

IN THE HIGH COURT OF FIJI
IN THE WESTERN DIVISION
AT LAUTOKA

CIVIL JURISDICTION

Civil Action No. HBC 128 of 2005

BETWEEN : **NARENDRA MICHAEL** of Lautoka
PLAINTIFF

AND : **MAHESH** of Nadi Police Station, Nadi.
1st DEFENDANT

AND : **ARVIN** of Nadi Police Station, Nadi.
2nd DEFENDANT

AND : **SUSHIL** of Nadi Police Station, Nadi.
3rd DEFENDANT

AND : **THE COMMISSIONER OF POLICE**
4th DEFENDANT

Appearances : **Mr. Mosese Naivalu for the plaintiff**
(Ms) Mary Motofaga for the defendants.

Trial : **Monday, 27th and Tuesday, 28th May 2019**

Written Submissions: **19th July 2019 and 04th November 2019**

Judgment : **Friday, 08th November 2019**

JUDGMENT

(A) INTRODUCTION

(01) This is a claim by a citizen against the police for damages for injuries caused by assault while he was in Police custody. Quite apart from that, the plaintiff seeks damages because he claims that the assault was a breach of his constitutional rights under Chapter (4) of the Constitution of the Republic of Fiji Islands.

(02) The assaults were allegedly committed on 13th and 14th May 2002 at the Nadi Police Station.

(03) The defendants denied assaulting or causing any injuries to the plaintiff.

(B) THE FACTUAL BACKGROUND

(01) The amended statement of claim which is as follows sets out sufficiently the facts surrounding this case from the plaintiff's point of view as well as the prayers sought by the plaintiff.

1. *THAT the Plaintiff a 42 year old male at all material times on the 13th day of May 2002 was taken into police custody by the 1st, 2nd and 3rd Defendants at the Nadi Police Station.*
2. *THAT the said 1st, 2nd, and 3rd Defendants were at all material times under the direction and control of the 4th Defendant in the performance or purported performance of their functions and duties.*
3. *THAT whilst in Police custody, the said 1st, 2nd and 3rd Defendants unlawfully assaulted and tortured the Plaintiff and subjected him to degrading and inhumane treatment at the Nadi Police Station thereby causing the Plaintiff serious injuries.*
4. *THAT as a result of the said inhumane treatment the Plaintiff was admitted to Lautoka Hospital and an underwater seal drain was inserted in his chest and removed after 4 days. He was hospitalized for total of six (6) days and discharged.*
5. *THAT the 1st, 2nd and 3rd Defendants further violated the Plaintiff's constitutional rights under Chapter 4 of the Constitution of the Republic of Fiji Islands (1997).*
6. *THAT in the premises the Plaintiff has suffered loss and damages and still suffers mentally and physically from the unlawful conduct of the Defendants.*

PARTICULARS OF INHUMANE TREATMENT

- i. *Removal of clothing except for underwear.*
- ii. *Assaulting with a piece of wood.*
- iii. *Rubbing chillies on the private parts of the Plaintiff.*
- iv. *Squeezing the Plaintiff's testicles.*
- v. *Forcing the Plaintiff to take a cold shower at 2am in the morning.*
- vi. *Sleep deprivation.*

PARTICULARS OF INJURIES

- i. *Multiple bruises on the chest wall.*
- ii. *Bruising left shoulder.*
- iii. *Bruising on both buttocks.*
- iv. *X-ray of the chest pneumothorax and fractured 10th ribs on the left side.*
- v. *Contused orbits.*
- vi. *Abrasion right temple.*

(2) The plaintiff claims from the defendants.

1. *Exemplary and punitive damages for Inhumane Treatment.*
2. *General damages for pain and suffering.*
3. *Aggravated damages for humiliation and injured feelings.*
4. *Costs on a Solicitor/Client basis.*
5. *Further or other relief that this Honourable Court thinks fit.*

(3) The defendants in their amended statement of defence pleaded *inter alia* that;

1. *SAVE as to admitting that the Plaintiff surrendered himself to custody on 13th day of May 2002, the 1st, 2nd and 3rd Defendants (hereinafter referred to as "Defendants") deny the rest of the contents of paragraph 1 of the Plaintiff's Amended Statement of Claim (hereinafter referred to as the "Amended Claim") and put the Plaintiff to strict proof.*
2. *THAT the Defendants admit paragraph 2 of the Amended Claim and further state that the 3rd Defendant has migrated overseas.*
3. *THAT the Defendants vehemently deny paragraph 3 of the Amended Claim and put the Plaintiff to the strictest proof thereof.*
4. *SAVE as to admitting that the Plaintiff was admitted at the Lautoka hospital, the Defendants deny the rest of the contents of paragraph 4 of the Amended Claim.*
5. *THAT the Defendants deny the allegations contained in paragraph 5 of the Amended Claim and states further that they did not violate the Plaintiff's Constitutional rights under Chapter 4 of the Constitution or any clause whatsoever and will also put the Plaintiff to the strict proof of this allegation.*
6. *THAT the Defendants deny any knowledge of the Plaintiff's allegation under paragraph 6 of the Amended Claim. In particular the Defendants deny all particulars of inhumane treatment and all particulars of injuries and put the plaintiff to strict proof of all allegations. Furthermore the Defendants denies that all particulars of inhumane treatment and particulars of injuries were caused by the Defendants and put the Plaintiff to strict proof thereof.*
7. *WHEREFORE the Defendants pray:-*
 - a) *That the action be dismissed with costs.*
 - b) *Such further or other relief as this Honourable Court may deem fit and just.*

(4) The plaintiff's reply to amended statement of defence is as follows;

1. *Save as to paragraph 1 of the Statement of Defense, it joins issue with the Defendants' denials as its contents and reiterates that he was taken into police custody on the 13th day of May 2002 by the 1st, 2nd and 3rd Defendants at the Nadi Police Station.*

2. *The Plaintiff joins issue in relation to paragraph 2 of the Statement of Defense and further states that he did not have any knowledge of the 3rd Defendant migrating overseas.*
3. *Save as to the contents that contain admission, the plaintiff joins issue with the Defendant in relation to Paragraph 3 of the Statement of Defense.*
4. *The Plaintiff joins issue in relation paragraph 4 of the statement of Defense and reiterates that as a result of the inhumane treatment the Plaintiff was admitted to Lautoka hospital and an underwater seal drain was inserted in his chest and removed after 4 days.*
5. *Save as to the contents that contain admission, the Plaintiff joins issue with the Defendant in relation to Paragraph 5 of the Statement of Defense.*
6. *The Plaintiff joins issue in relation to paragraph 6 of the Statement of Defense.*

WHEREFORE the Plaintiff prays that the Statement of Defense be dismissed on a Solicitor Client Indemnity Basis and order in terms of prayers in the Statement of Claim.

