds were:

> a) *The 1st Respondent was never physically disabled from the accident nor did he lose any limb nor suffer brain damage that would render him incapable of earning future income;*
> b) *The 1st Respondent was already working as an I.T officer for the Elections Office of Fiji and was also doing private part time work;*
> c) *The 1st Respondent is earning more than what he used to before therefore the Appellant is confused as to why the 1st Respondent is given such damages for loss of future earning capacity;*
> d) *The award for loss of future earning capacity is usually awarded to those that have become permanently disabled from generating a source of income for instance, those who suffer brain damage or several amputations as a result of an accident.*

I consider both the grounds and submissions each in turn:

> *"Never physically disabled, brain damaged or lost a limb as to render him incapable of earning in the future."*

45. Referring to the 1st respondent father's evidence about his son going to the gym and by reference to old precedent and some newer authorities, the thrust of this submission was that the overall award was excessive.

46. It is beyond doubt that because of the accident the 1st respondent will have lifelong struggles with physical and psychological harm. I repeat there was no evidence that the 1st respondent returned to his normal life following this accident. As a result of the severe

injuries including his vocal chord and brain damage his relationship with his family, former friends and social circle from his active sporting life playing soccer were severely compromised.

Already working and earning more

47. At trial the only evidence about the 1st respondent's work was that he received some income from casual jobs. The award was made on the evidence adduced during the trial. I am not persuaded that the award was wrong.

48. It was with respect disingenuous for the appellant to now chisel away at the award made because in an effort to rehabilitate Mr Singh may have been to the gym, or taken part time work, or might be able to drive. There was no evidence before the court that he was after the accident in full time employment earning more than before the accident.

CWM Hospital were negligent in their treatment of Mr Singh and so aggravated his injury

49. This submission was latterly raised outside the pleadings, and in any event without evidence. It should never have been advanced in this appeal. This ground fails.

Mr Singh's election for treatment in India rather than New Zealand with extra costs involved should not be compensated

50. This ground was interlinked with the previous ground alleging, without the benefit of any real proof, it was the negligence of CWM that required the trip to India for treatment. For the same reason this ground cannot succeed. It was the appellant's negligent driver who caused Mr. Singh's horrific injuries. We agree with the 1st respondent's counsel that Mr. Singh's choice about where to receive necessary medical treatment was entirely a matter for him. This ground fails.

Loss of future earning capacity

Applicable law

51. In personal injury cases involving loss of future earnings a plaintiff is required to adduce evidence to assist calculation of the accepted multiplier method for amounts claimed. That evidence may always be challenged. The object of the court's calculation is to arrive at an amount which a plaintiff has been prevented by the injury from earning in the future described in this way[10]:

> *"The amount is calculated by taking the figure of the claimant's present annual earnings less the amount, if any, which he can now earn annually, and multiplying this by a figure which, while based upon the number of years during which the loss of earning power will last, is discounted to allow for the fact that a lump sum is being given now instead of periodical payments over the years…Further adjustments, however, may or may not have to be made to multiplicand or multiplier on account of a variety of factors, namely, the probability of future increases or decreases in the annual earnings, the so-called contingencies of life, and the incidence of inflation and taxation."*

52. The calculation of future loss of earnings was discussed at length by the Supreme Court in *Attorney-General of Fiji v Broadbridge*[11]. At paragraph 61 the Supreme Court in delivering a judgment on a difficult damages claim that would not neatly fit within the constraints of the multiplier methodology observed:

> *"There is no challenge to the Court's ability to approach loss of earning capacity in a manner that dispenses with the conventional multiplicand / multiplier approach."*

Then the utility of the multiplicand / multiplier as a method by which to assess future economic loss in personal injury cases in this country was reemphasised as:

> *"When properly applied it operates as a perfectly satisfactory method of carrying out what is always a most difficult task."*

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[10] McCregor on Damages (17th Edition 2003) at paragraphs 35-051

[11] *Attorney-General of Fiji v Broadbridge* [2005] FJSC4; CBV005.2003 (8 April 2005). [61] then [91].

The Trial Judge's Calculation

53. The learned Judge took the loss of earnings at a lower figure than he may have. Rather than use the $50,000.00 Mr Singh was earning when employed by Digicel Samoa Ltd before he retired to spend more time with his family back home in Fiji, the learned Judge used the immediate pre-accident figure of $18,000.00 he earned from Pacific Agencies. It might have been open for His Honour to have compromised between those two amounts to obtain a more realistic earnings potential sum; he did not. The 1st respondent was then 37 years old. It is unobjectionable that His Honour used a multiplier of 13 years to fix upon an award that bears fair comparison with the cases cited. It cannot be said that the trial Judge arrived at an erroneous or unreasonable conclusion in the award he made.

54. Further, that this is so gains some support from the fact despite the detailed and analytical approach taken by the 1st respondent's counsel they were unable to persuade the trial Judge to grant the full amounts claimed. This, and the record where His Honour meticulously and carefully considered the evidence and even chided both counsel for using outdated comparator cases, must mean His Honour made a considered and reasonable assessment of the available evidence and reached his conclusion by comparison of the cases supplied. We are not persuaded that with his assessment was unreasonable. These grounds on the award of damages fail.

Result

55. The appeal is dismissed.

<u>Orders of the Court:</u>

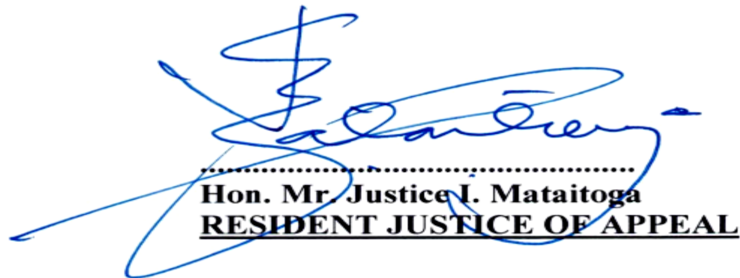
1. *The Appeal is dismissed.*

2. *The judgment of the High Court ordering the appellant and 2nd respondent to jointly and severally pay the 1st respondent the aggregate sum of $472,415.00 is affirmed.*

3. *In addition to the aggregate sum the appellant and 2nd respondent will also pay the 1st respondent jointly and severally the interest at 6% per annum as awarded in the High Court on $472,415.00 from the date of the High Court Judgment until payment to the 1st respondent is made in full.*

4. *The appellant and 2nd respondent shall jointly and severally pay the 1st respondent the sum of costs of $5,000.00 as ordered by the High Court.*

5. *The appellant must pay the 1st respondent costs on an indemnity basis of and incidental to this appeal. The amount of those costs to be in the discretion of the taxing officer.*



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Hon. Mr. Justice I. Mataitoga
<u>RESIDENT JUSTICE OF APPEAL</u>

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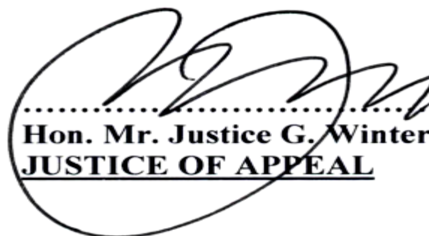
Hon. Madam Justice P. Andrews
<u>JUSTICE OF APPEAL</u>



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Hon. Mr. Justice G. Winter
<u>JUSTICE OF APPEAL</u>

<u>Solicitors:</u>

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Mishra Prakash & Associates for the 1st Respondent
2nd Respondent in person