

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 339 of 2013

BETWEEN : CHANDRA WATI of Cunningham Stage 1, Suva, Fiji, Domestic duties in her personal capacity and as the Administratrix of the ESTATE OF JAI NARAYAN REDDY late of 21 Vesida Housing, Kinoya, Nasinu, Fiji, Driver.

PLAINTIFF

AND : YAMAL WANTI also known as MEENA of Lot 21, Vesida Place, Nasinu, Fiji, Businesswoman.

DEFENDANT

BEFORE : Master Vishwa Datt Sharma

COUNSEL : Mr. Ramesh Prakash - for the Plaintiff
1st Defendant - In Person
2nd Defendant - N/A

Date of Ruling : 06th August, 2018 @ 10am

RULING

[Plaintiff's Application for Assessment of Damages against 1st Defendant pursuant to Order 37 of the High Court Rules, 1988]

A. INTRODUCTION

1. The Plaintiff filed an **Amended Summons for Assessment of Damages** against the **First Defendant** and sought for the following orders-
 - (a) *That Damages with Interest and costs be assessed against.*
 - (b) *That costs of this application be cost in the cause.*
2. This application is made pursuant to **Order 37 of the High Court Rules, 1988** and the Inherent Jurisdiction of this Honourable court.

B. THE LAW

3. The provisions of Law dealing with the Assessment of Damages can be found at **Order 37 of the High Court Rules, 1988** which states as follows-

Assessment of damages (O.37, r.1)

1.(1) Where judgment is given for damages to be assessed and no provision is made by the judgment as to how they are to be assessed, the damages shall, subject to the provisions of this Order, be assessed by the Registrar, and the party entitled to the benefit of the judgment may, after obtaining the necessary appointment from the Registrar and, at least 7 days before the date of the appointment, serving notice of the appointment on the party against whom the judgment is given, proceed accordingly.

(2) Notwithstanding anything in Order 65, rule 9, a notice under this rule must be served on the party against whom the judgment is given.

(3) Without prejudice to the powers of the Registrar under Order 32, rule 12, the attendance of witnesses and the production of documents before the proceedings under this Order may be compelled by writ of subpoena, and the provisions of Order 35 shall, with the necessary adaptations, apply in relation to those proceedings as they apply in relation to proceedings at a trial.

Certificate of amount of damages (O.37, r.2)

2. Where in pursuance of this Order or otherwise damages are assessed by the Registrar, he shall certify the amount of the damages and file the certificate in the Registry.

C. BACKGROUND

4. The Plaintiff is the mother of Jai Narayan Reddy late of 21 Vesida Housing, Kinoya, Nasinu, Fiji, Driver ("the deceased") and the Administratrix of the Estate of the deceased.
5. That letters of administration number 53466 in the estate of the deceased was granted to the plaintiff by the High Court of Fiji on the 20th day of March 2013.

6. The Plaintiff brings this action on behalf of the deceased estate under the Compensation to Relatives Act Cap. 29, Law of Fiji and under the Law Reform (Law Reform) (Miscellaneous Provisions) Interest Act Cap 27, Laws of Fiji and any other Act or law enabling her to bring this action.
7. Particulars of relationship of the persons on whose behalf the Plaintiff brings this action and for whom damages are sought to be recovered are as follows:-

<u>NAMES</u>	<u>RELATIONSHIP</u>	<u>DATE OF BIRTH</u>	<u>RESIDENCE</u>
Chandra Wati	Mother	03/08/1956	Cunningham Stage 1, Suva, Fiji

8. On the 14th day of December, 2010 at the relevant time the First Defendant having control, management and possession of the motor vehicle registration number EG099 ("the vehicle") was driving the said vehicle on Queens Road at Vakabalea Bridge, Navua and in which vehicle the deceased was travelling as a passenger.
9. At all material times the **First Defendant** was driving the said vehicle as an **agent and/or servant of the Second Defendant** and the **First Defendant had care, control, and possession** of the said vehicle with the express and/or implied consent of the Second Defendant.
10. At the relevant time the **Second Defendant** was the **registered owner** of the said vehicle as recorded by the Land Transport Authority and is **vicariously liable** for the **negligence of the First Defendant**.
11. The First Defendant was so negligent and/or careless and/or reckless in the care, control and management of the said vehicle that it went off the road and collided with the railings of the Vakabalea Bridge at Navua.
12. As the result of the said collision the deceased suffered serious injuries and died at the scene of the accident on the 14th day of December 2010.
13. As a result of the said collision and the death of the deceased the Plaintiff and the Estate of the deceased have suffered pain and loss, and incurred expenses and continues to suffer pain, loss and expenses.
14. The Estate of the deceased suffered damages due to the First Defendants negligent driving and the resulting death of the deceased.
15. The deceased at the time of the accident was 27 years having being born on 12th day of November 1982 and he led a healthy and robust life.
16. The Plaintiff further claims interest from the date of accident to the date of judgment under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap. 27, Laws of Fiji on all sums awarded.
17. The Plaintiff now claims against the First Defendant the following-
- (a) Special damages in the sum of \$5000.50;

- (b) Damages under the Compensation to Relatives Act Cap. 29 Laws of Fiji;
- (c) Damages for the Estate of the deceased;
- (d) General damages;
- (e) Interest from the date of accident to the date of judgment under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap. 27, Laws of Fiji on all sums awarded; and
- (f) Cost.