(C) THE MINUTES OF THE PRE-TRIAL CONFERENCE RECORD, INTER ALIA THE FOLLOWING

- (a) Agreed Facts
 - i. *The Plaintiff at all material times was a 42 year old male was on or about the 13th day of May, 2002, taken into police custody by the 1st, 2nd and 3rd Defendants.*
 - ii. *That the said 1st, 2nd and 3rd Defendants were at all material times under the direction and control of the 4th Defendant in the performance or purported performance of their functions and duties.*
- (b) Disputed Issues
 - i. *Whether the Plaintiff surrendered himself to custody on the 13th of May 2002?*
 - ii. *Whether the 1st, 2nd and 3rd Defendants unlawfully and without reasonable cause assaulted and tortured the Plaintiff the Plaintiff whilst in the custody of the police custody?*
 - iii. *Whether the 1st, 2nd and 3rd Defendants subjected the Plaintiff to degrading and inhumane treatment whilst in police custody at Nadi Police Station and thereby causing the Plaintiff serious injuries?*
 - iv. *Whether the Plaintiff sustained any injuries, the extent of injuries if any and the persons responsible for causing such injuries to the Plaintiff.*

- v. *Whether the Plaintiff was hospitalized at Lautoka Hospital, what treatment if any, was administered by the Doctors and the period of hospitalization?*
- vi. *Whether the 1st, 2nd and 3rd Defendants by their actions, violated the Plaintiff's constitutional rights under Chapter 4 of the Constitution of the Republic of the Fiji Islands (1997)?*
- vii. *Whether the Plaintiff has suffered any losses or damages and still suffers mentally and physically from the conduct of the Defendants?*
- viii. *Whether if this Court finds in favor of the Plaintiff, the Plaintiff is entitled to costs and interests.*

(D) ORAL EVIDENCE

(1) The Plaintiff's case

- P.W. (1) The plaintiff
 (2) Mr. Shalendra Kumar
 (3) Mr. S.Faizal Koya (Solicitor)
 (4) (Ms) Amrita Kaur (De facto partner of the plaintiff)
 (5) (Mrs) Tara Wati (Wife of the plaintiff)
 (6) Dr. Michael T.Nagan (General Practitioner)
 (7) Dr. Aktar Ali (Consultant Surgeon, Lautoka Hospital)

(2) The defendants' case

The first and the second defendant.

(E) DISCUSSION

(01) Counsel for the plaintiff and the defendants have tendered extensive written submissions and I am grateful to Counsel for those lucid and relevant submissions.

(02) This is an action in tort brought by the plaintiff. Two causes of action are pleaded in the statement of claim. They are;

- (A) Tort of assault**
- (B) Tort of torture**

Quite apart from that, the plaintiff seeks damages because he claims that the assault and torture was a breach of his constitutional rights under chapter (2) of the Constitution of the Republic of Fiji Islands.

(03) In order to succeed under the two causes of action and the claim under the constitution, the plaintiff has to prove on a balance of probabilities that he was assaulted and tortured by the defendants whilst in Nadi Police custody and that he sustained the injuries that had been described in paragraph (6) of the Amended

Statement of Claim. It is also incumbent on him to produce medical evidence in order to establish the nature of the injuries and the manner in which they could have been inflicted.

- (04) The defendants in their Amended Statement of Defence admitted that the plaintiff surrendered himself to Nadi Police custody on 13th day of May, 2002. They merely denied the allegation of torture, assault and inhuman treatment whilst in Nadi Police custody and the extent of injuries if any caused by the alleged assault, torture and inhuman treatment and the plaintiff was put to strict proof.
- (05) It is to be observed that the incident complained of was in May 2002. The Writ was issued in May, 2005. The trial was taken up in May 2019 which was (17) years after the incident complained of. It is unfortunate; however, an inescapable fact is that the plaintiff's change of Solicitors is the major contribution to the delay.
- (06) **It must be borne in mind that at the pre-trial conference minutes, it was admitted by the defendants that on 13th May, 2002 the plaintiff was taken into custody by the 1st, 2nd and 3rd defendants at the Nadi police station.** Eight issues have been identified at the pre-trial conference minutes. They are;
- i. *Whether the Plaintiff surrendered himself to custody on the 13th of May 2002?*
 - ii. *Whether the 1st, 2nd and 3rd Defendants unlawfully and without reasonable cause assaulted and tortured the Plaintiff the Plaintiff whilst in the custody of the police custody?*
 - iii. *Whether the 1st, 2nd and 3rd Defendants subjected the Plaintiff to degrading and inhumane treatment whilst in police custody at Nadi Police Station and thereby causing the Plaintiff serious injuries?*
 - iv. *Whether the Plaintiff sustained any injuries, the extent of injuries if any and the persons responsible for causing such injuries to the Plaintiff.*
 - v. *Whether the Plaintiff was hospitalized at Lautoka Hospital, what treatment if any, was administered by the Doctors and the period of hospitalization?*
 - vi. *Whether the 1st, 2nd and 3rd Defendants by their actions, violated the Plaintiff's constitutional rights under Chapter 4 of the Constitution of the Republic of the Fiji Islands (1997)?*
 - vii. *Whether the Plaintiff has suffered any losses or damages and still suffers mentally and physically from the conduct of the Defendants?*
 - viii. *Whether if this Court finds in favor of the Plaintiff, the Plaintiff is entitled to costs and interests.*

Finding on liability

- (07) At the material time, the plaintiff was 42 years old and a father to five children. He was a mechanic by the occupation and was running a garage.
- (08) The plaintiff told this Court that in the afternoon on the 13th May, 2002 he voluntarily surrendered himself to the Nadi Police Station with a Counsel after he learnt from his wife [Mrs Tara Wati,PW5] that Nadi Police was looking for him for questioning following the robbery at Nadi Vodafone Centre. For the plaintiff, there is unchallenged evidence of PW5 Mrs Tara Wati (the wife of the plaintiff) and PW4 (Ms) Amrita (the plaintiff's de facto partner) that the plaintiff was in good health and there were no injuries on the plaintiff's body when he surrendered himself to the custody of the Nadi Police Station on Monday, 13th May, 2002.
- (09) The only direct evidence of police assault and torture was given by the plaintiff himself. The plaintiff gave an account of the assault on him by the 1st, 2nd and 3rd defendants. The plaintiff told this Court that on Monday, 13th May, 2002 while he was sitting on the bench in the Charge room at the Nadi Police Station, awaiting the arrival of the Investigation Officer (the first defendant), he was taken to a room in the upstairs of the Police Station by the second defendant after 8.00pm. He was made to sit on the floor in the room. A little later, the investigating officer (the first defendant) came to the room and pulled a chair and sat in front of him. The first defendant conducted the questioning and the second and third defendants were accompanying him. The first defendant had questioned the plaintiff as to whether he had taken part in the robbery at the Vodafone Centre at Nadi. The plaintiff replied that he knows nothing about the robbery at Vodafone Nadi. The first defendant was furious over the plaintiff's answer. Then the first defendant punched him on his stomach. After that the first defendant raised up the plaintiff by his shirt and punched him again on his stomach. The plaintiff said that the second punch was very painful and he cried for help. The first defendant had kept on asking the plaintiff about the safe which was robbed from the Vodafone Centre. When the plaintiff replied that he does not know anything about the robbery, the second and third defendants brought some chillies and pounded. The first defendant held the plaintiff by his hand and the second and third defendants tried to rub chillies on the genitalia of the plaintiff. When the plaintiff struggled and resisted, they put his hands behind and handcuffed him. Thereafter, they have rubbed chillies on his genitalia, on his anus and all over the body. They forced chillies down his throat. Thereafter, the first defendant continued questioning the plaintiff regarding the whereabouts of the robbed safe. When the plaintiff told him that he does not know, the first defendant was very furious and he had kicked him with his police boot while the plaintiff was lying on the floor handcuffed. They have repeatedly hit on his both buttocks with a wooden duster. He was again kicked and punched by them.
- (10) The plaintiff positively identified the 1st, 2nd and 3rd defendants and named them as the assailants. He said all three of them assaulted him and he lost consciousness intermittingly during the assault due to unbearable physical pain inflicted on him. When he regained consciousness, the interview and the questioning was suspended and he was taken to the tap downstairs by the 2nd and 3rd defendants and he was forced to a cold bath in the midnight. After the forced cold bath, they locked him in the cell overnight. He said that he was in great pain and he cried. He could not sleep

due to the body pain. The transcript of plaintiff's evidence in chief contains this; (Reference is made to page (12) to (15) of the transcript of evidence)

