

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 22 of 2017

BETWEEN

JOHN SATENDRA DUTT VERMA of Lowcost, Bulileka, Labasa,
Disabled.

PLAINTIFF

AND

MOHAMMED JAMAL of Korokadi, Lekutu, Bua, P.O. Box 3057,
Labasa

1ST DEFENDANT

AND

THE PERMANENT SECRETARY FOR MINISTRY OF
INFRASTRUCTURE & TRANSPORT, Nasilivata
House, 87 Ratumara Road, Samabula.

2ND DEFENDANT

ATTORNEY GENERAL OF FIJI

3RD DEFENDANT

Counsel : Mr. A. Sen for the Plaintiff
Mr. A. Kohli for the Defendant

Date of hearing : 14th August, 2018

Date of Judgment : 25th September, 2018

JUDGMENT

(Assessment of damages)

[1] The plaintiff instituted these proceedings seeking to recover damages for the injuries caused to him due to the negligence of the 1st defendant.

[2] The particulars of special damages claimed by the plaintiff are as follows:

Transportation and medication	-	\$2000.00
Massaging	-	\$1,000.00
Loss of wages	-	\$22,398.44
Loss of FNPF	-	\$1947.64
Loss of FNPF (employer contribution)	-	\$2433.68
Loss of Allowances	-	\$14,616.00
Care giver	-	\$420.00
Loss of Supplementary income	-	\$5800.00

[3] At the time the plaintiff was injured he and other workers were travelling in the vehicle driven the 1st defendant. The plaintiff filed this action and five of the other who claimed that they were also injured filed Civil Action No. 23 of 2017. When both these matters came up for trial on 23rd April, 2018, the parties to this action agreed that they would be bound by the decision in HBC 23 of 2017 as to the negligence of the 1st defendant. On the same day the plaintiffs in both matters filed notice of discontinuance to discontinue proceedings against 2nd and 3rd

defendants on the basis that the 2nd defendant had agreed to pay compensation. The court accordingly discontinued the proceedings against the 2nd and 3rd defendants. The parties thereafter requested the court to conduct the trial on the question of negligence and to decide the question of damages on another day after the 2nd defendant pays the compensation which the court allowed. The court in its judgment delivered on 09th May, 2018 found that the accident was due to the negligence of the 1st defendant.

[4] The plaintiff called Dr. Sharma from Labasa Hospital to testify as to the medical condition of the plaintiff. He has not seen this patient but he gave evidence on the medical reports which were tendered in evidence at the hearing.

[5] The report of Dr. Maloni Bulanauca was tendered in evidence marked as "P1". The report is dated 07/02/14 but the accident took place on 31st December, 2014. In his report Dr. Bulanauca has made the following observations:

It was found that his right hand mangled and suffered degloving injury extensively involving the 2nd and 3rd fingers mainly. The degree of injury to the right hand proved to be severe to the classification of Gustillo Anderson Open Fracture type 3b in relation to the 2nd and 3rd fingers.

[6] Gustillo Anderson Open Fracture type 3b is open fracture with extensive soft-tissue loss and periosteal stripping and bone damage, usually associated with massive contamination. It is also stated in the said report that these two fingers were amputated and he is a right hand dominant person.

[7] In the report dated 08th August, 2016 the same doctor has made the following observations:

He is gradually transitioning to become better functionally with his non-dominant left upper limb and is optimistic. He is in constant pain and requires regular analgesia (Panadol, Gabapentin, Amitriptyline) through surgical OPD.

He has a very deformed right hand which is poor in function. A very noticeable and bothersome scar is assessed to have a weight of 9% WPI. Combined skin dysfunction to his hand, wrist and elbow shows a final WPI of 45%.

- [8] At this hearing Dr. Sharma referring to previous medical reports said the plaintiff is incapable of looking after himself.
- [9] The plaintiff has subsequently suffered a stroke and now permanently on a wheelchair. However, there is no evidence that the paralysis was due the injuries suffered in the accident. He was not fit to testify in court although he was present in court. His brother testified that the plaintiff cannot speak and is not capable of doing anything on his own. This may be because of paralysis he subsequently suffered and as I said earlier without any evidence that the injuries sustained in the accident contributed to the paralysis the court is unable to rely on this evidence in assessing damages. However, as Dr. Maloni Bulanauca has, in his report observed the plaintiff could not have engaged in the work he is experienced with due to the two fingers of his dominant hand being amputated. In my view he is entitled to recover as damages for the period commencing from the date of the accident until he attains the age of retirement which is 60 years. He was born on 12th July, 1963 and he was due to retire at the age of 60 years on 12th July, 2018. There is no evidence that he was paid compensation under the Workmen's Compensation Act 1966.
- [10] Taking all these factors into consideration I award **\$100,000.00** for pain and suffering and loss of amenities of life.
- [11] It is evident that the plaintiff could not go to work after the accident. The plaintiff claims, by way of special damages \$22,398.44 at the rate of \$193.09 per week for 116 week as loss of wages until these proceedings are instituted which is correct according to his pay sheet tendered in evidence as "P12". The special damages claimed by the plaintiff were not challenged by the defendant.
- [12] The plaintiff's salary sheet was tendered in evidence marked as "P8", according to which his weekly salary after deducting his FNPF contribution was \$319.16. When the plaintiff suffered injuries he was 51 years old and could have under normal circumstances till the age of 60 years. Therefore, he had 9 more years to work. After reducing a percentage for contingencies I allow a multiplier of 7. His loss of future income will be **\$116,174.24** (319.16 x 52 x 7).
- [13] As stated in the decision in **Chand v Amin** [2015] FJCA 143; ABU0031.2012 (2 October 2015) compulsory FNPF contribution is only up to the age of 55 years.

Therefore, the plaintiff is entitled to FNPF contribution for 4 years. He is therefore, entitled to recover **\$6086.08** (16.72 x 52 x 7).


[14] The plaintiff also claimed by way of special damages \$5800.00 as loss of supplementary income. The plaintiff has not adduced any evidence on this claim. Therefore, he is not entitled to loss of supplementary income.

[15] **ORDERS**

The 1st defendant is ordered to pay the following amounts as damages with interest of 6% per annum from the dated of the service of the summons to the date of this judgment:

Special Damages	-	\$30,199.12
Loss of Future Income	-	\$116,199.12
Loss of FNPF	-	\$6068.08
For pain, suffering and loss of amenities	-	\$100,000.00
Loss of allowances	-	\$14616.00
Total	-	\$267082.32




Lyone Seneviratne

JUDGE

25th September, 2018