D. ANALYSIS and DETERMINATION

- 18. This is the Plaintiff's application for **Assessment of Damages**, further to obtaining the **Interlocutory Judgment** against the **1st Defendant, Yamal Wanti** herein.
- 19. It will be noted herein that the Plaintiff is only seeking Assessment of Damages against the **1st Defendant** and not the **2nd Defendant**, since the Plaintiff had discontinued the Action against the **2nd Defendant**.
- 20. However, the Question that arises in mind is **whether the Master who has the conduct of this case and/or application has the jurisdiction to hear and determine the current application and Assess Damages** against the **1st Defendant** on the evidence before him.
- 21. If the answer is yes, then where does the Master derive his powers and jurisdiction from?
- 22. Reference is made to *Order 59 Rule 2 (d) of the High Court Rules, 1988* which does not allow the Master the Jurisdiction to hear and determine this application for the Assessment of Damages and provides as follows-
 - 'The Master shall have and exercise all the power, authority and jurisdiction which may be exercised by a Judge in relation to the following causes and matters-*
 - (a) Chamber applications, *except in respect of-*
 - (i).....
 - (d) Assessment of damages where liability has been determined;
- 23. In the current action, **Interlocutory Judgment** (By Default) was entered and sealed against the **1st and 2nd Defendants** on **22nd December, 2014**.
- 24. The **Interlocutory Judgment** entered and sealed against the **1st Defendant** had **determined liability** on the part of the **1st Defendant**. (*Order 59 r. 2 (d) refers*).
- 25. On the strength of this Interlocutory Judgment entered and sealed against the **1st Defendant** that the Plaintiff having established and determined liability against the **1st Defendant** that this court has the power and jurisdiction to deal with the **assessment of Damages** on the very basis and foundation of **liability being established** upon the entry and sealing of the Interlocutory Judgment against the **1st Defendant**.
- 26. I will now proceed to determine the current application for the **Assessment of Damages**.
- 27. The facts of this case were ascertained from the Plaintiff's Statement of Claim as set therein which includes Particulars of Negligence, Injuries and Damages as follows-

- On the 14th day of December, 2010 at the relevant time the First Defendant having control, management and possession of the motor vehicle registration number EG099 drove the said vehicle on Queens Road at Vakabalea Bridge, Navua and in which vehicle the deceased was travelling as a passenger.
 - The First Defendant drove the vehicle carelessly and lost control and as a result the vehicle went off the road and collided with the railings of the Vakabalea Bridge at Navua.
 - As the result of the said collision the deceased suffered serious injuries and died at the scene of the accident on the 14th day of December 2010.
 - As a result of the said collision and the death of the deceased the Plaintiff and the Estate of the deceased have suffered pain and loss, and incurred expenses and continues to suffer pain, loss and expenses.
 - The Estate of the deceased suffered damages due to the First Defendants negligent driving and the resulting death of the deceased.
 - The deceased at the time of the accident was 27 years having being born on 12th day of November 1982 and he led a healthy and robust life.
28. Further, a total of three (3) witnesses, including the Plaintiff who was the mother and the Administratrix of the Deceased Estate gave evidence at the hearing. Full context of the witnesses evidence has been recorded on the court file rather than paraphrasing the same herein. A brief account of the evidence appears hereunder.
29. **PW1 - Ravin Naicker** gave evidence and briefly stated as follows-
- *Recalled 14th December, 2010, interviewed driver of vehicle EG 099.*
 - *Remember the fatal accident.*
 - *Jai Narayan Reddy died in the accident. Charged Driver, Yamal Wanti for Dangerous Driving.*
- PW2- James Naidu** - gave evidence and stated as follows-
- *Plaintiff, Chandra Wati is my mother in Law.*
 - *Tendered Exhibits 1-13 inclusive.*
 - *Knew the Deceased driving for Michael Deepak Transport and earned \$125 weekly wages.*
 - *Deceased was a healthy person and trying to get a Group 3 licence.*
 - *Taxi drivers earn \$300-\$400 whilst Bus Drivers earn \$200 plus extra.*
 - *Deceased died in December, 2010.*
 - *Deceased only son of Plaintiff, Chandra Wati.*
 - *Plaintiff is 60 years old.*
 - *Deceased send money to mother weekly \$100 and pay for travel from Labasa for Chandra Wati.*
 - *Deceased supported Chandra Wati.*
 - *Chandra Wati now claiming Damages.*
 - *On 2nd December, 2010 found out Yamal Wanti driving EG 099 and accident occurred at Vakabalea Bridge at Navua.*
 - *Chandra Wati had expectation to continue of \$100 per month from the Deceased son.*
 - *Taxi Drivers expected to drive up to 55 years of age.*
- PW3 - Chandra Wati**- testified and states as follows:
- *I am 60 years old and do hose keeping work.*
 - *My son Jai Narayan died in December, 2010.*
 - *Received L/A Grant for Deceased Estate.*
 - *Court to assess Damages.*
 - *Believe my son died in road accident.*
 - *I am the mother of Deceased.*
 - *Yamal Wanti drove car, son a passenger in the car and accident happened on 14th December, 2010.*
 - *Money for funeral expenses as told by son in law PW2.*
 - *I want all those expenses.*

- Son was 27 years old, healthy person and worked as a Driver.
- I want my claim against Yamal Wanti and costs.