Q: *Did anything else happen before Mr Mahesh appeared? So, your lawyer left?*

A: *My lawyer left, I was here. It was something around 8pm then an officer, I know him very well before this case too. His name is Arvind. We call him China. He came and he asked me to accompany him upstairs in the Crime room. He took me to upstairs to the Crime room.*

Q: *Is this the Arvind that appears as the second defendant in the Summons?*

A: *Yes.*

Q: *Take a look again at these two well-dressed gentlemen. They both wearing blue. The one crossing his arms?*

A: *Yes, that is correct.*

Q: *What time did you say Mahesh arrived there?*

A: *When I was taken upstairs and was told to sit on the floor and then Mahesh came.*

Q: *So, you saw Arvind first?*

A: *Yes.*

Q: *And then Mahesh later, correct?*

A: *That is correct.*

Q: *He took you upstairs?*

A: *Yes.*

Q: *Arvind?*

A: *Yes.*

Q: *Did he say anything as to why he was taking you upstairs?*

A: *No.*

Q: *What did he say?*

A: *I was sitting on the bench in the Charge room. You get up and follow me. So I followed him.*

Q: *What time was this, sorry?*

- A: *It was dark, exact time, I don't know but it was after 8.*
- Q: *So, you went upstairs and what happened?*
- A: *I was told to sit on the floor.*
- Q: *Who told you?*
- A: *Arvind.*
- Q: *What kind of room did you enter? Can you just describe that?*
- A: *There 1, 2 offices, when we enter upstairs, you turn left, there is two offices and there is a open space. There was a table there, some chairs there and I was told to sit on the floor.*
- Q: *As you walked through the door, did you move left or did you move right?*
- A: *Right. Upstairs right.*
- Q: *Did you see some other police officers inside that?*
- A: *As there was one, an inspector named Davend I think. I can't recall his name but I think he is Inspector Davend*
- Q: *So, one Inspector, and how many other Officers?*
- A: *Mahesh, Arvind and there was another Officer whom I talked, Serevi. Serevi was here.*
- Q: *You mean Seruvi?*
- A: *Seruvi, yeah.*
- Q: *Mahesh, Arvind and Seruvi?*
- A: *Yes.*
- Q: *Arvind told you to sit on the floor?*
- A: *That is correct.*
- Q: *And then what happened?*
- A: *And after 10 minutes, Mahesh arrived and got one chair in front of me while I was sitting on the floor and told me to look at him and look at him properly because he is going to ask me some questions and he want a straight forward answer from me.*
- Q: *Describe your sitting arrangements? You and him, him and you?*

A: *I was sitting right at the floor. He pulled a chair as he is a huge person, physically and he just told me to look at him properly and whatever he asked, he want a straight forward answer.*

Q: *So, were you still sitting on the floor?*

A: *Still sitting on the floor.*

Q: *He moved his chair towards you or he moved?*

A: *He pulled the chair, sit in front of me and instructed me.*

Q: *Where was Amrita, you defacto?*

A: *She was downstairs.*

Q: *Did you manage to speak to her before you climbed up the stairs?*

A: *No. I just told her to wait for me.*

Q: *So, you did. You told her "wait for me"?*

A: *I told her just wait for me.*

Q: *Describe the tone, his voice when he moved towards you and spoke to you? Did you say, staring into your eyes?*

A: *When he approached me, like he was very angry. He wasn't polite. Like, he was threatening me. The voice, he said he wants the answer and a straight forward answer.*

Q: *What about the level of his voice?*

A: *High, loud.*

Q: *Loud?*

A: *Yes.*

Q: *You said you felt threatened?*

A: *Yes.*

Q: *And this Mahesh is bigger than you or smaller?*

A: *He's bigger, physically very bigger than me.*

Q: *Then what happened next. Okay, hold on. When you heard his loud, threatening, high voice, what was going through your mind?*

A: *I was scared.*

Q: *Where were other officers?*

A: *They were around him. Arvind was just standing beside him and then another Police Officer joined him. His name was Sushil.*

Q: *Is that the Sushil that is the 3rd defendants in your summons?*

A: *That's correct.*

Q: *Where was Seruvi?*

A: *Servui was with his boss, Inspector Davend having some grog on the table there.*

The following night which was Tuesday, 14th May, 2002 he was further questioned and again he was subjected to serious assaults. Again chillies were rubbed on his genitalia, anus and all over the body. The plaintiff said that the 1st, 2nd and 3rd defendants took part in the assault. The plaintiff said that on the second night, comparatively, the beating was harsher, higher and it was very painful and he lost consciousness three times during the second night assault due to the unbearable physical pain inflicted on him by the first, second and third defendants. Close to midnight he was locked up in the cell and the plaintiff explained as follows his feelings in the midnight. (The transcript records the following questions and answers in his evidence in chief at page (24)).

Q: *So, how were you feeling?*

A: *I was in pain. I thought maybe I'll die there because in the pain, I was never in that kind of pain in whole of my life. I was in very big pain. I can't tell you in this Court how much pain I was. In real pain.*

Q: *Can you just describe where were you hurt? What was paining? Which part of your body was paining?*

A: *My ribs were very paining. I could not breathe properly. All my body was sore it was in pain.*

Q: *Yes, but you have to be specific. Which part of your body was in pain?*

A: *My ribs, my back, my buttocks. My private part was burning. All my body except my leg. All upper part of my body was in very big pain. This top part of my arms in pain. Chest was also paining.*

Q: *So, as the result of this assault, how was your body reacting to assault?*

A: *I truly thought that I could not survive, maybe I'll die. I can't describe how much pain I was in. I was in lot of pain, lot of pain.*

Q: *What other parts of your body?*

A: *As I said, my chest, my ribs, my buttocks, all upper part was in pain.*

Q: *Let's go to the 15th. What happened when you woke up?*

A: *I was in pain, I was asking for help, there was no help. I asked for panadol, there was no medicine given to me, nothing. When you are in the cell, nobody listens to you and I just couldn't sleep. I was in pain. I couldn't sleep.*

- (11) The next day, on the 15th May, 2002 he was interviewed by the first defendant and a statement was recorded. At about 2.00 p.m he was brought in police custody to the Nadi Magistrate Court. He was charged by the Nadi Police for robbery at Nadi Vodafone Centre. His Counsel Mr Koya made an application for bail on urgent medical condition. The Magistrate released him on bail on urgent medical condition. I am told that some time back, the plaintiff was discharged by the Magistrate from the alleged charge of robbery laid against him.
- (12) The plaintiff had been detained in the Nadi Police Station for two nights. He positively identified and named the 1st, 2nd and 3rd defendants as the assailants. All three defendants had taken part in the beating. The plaintiff gave evidence that he was beaten and tortured so badly that he thought he would be killed.
- (13) The plaintiff called Solicitor Mr Koya (PW-3) as his witness. On Wednesday, 15th May, 2002, Solicitor Mr Koya came to Nadi Police Station twice in the morning and afternoon to see the plaintiff, before he was bailed out around 3.00pm on the same day. Mr Koya told this Court that the plaintiff complained him about police assault and the plaintiff's condition was bad. Mr Koya testified on the plaintiff's condition as follows when he saw the plaintiff in the morning and in the afternoon in the Nadi police station on the day he was bailed out; (Reference is made to page (52) and (53) of the transcript of evidence).

Q: *How did he present to you when you went to see him in the first occasion?*

A: *When I did initially visit him my Lord, he looked exhausted in the sense as a lapper person of observation. I did see him looking pale and his eye I do recall very well didn't look fresh, were red and I asked him whether he was given his normal meals etc, and possibilities of proper sleep and good facilities and he's simple answers were no.*

A: *On the second occasion, I did notice that he sounded very weak and he did say to me that according to his words that he was assaulted by the police and he really needed assistance by way of getting bailed and I as his Counsel then I had suggested that I will raised this in court and he would require to get medical assistance because he said he had discomfort on his bodies and he did look pale*

and on that basis I had then made my assessment as to what type of bail application I wants to make before the Nadi Court.

Q: Was there any difference on how he looked between the first and the second occasion that you visited him?

A: Well differences in the sense his ability to speak the strength wasn't there. And my Lord the other thing I very well clearly remember that he was crutched to ...because he said he had pain around his torso. I did not physically visualize that but he had told me that he had pains around his torso area based on his allegation of police assault.

The evidence of the plaintiff's Solicitor Mr Koya lends credence to the evidence of the plaintiff that he was beaten up and tortured by the police.

- (14) Next, I turn to the evidence of the wife of the plaintiff Mrs Tara Wati (PW5). She said that her husband was a fit and healthy man when he surrendered to the Nadi police station. She testified on the condition of her husband when he was brought in the police custody to the Nadi Magistrates Court in the afternoon about 2.00pm on Wednesday, 15th May, 2002 after he was detained in the police station for two nights. She noted that he was having a black eye and he looked half dead. He could not walk. He had difficulty in standing on his legs. The transcript of Mrs Wati's evidence in chief contains this: (page 73 of the transcript of evidence).

Q: Was he walking unaided? Was he walking unaided?

A: He was held, my Lord, to walk through the Court room, my Lord.

Q: Held by who?

A: The Police.

Q: How many Police men?

A: Two.

Q: One on each side?

A: Yes my Lord.

Q: Can you for the Court, describe how he looked, the first time. This is the first time you saw him?

A: Very bad, couldn't walk but I saw his face, black eyes. I can't describe you, he looked half dead to me. He couldn't walk properly, my Lord. The legs and he was held to walk.

Q: How did you feel as a wife?

A: *I was crying over there. My husband was a fit and a healthy man when he went to the Police Station, my Lord.*

Q: *So he came towards the Court, did he go past you?*

A: *Yes, my Lord.*

Q: *Did he look at you?*

A: *No, he looked in front. He saw me I was crying. He was taken inside the court room, my Lord.*

(15) Let me go back to Mr. Koya again. Mr. Koya said he found the plaintiff's condition very disturbing and he appeared before the Magistrate and sought bail on behalf of the plaintiff on medical grounds as he could not stand properly. The Magistrate allowed the plaintiff to sit on a chair next to the dock since the plaintiff could not get on to the dock due to his disturbing physical condition after two days detained in the defendants' custody. The transcript of Mr. Koya's evidence in chief contains this; (reference is made to page (54) and (55) of the transcript of evidence)

Q: *Did that happen?*

A: *Yes my Lord the matter was called. I remember this date very well it was in court No. 1 in Nadi Magistrate Court. It was called before Magistrate then David Balram and it was in the later part of the day. He was called and produced in court and that is when I made the bailiff application.*

Q: *And what was the crux in your bail application?*

A: *My Lord the inability for him to stand up properly in court and this is one of the very rare occasion for me that's why I remember the date very well in which I had asked the Resident Magistrate Balram upon prosecution objecting to bail. On humanitarian grounds and a very strong suspicion of my client not being medically well because I had pointed out to the Magistrate that he is inability to stand up properly and he be granted bail so he's urgent medical attention can be facilitated by his family members and I clearly recall I had suggested if the court wishes to satisfy herself he raise his shirt and show the injuries that he had sustained. But I had mentioned that this is a shown a circumstances but my client would undertake to any bail condition provided he be given urgent medical attention.*

Q: *So did the court accept the offer and..... to raise his shirt?*

A: *No, Magistrate Balram's words I do recall that they that was not necessarily and because of his inability to structure himself to stand, the Magistrate I recall that during the arguments of bail then asked him to sit down. But no, to answer your question the Magistrate did not require observations to that part of my representation.*

Q: *So the accused can you just - he was in the accused box and then the court told him to get back into the public gallery?*

A: *No, he was just ask*

Q: *Or seated?*

A: *Yes there's in court no. 1 in Nadi Court my Lord there is obviously there is a seat near a dock.*

Q: *And you say why did a court get him to sit down?*

A: *I had pointed out right from the outset he is inability to stand up properly.*

Q: *So what was the result of your bail application?*

A: *My Lord, the Magistrate then did grant bail and upon the bail been formalized through the registry I had asked his friends and family members to immediately take him to get a medical review.*

Q: *Did you do anything after this?*

A: *No my Lord once the bail was granted I had just told the family members to update me as to what was the outcome of his medical review and I resided in Nadi and my practice in Nadi so I remained in Nadi and I believed he was taken by his friends and family members to Lautoka.*

(16) After his release on bail by the Magistrate, the plaintiff was brought home straight by the wife, Mrs Wati and she had seen bruises and dried blood clots on the plaintiff's shoulder and chest and chillie seeds were found on his genitalia. When she used water to relieve his pain, he started screaming and crying in pain. She testified on the plaintiff's condition as follows; (reference is made to page (75), (76) and (78) of the transcript of evidence)

Q: *And then what happened?*

A: *And I brought him straight home, my Lord. The reason why I brought him home my Lord, because his clothes were all smelling bad, my Lord.*

Q: *What clothes were he wearing?*

A: *The same clothes he went to the Police Station the same clothes he was wearing, my Lord.*

Q: *Did you try to find out what was causing this smell?*

A: *I saw all the dried blood there. Sir, I saw all the dried blood on his clothes, my Lord. And it was smelling really bad, my Lord.*