30. It appears from the evidence tendered before this court that the Plaintiff Chandra Wati is suing the 1st Defendant for the loss of Damages suffered by the Deceased's Mother due to the Negligence of the 1st Defendant resulting in the death of her son Jai Narayan Reddy on 14th December, 2010.
31. The Court of Appeal in *Daya Ram -v- Peni Cara and others (supra)*. Speight J A at page 149 (*para c to g*) firstly described the nature of claim and method of **Assessment of damages** for the dependants under the Compensation to Relatives Act as follows:-

".....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 whatever was the expected period of dependency".

And for a claim under the Law Reform (Miscellaneous Provision) (Death and Interests) Act for "lost years", His Lordship stated as follows:-

"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. (Underline mine for deliberation in this case)

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."

Assessment of damages

32. I will now proceed to the assessment under Special and General Damages that the Plaintiff is entitled to as follows-

Special damages

Special damages are monetary losses actually suffered including any expenditure incurred. They are assessed up to the date of the judgment. By its nature it is capable of precise arithmetic calculation. *Paff -v- Speed [1961] HCA 14; [1961] 105 CLR 549 at 558-559 per Fullagar J*. As a matter of law, they must be pleaded and strictly proven; *Tacirua Transport Company Limited -v- Verend Chand Civil Appeal No. ABU 0039/94* refers.

(i) Funeral expenses	\$3,500
(ii) Loss of damage to clothing	\$ 200
(iii) LTA Vehicle search	\$ 21
(iv) Travelling	\$ 349
(v) Police report	\$22.50
(vi) Navua Court Record TR No. 6285/10	\$23
(vii) Letters of Administration	\$885
	\$5000-50

33. By virtue of *S. 11 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act*, "Damages may be awarded in respect of funeral expenses of the deceased persons of such expenses have been incurred by the party whose benefit the action is brought." In this case for the benefit of the Plaintiff as the Administratrix of the Deceased Estate.
34. Accordingly, for funeral expenses, I am inclined to grant \$2,000 and taking into consideration other documentary evidence and exhibits, I grant a total sum of \$3,500-50 for funeral expenses and other miscellaneous claims made hereinabove.

Multiplier

35. A multiplier is the finite duration over which the annuities for the benefit of estate will be available.
36. A multiplier is derived from the evidence of the deceased's health and age. Age in this context is limited to "working age". Ordinarily, a person is deemed to have retired at an age of 60 years. However, to continue working for that period, it is important to note that there are many contingencies and vicissitudes of life. One may not live for that long. S/he may lose the job, thus the earning or earning capacity. Bearing all this in mind, in *Attorney General -v- Edward Michael Broadbridge* the Supreme Court suggested that a discount of one third be allowed for the duration of the working life of a person. Multiplier also takes into account that all future payment are paid in advance in lump sum. Accordingly, the recipients are to invest the said sum thus receiving dividends from the same.
37. In this case the Deceased, Jai Narayan Reddy born on 12th November, 1982, was 28 years old at the time of the accident on 14th December, 2010. He had a further 27 years of working life left in him. Applying the formula based in *Broadbridge*, the duration be reduced by 9 years. That is a total working life 18 years applies.
38. In *Attorney General -v- Paul Parveen Sharma*, (*supra*) the retirement age was based at 55 years. The approach suggested and applied in *Broadbridge* seems to achieve a fair result. At least it is a fair and just means to an end. Therefore, I am bound by the authoritative decision of the Appellate Court on the multiplier. *Attorney General -v- Paul Parvin Sharma (supra)* still remains the law on the multiplier.
39. Applying the approach suggested and applied in *Attorney General -v- Paul Parveen Sharma*, (*supra*), my calculation will result as follows-

Deceased 28 yrs old - 55 yrs (Retirement) = 27 years of working life left.

Applying the formula reduce by 1/3rd of 27 years = 9 years-

27 years-9 years= 18 years 18 years x 12(No. of months) x \$125 per month=
\$27,000

40. Accordingly, I give a judgment to the Plaintiff in the sum of \$27,000 inclusive of costs.
41. For the aforesaid rational, I award the following Damages accordingly.

FINAL AWARDS

- (i) For Special Damages, I award a sum of \$3,500-50.
- (ii) For General Damages, I award a sum of \$27,000 inclusive of all costs.
- (iii) Orders accordingly.

Dated At Suva This 06th Day of August, 2018.



cc: Mishra Prakash Associates, Suva
Yamal Wanti, Lot 21, Vesida Place, Nasinu

.....
VISHWA DATT SHARMA
Master