Q: *So, now it was just him and you in the car, correct?*

A: *Yes my Lord.*

Q: *You are trying to bring him back to Lautoka, correct?*

A: *Yes my Lord.*

Q: *So, you brought him home?*

A: *Yes, my Lord, I brought him home. It was already afternoon, my Lord.*

Q: *Alright. So, what happened when you got home?*

A: *The first thing I did after bringing him home my Lord, I took off his clothes, my Lord. His shirt, when I opened his shirt my Lord, the only thing I could see inside was all black and blue. When I opened the shirt my Lord, I could see all the dried blood on his shoulder and on his chest, bruises were all coloured blue, my Lord. When I took off his trousers my Lord, his under garments my Lord, the chilly seeds were there, my Lord, red and green, my Lord. In his private parts my Lord, all inside his private parts, my Lord. I could only think, how could he that bad, the pain, my Lord. I brought a basin of water my Lord, with Dettol, I tried to clean him my Lord. When I was cleaning him, he was only shouting my Lord. I only wish that after cleaning him I just take him to the Doctor, my Lord. When I took him to the Doctor Michael, my Lord, his surgery was closed. Because every time we used to visit him, my Lord, Dr Michael. He informed me that when he'll open at 7 then to come and see him, my Lord.*

Q: *That evening?*

A: *Yes, same day, my Lord. So, I thought that I just could take him home and make a soup for him, my Lord. To feed him something, my Lord. I made the soup but he didn't eat or drink the soup, my Lord. When Doctor Michael opened the surgery I was the first one to go in with my husband, my Lord.*

Q: *Okay, hold on, hold on. Let's go back to the soup. You saying, he did not eat the soup? Why didn't he eat the soup you prepared?*

A: *He was in so much pain. I tried many times my Lord, to feed him but even did not drink a glass of water, my Lord.*

Q: *Alright, let's go back to Doctor Michael. Yes, there what happened?*

A: *When I took him to Dr Michael, my Lord, Dr Michael examined my husband and he told me to take my husband to Lautoka Hospital, government hospital, my Lord. And then we returned home, my Lord. The reason I came home my Lord, is to take my son because I was only woman and with my husband. We took him by the taxi, my Lord, I did not drive this time, my Lord. The hospital was overcrowded, my Lord. They took him by the bed, my Lord, from the taxi.*

Q: *Okay, okay. Let me take you back, from home, when you first took him to Dr Michael, who helped you take him?*

A: *My son.*

Q: *The first visit to Dr Michael?*

A: *Yes.*

- Q: *The second visit to Dr Michael? At 7?*
A: *My son helped me get him inside the taxi, my Lord, but when we reached the hospital, the Nurse helped us.*
- Q: *No, no, Dr Michael? Dr Michael's nurse?*
A: *Yes.*
- Q: *Okay. She assisted?*
A: *Yes. The Nurse at the Surgery helped my husband, my Lord.*
- Q: *Okay. So, at the hospital now. What happened when you reached the hospital?*
A: *Same time he was taken to the Emergency ward, my Lord. It was crowded my Lord, so the Doctor's made him lie down on one bed and they put on the oxygen, my Lord.*
- Q: *This is the old hospital, correct? Where everyone just, those cubicles?*
A: *Yes.*
- Q: *They put oxygen?*
A: *Yes.*
- Q: *Okay. So, how did he go from there to the Emergency? Your son again, sorry. Samuel, right?*
A: *Yes.*
- Q: *Your son.*
A: *I picked my son from home, my Lord. I went to the hospital by taxi, my Lord.*
- Q: *Ye, alright. So, he's lying down with oxygen on him. Tell me what happened. Carry on?*
A: *I couldn't believe, my Lord, that he would be alright because when I saw him at the Emergency with the Oxygen but the hospital was also crowded, my Lord. And Narend was shouting, my Lord, and he was bit unconscious, my Lord. He was yelling and crying at the same time, my Lord. We waited there for long time, my Lord. They put the heart machine also, my Lord. The Doctors asked me to wait outside, my Lord, and I don't know what the Doctors, they were doing inside.*
- Q: *At that same place where he was lying? That same place? The Emergency?*
A: *I was sitting outside the Emergency ward, my Lord, by the door. There was a bench.*
- Q: *So, when he had just gone in to when the Doctors saw him, how long was this space?*

A: *Approximately 2 to 3 hours, my Lord.*

Q: *Right. So, what happened next?*

A: *The Doctors advised me after 12 my Lord, that they will transfer him to Emergency after examining him for so long, my Lord. When he was admitted my Lord, me and my son we came back home, my Lord.*

Q: *Let's just go back to when you checked his clothes. You were mentioning chillies. Can you kind, can you slowly, where did you find these chillies or pieces of chilly?*

Judge: **Sorry?**

A: *Sir, private part.*

Ms. Motofaga: *I think you talking about the chilly that is not within the pleadings. It's not actually pleaded.*

Mr Naivalu: *It is, my Lord.*

Ms. Motofaga: *So, we going outside of what is actually covered in the pleadings.*

Judge: **It's pleaded.**

Ms. Motofaga: *It is?*

Judge: **Yes, it's pleaded. Have a look at them**

Ms. Motofaga: *I withdraw my objection.*

Judge: **Paragraphs 6 sub-paragraph 3.**

Ms. Motofaga: *I withdraw my objection.*

Judge: **Yes.**

Mr Naivalu: *Thank you.*

Q: *Can you start again? What's that?*

A: *The chillies were all inserted inside his private parts, my Lord, even from his anus and also in the front, the private part. I could only see chillies, my Lord.*

Q: *Okay, where else? One by one.*

A: *The pounded chillies my Lord, I could see the seeds also on his chest also, my Lord, and also in the private areas I have mentioned. And his buttocks were all blue, my Lord. And were all with bruises, my Lord.*

- (17) Since she found his condition very disturbing, about 7.30pm the plaintiff was presented to Dr. Michael T. Nagan for a medical examination. Dr. Michael Nagan had conducted a general physical examination and upon his advice on early Thursday morning, 16th May 2012 the plaintiff was presented to Lautoka Hospital where he was admitted and treated for pneumothorax and fractured 10th rib. He was in hospital for six (06) days. He was admitted to intensive care unit.
- (18) Tara Wati's testimony contains a detailed account of plaintiff's condition and the injuries he had received. (See paragraph (14) and (16) above) The evidence of Mrs Tara Wati lends credence to the plaintiff's evidence that he was beaten up and tortured by the defendants whilst in Nadi police custody.
- (19) Let me now turn to the medical evidence. Dr. Michael T. Nagan, who is a **General Practitioner**, testified under oath on behalf of the plaintiff. He referred to the plaintiff's medical report dated 17th May 2002. He had noted the following injuries;
- ❖ *Bruise on his right shoulder posteriorly.*
 - ❖ *Bruise; approximately 10 cm in diameter on left shoulder*
 - ❖ *2cm diameter bruise anterior left shoulder*
 - ❖ *Linear bruise on his abdomen-approximately 10 cm.*
 - ❖ *Patches and bruises on left upper quadrant.*
 - ❖ *4 linear bruises on his back*
 - ❖ *Both buttocks were bruised.*
- (20) In the medical history, the plaintiff has told Dr. Nagan that he was punched several times. Dr. Nagan told court that after his general physical examination, the plaintiff was sent for chest x-ray because he suspected that the plaintiff might have some injuries to his chest or other internal organs.
- (21) The plaintiff after seeing Dr. Michael Nagan on 15.05.2002 at about 7.30pm, admitted to the Lautoka Hospital in the early hours of 16.05.2002. On examination the following injuries were noted on the plaintiff's body by Dr. Taoi, the **Consultant Surgeon** at Lautoka Hospital.
- A. Multiple bruises on the chest wall.*
 - B. Bruising left shoulder.*
 - C. Bruising on both buttocks.*
 - D. X-ray of the chest-pneumothorax and fractured 10th rib on the left side.*
 - E. Contused orbits.*
 - F. Abrasion right temple.*
- (22) In the medical history, the plaintiff has told the Consultant Surgeon that he was assaulted. Dr Taoi, who treated the plaintiff, was not available to give evidence. He passed away in 2007. The plaintiff led the evidence of Doctor Aktar Ali, the consultant surgeon, Lautoka Hospital. Dr. Ali testified on the contents of the medical report of Dr. Taoi. Dr. Ali said that the bruises (injury **A, B and C** above) appear on the skin could be due to a blow on that area of the body. The bruises on both buttocks could have been caused by blunt force trauma and it is clear to this court that the bruises on both buttocks are consistent with the plaintiff being hit with a wooden duster on his both buttocks repeatedly. The rib fracture (injury **D**) could have been

caused by blunt chest trauma and it is clear to this court that the rib fracture is consistent with the plaintiff being punched on the stomach by the first defendant repeatedly with clenched fists. It appears that the injuries **A**, **B** and **E** are consistent with the plaintiff being punched and kicked with police boot. It is obvious that there is medical corroboration of his allegation. The injury no:- **(A)**, **(E)** and **(F)** are not noted in Dr. Nagan's medical report. I point that Dr. Nagan has not done a full and proper diagnosis because his medical center did not have x-ray facilities. **Moreover, Dr. Nagan is a General Practitioner and not a Consultant.** He sent the plaintiff to Lautoka Hospital for an x-ray. When an x-ray was done at the Lautoka Hospital, it revealed that the plaintiff had not only a broken rib but also three new injuries **(A)** multiple bruises on the chest wall **(E)** Contused orbits **(F)** Abrasion right temple. Dr. Taoi has prescribed pain killers and antibiotics. This would not have been prescribed unless there was significant pain and injury.

By paragraph six (6) of the statement of claim, the plaintiff has pleaded the particulars of assault, torture and inhumane and degrading treatment suffered by him at the hands of the defendants. The defendants complained that the plaintiff has not pleaded in the statement of claim that he was kicked, punched and hit with a wooden duster. In any event, the defendants would not be prejudiced by the lack of particulars of assault, torture and inhumane and degrading treatment the plaintiff suffered at the hands of the defendants because the defendants denied assaulting or causing any injuries to the plaintiff whilst he was in their custody. One word of caution, pleadings in an action are to define the issues between the parties. The pleadings may not do so at all or only imperfectly. As a rule, though, depending on the course of the hearing, that may not matter because the issues become quite plain as the hearing proceeds and no party is put at a disadvantage. See;

- **Gould v Mount Oxide
Mines Ltd
(1916) 22 CLR 490**
- **Fred Wehnreberg v Aminiasi Tuvua & Others**

**Civil Action No.
HBC 0227 of 1996
H.C. Lautoka**

- (23) There are no injuries consistent with the plaintiff being rubbed with chillies. Rubbing of chillies could be an exaggeration. At the most, plaintiff's evidence did constitute an exaggeration. Surely, a distinction between an exaggeration and a lie needs to be drawn. **He certainly sustained some injuries as presented by the two medical reports.** He sustained bruises on the chest wall, shoulder and on both buttocks. He sustained a rib fracture, contused orbit and an abrasion. He had these injuries when he arrived at the Nadi Court in police custody after spending two nights in the Nadi police station. The crucial question is; how did he sustain these injuries? Who inflicted these injuries on his body? **At the pre-trial conference minutes, the defendants admitted that on Monday, 13th May, 2002, the plaintiff was taken into police custody by the first, second and third defendants at the Nadi police station.**

- (24) The first and the second defendant testified under oath. The first defendant said he was the investigating officer in to the complainant of robbery at Vodafone Centre Nadi. He said he met the plaintiff in the charge room of the Nadi police station in the night on the 13th May 2002. He took him to the crime office in the first floor. He questioned the plaintiff regarding the robbery. He said he gave directions to the second defendant to interview the plaintiff and the third defendant to be the witnessing officer. **He said that the second defendant continued with the interview and he was not in contact with the plaintiff thereafter. To put another way, he went out of the existence thereafter.** He deposed in cross- examination that the plaintiff looked healthy and fit when he first saw him in the police station. All that is said is that the plaintiff was not treated with violence.

I confess to a feeling of unease that the first defendant did not give evidence of times and events by referring to the 'station diary'. **He merely said that he was not in contact with the plaintiff because he went out of the existence.** The purpose of the station diary was to record all movements in and out of the station officers and suspects. The diary is an accurate record of movements. The station diary is checked by the Station Officer. The cell book register contains names of persons charged and arrested and locked in the cell. The first defendant in order to establish the accuracy of the matters presented to this court, did not refer to the station diary or cell book whilst he was giving evidence. **What is the evidentiary consequence of this failure?** His failure to refer to station diary and the cell book to establish that he was not in contact after the second defendant took over the interviewing of the plaintiff is a telling factor against his evidence on this point. I am not satisfied on the balance of probabilities that he went out of the existence when the second defendant took over the interview. His failure to refer to the station diary and the cell book whilst giving evidence is not explained. This may lead rationally to an adverse inference that if he had referred to station diary and cell book it would not have helped his case. That is a fact to which this court cannot simply shut its eyes and take refuge in the art of presenting evidence. What more I could say given the total absence of reference to station diary and cell book to establish the accuracy of the movements of the first defendant. I attach no weight to the fact that the first defendant went out of existence when the second defendant took over interviewing the plaintiff. I describe the first defendant as unsatisfactory and evasive witness. I reject his evidence as being untrue. Besides, the first defendant's version that he went out of existence after the second defendant took over interviewing of the plaintiff was not put to the plaintiff when he was under cross examination. No witness should be stabbed from behind. The plaintiff should have a fair opportunity of meeting whatever challenge is offered to his evidence and the substance of any testimony that is to be adduced to contradict it. There is nothing more frustrating to a tribunal of fact than to be presented with two important bodies of evidence which are inherently opposed in substance but which, because **Browne Dunn (1894) 6. R. 67 (H.L)** has not been observed, have not been brought into direct opposition, and serenely pass one another by like two trains in the night.

The established practice is stated briefly by **Odgers, Pleading and Practice 7th ed. (1912), page 312:**

Cross-examination

*“This much counsel is bound to do, when cross-examining: **he must put to each of his opponent’s witnesses, in turn, so much of his own case as concerns that particular witness or in which that witness had any share.** Thus, if the plaintiff has deposed to a conversation with the defendant, it is the duty of the counsel for the defendant to indicate by his cross-examination how much of the plaintiff’s version of the conversation he accepts, and how much he disputes, **and to suggest what the defendant’s version will be.** If he asks no question as to it, he will be taken to accept the plaintiff’s account in its entirety.”*

(Emphasis added)

So, I turn to the second defendant. He was a Detective Constable at that point of time. He said at about 8.20 pm on the 13th May, 2002 he interviewed the plaintiff in relation to the complaint of robbery at the Nadi Vodafone Centre. He said that he partly interviewed the plaintiff and on the following day, that is 14th May, 2002 the plaintiff’s house was searched and nothing was recovered in connection with the alleged robbery. He resumed the interview at about 2.00pm on 14th May 2002. He concluded the interview and the plaintiff was locked up in the cell. He said he did not have contact with the plaintiff after the interview. He deposed in cross examination that when he first saw the plaintiff at the Police Station in the night on the 13th May 2002, the plaintiff looked healthy and well. All that is said is that the plaintiff was not treated with violence whilst in police custody.

- (25) At the pre-trial conference, the defendants admitted that the plaintiff was taken into custody by the 1st, 2nd and 3rd defendants on 13.05.2002. The defendants in their testimony before the court denied the allegation of torture made against them but admitted that on 13.05.2002 the plaintiff was questioned and formally charged with the offense of robbery by producing him before the Nadi Magistrate on 15/05/2002. The second defendant too did not give evidence of times and events by referring to the ‘station diary’. The purpose of the station diary was to record all movements in and out of the station officers and suspects. The diary is an accurate record of movements. The station diary is checked by the Station Officer. The cell book register contains names of persons charged and arrested and locked in the cell. The second defendant too did not refer to the station diary or to the cell book when he was giving evidence. **It undermines his evidence on this point.**
- (26) For the plaintiff, there is the unchallenged evidence of his wife P.W (5) Mrs Tara Wati and the de facto partner P.W (4) (Ms) Amrita that the plaintiff was in good health and there were no injuries on the plaintiff’s body when he surrendered himself to the custody of the Nadi Police Station on Monday 13th May, 2002. At the pre-trial conference, the defendants admitted that on 13th May, 2002 the plaintiff was taken into custody by the first, second and third defendants. The first and second defendant, in cross-examination deposed that the plaintiff was looking healthy and in good physical health when they took him to custody in the evening on Monday, 13th May, 2002.
- (27) There is unquestionable medical report from two doctors, Dr. Michael Nagan and Consultant Surgeon Dr. Viliame Taoi of Lautoka Hospital which clearly refer to serious extent of injuries on the plaintiff’s body. There is unequivocal evidence of

injuries on the plaintiff body when he was brought to Nadi Magistrate in the police custody in the afternoon on Wednesday, 15th May, 2002. There is unchallenged evidence that the plaintiff was detained at the Nadi Police Station before he was brought before the Nadi Magistrate. At the pre-trial conference, the defendants admitted that the plaintiff was taken into custody of 1st, 2nd and 3rd defendants on 13.05.2002 at Nadi Police Station. So therefore, the defendants had complete control over the plaintiff. **When a person is in custody of police or security forces, they have complete control over that person. It is therefore their duty to take proper care of the person to ensure his safety and to see that he remains free from harm until he was set free or at liberty.** The question is, how did the plaintiff sustain injuries while he was in complete control and custody of the defendants? In their testimony before this court, the defendants deposed under cross examination that the plaintiff was looking healthy when they took him into police custody. (See page 117 and 123 of the transcript of evidence). The harsh reality is that the injuries were sustained by the plaintiff after he surrendered himself to the Nadi Police Station and until he was brought before the Nadi Magistrate. There is no evidence whatsoever that during that period the plaintiff had gone anywhere else where he could have possibly sustained these injuries. No explanation was given by the defendants as to how the plaintiff sustained these injuries whilst in their Police custody. The defendants told court that they have no idea as to how the plaintiff sustained injuries. They said that the plaintiff was questioned and later produced before the Nadi Magistrate. As noted, the question is how did the plaintiff sustain injuries when he was in custody and complete control of the defendants? **It is simply left unexplained by the defendants.** There was no reason advanced to explain why plaintiff would make an allegation against the defendants which would be untrue. It is true that the plaintiff has exaggerated in some areas (rubbing chillies). If hot chilli is rubbed on a person's genitalia it can cause inflammation and swelling which will last for few days. There is no medical corroboration of rubbing chillies. **But it is obvious that he received some injuries including a fractured rib as stated in two medical reports.** I note that in cross examination of either the plaintiff, Mrs Tara Wati and (Ms) Amrita, there was no suggestion put to any of them that the plaintiff sustained injuries elsewhere or in any way other than by a police assault. Therefore, it is an inescapable conclusion that the injuries were occasioned by the defendants whilst he was in police custody. Upon a balance of probabilities, such an inference has greater degree of likelihood. I am by no means prepared to accept the version of the defendants that they did not treat the plaintiff with violence whilst he was in police custody. The defendant's evidence on this point is so unsatisfactory and unreliable that a finding ought not to be made, on the balance of probabilities. There are no fundamental inconsistencies and contradictions in the evidence of the plaintiff. When the evidence of the plaintiff is knitted together with the circumstantial evidence of his solicitor Mr. Koya, the plaintiff's wife Mrs. Tara Wati (which lends credence to the plaintiff's evidence) and the two corroborative medical reports submitted does establish on the balance of probabilities that the plaintiff was severely beaten up, tortured and was subjected to inhuman treatment whilst he was in custody of first, second and third defendants at Nadi police station.

- (28) I find as a fact that the injuries were occasioned by the first second and third defendants whilst the plaintiff was in the police custody.

Damages

- (29) I now turn to the question of damages. The plaintiff claims for general damages for pain and suffering. He also claims exemplary and punitive damages for the injuries he suffered whilst being held in police custody by the defendants.

General Damages for pain and suffering

- (30) Apart from presenting the two medical reports, no medical evidence was led by the plaintiff relating to any subsequent consequential ailments as a result of the assault. He makes no claim for continuing pain and suffering or any limitation of life. There is no medical evidence of future pain and suffering or continuing pain and suffering. The nature of the injuries received by the plaintiff becomes important in assessing the quantum of damages to be awarded to the plaintiff.

Pain and Suffering

Although this phrase does suggest a double head of damage, in fact it means no more than the suffering attributable to the injury itself and the consequences flowing therefrom. (Vide; John Munkam¹. See also: **Bresatz –v- Prazibilla**²)

Relevant factors

The factors included in the phrase “injury itself and consequences flow therefrom” may be discerned from decided cases as follows:

- (1) Both past and future pain and suffering

West and Sons Ltd. –v- Sheppard³

- (2) Both the intensity of the injuries and duration

Clark –v- Kramer⁴

- (3) Mental anguish caused by the injuries

Forrest –v- Sharp⁵

- (4) Curtailment of capacity to enjoy life through physical handicaps

Cutts –v- Chumley⁶

In the light of the aforesaid factors, I shall now refer to the nature of the injuries inflicted on and suffering the plaintiff was subjected to.

¹ Damages for Personal Injuries and Death, 3rd ed., 1966 Butterworths

² (1962) 108 CLR 541 at 548

³ [1964] AC 326.

⁴ [1986] WAR 54 at 65

⁵ [1963] 107 SJ 536

⁶ [1967] 1 WLR 742

(31) Let me turn to the medical evidence. Dr. Michael T. Nagan testified under oath on behalf of the plaintiff. He referred to the plaintiff's medical report dated 17th May 2002. He had noted the following injuries;

- ❖ *Bruise on his right shoulder posteriorly.*
- ❖ *Bruise; approximately 10 cm in diameter on left shoulder*
- ❖ *2cm diameter bruise anterior left shoulder*
- ❖ *Linear bruise on his abdomen-approximately 10 cm.*
- ❖ *Patches and bruises on left upper quadrant.*
- ❖ *4 linear bruises on his back*
- ❖ *Both buttocks were bruised.*

Dr. Nagan told court that after his general physical examination the plaintiff was sent for chest x-ray because he suspected that the plaintiff might have some injuries to his chest or other internal organs.

The plaintiff after seeing Dr. Michael Nagan on 15.05.2002 at about 7.30pm, admitted himself to the Lautoka Hospital in the early hours of 16.05.2002. On examination the following injuries were noted on the body of the plaintiff by Dr. Taoi, the consultant surgeon at the Lautoka Hospital.

- A. *Multiple bruises on the chest wall.*
- B. *Bruising left shoulder.*
- C. *Bruising on both buttocks.*
- D. *X-ray of the chest-pneumothorax and fractured 10th rib on the left side.*
- E. *Contused orbits.*
- F. *Abrasion right temple.*

The plaintiff was hospitalized for six (06) days. He was in the Intensive Care Unit.

(32) The plaintiff said in evidence that he lost consciousness in the night on 13.05.2002 and 14.05.2002 intermittingly during the assault due to the infliction of severe physical pain on him. He gave evidence that he was beaten up and tortured in the two nights so badly that he thought he would be killed. The plaintiff must have gone through intense fear for his life during the time of assault. The damages in such a case have to be higher than usual personal injuries suffered in motor vehicle accidents where events occur within seconds and the fear is over. Here the trauma continued for several hours in two nights. This prolonged fear and stress has to be compensated.

(33) It is now well established that previous awards of personal injuries provide a guide and to maintain a level of consistency in awards. However, each case has to be considered in light of the particular claimant and his circumstances⁷.

(34) In **Sashi Prakash v Commissioner of Police and Attorney General**⁸ the High Court awarded a sum of \$42,000.00 for pain and suffering both past and future where a suspect was held in police custody from 7.30pm to 1.30am and suffered seven fractured ribs, four on the right and three on the left. He also had a swollen mouth

⁷ Jovesa Rokobutabutaki and Attorney General of Fiji v Lusiana Rokodovu, ABU 88 of 1998

⁸ HBC 237 of 2001, H.C. Lautoka

and broken dentures and other lesser injuries. There was no evidence of post traumatic disorder.

- (35) In **Yogendran v Chand and Others**⁹, the victim had four fractured ribs and cuts to the inside of his mouth and was hospitalized as a result of being assaulted while being questioned by the police and was awarded \$50,000.00 as damages.

In **Kumar v Commissioner of Police and Another**¹⁰ the victim who had three fractured ribs and a puncture in his left lung and was hospitalized was awarded \$50,000.00.

- (36) In **Taito Navualaba v The Commissioner of Military Forces, The Commissioner of Police and The Attorney General of Fiji**¹¹ Singh J. awarded \$45,000.00 for past and future pain and suffering in a case of brutal assault resulting 47 days admission to the hospital resulting in post-traumatic stress disorder, insomnia and irritability.

- (37) Considering the nature of the injuries suffered by the plaintiff as stated in the two medical reports presented to this court I award FJ\$ 35,000.00 as general damages for past pain and suffering.

Exemplary/Punitive damages

- (38) I need to stress the distinction between aggravated damages and exemplary damages. Aggravated damages are part of compensatory damages paid to the victim of a tort where the manner it was carried out was such as to injure his proper feelings of dignity and pride.¹² Its quantum is consequently higher as it is intended to compensate the victim for the injury to his feelings and not to punish the tortfeasor for his wrongful behavior.

- (39) The *locus classicus* of exemplary damage is the decision of Lord Devlin in the House of Lords in **Rookes v Barnard**¹³ Lord Devlin said there were only three categories of cases in which exemplary damages could be awarded. These were;

- (A) Where there had been oppressive, arbitrary or unconstitutional action by servants of the government.
- (B) Where the tortfeasor's conduct had been calculated to make a profit for him which might exceed the damages payable to the injured party.
- (C) Where exemplary damages are expressly authorized by statute.

Lord Devlin has dealt with it quite extensively in the **House of Lords in Rookes v Barnard and Others** 1964 AC 1129 at 1221-1231.
His Lordship said at p.1131;

⁹ HBC 403 of 2001 (12.04.2005)

¹⁰ HBC 145 of 2003L (17.10.2005)

¹¹ HBC 355 of 2003 (08.08.2008)

¹² Clerk and Lindsell on Torts (19th Ed.)

¹³ (1964) A.C. 1129

“that exemplary damages could be awarded in cases (i) of oppressive, arbitrary or unconstitutional acts by government servants; (ii) where the defendant’s conduct had been calculated by him to make a profit for himself which might well exceed the compensation payable to the plaintiff; (iii) where expressly authorized by statute (post, pp.1226-1227); that in a case in which exemplary damages were appropriate a jury should be directed that only if the sum which they had in mind to award as compensation (which might of course be aggravated by the defendant’s behavior to the plaintiff) was inadequate to punish and deter him, could it award some larger sum (post, p.1228); that the facts disclosed in the summing up showed no case for exceptional damages and possibly none for aggravated damages (post, pp. 1232, 1233); however, the plaintiff could, without any departure from the compensatory principle, invite the jury to look at all the surrounding circumstances and award a round sum based on the pecuniary loss proved (post, pp. 1221, 1233).”

Further down at p.1221

“Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter....”

Sir Thomas Bingham M R in **John v MGN Ltd (T.L.R. 14.12.1995 675 at 677 C.A.)** said:

“The authorities gave judges no help in directing juries on the quantum of exemplary damages. Some such damages, were analogous to a criminal penalty, and although paid to the plaintiff played no part in compensating him, principle required that award should never exceed the minimum sum necessary to meet the underlying public purpose: that of punishing the defendant, showing that tort did not pay and deterring others.”

The Fiji Court of Appeal said as follows in **James Arthur Rennie Borron & Mago Islands Estate Limited v Fiji Broadcasting Commission & Newspapers of Fiji Limited (Civ. Appeal No. 40/81 FCA at p5):**

“Exemplary damages are damages which are awarded to punish a defendant and vindicate the strength of the law. In considering whether exemplary damages should be awarded the Court should ask itself whether the sum it proposes to award as compensatory damages, which may include an element of aggravated damages is adequate in all the circumstances for compensating a plaintiff and also for punishing or deterring a defendant. Only if it is inadequate for the latter purpose should the Court consider awarding exemplary damages.”

Further the Appeal Court stated that **‘exemplary damages or punitive damages are exceptional and only in rare cases they are awarded’**. The Court then referred to the following passages in **Manson v Associated Newspapers Ltd. [1965] 1 W.L.R. 1038** where Widgery J said:

“Of course, a newspaper is always published for profit. It is the purpose of a newspaper to make money and build up circulation. You must not go away

with the idea that because of that any libel in a newspaper is a libel for which exemplary or punitive damages must be awarded. If a newspaper, in the ordinary way of business, publishes news in regard to a particular item and happens to make a mistake, the mere fact that it is publishing for profit does not open the door to an award of exemplary or punitive damages. The only cases (and they must be very exceptional, you may think) in which exemplary or punitive damages are permissible are those cases where the jury, is satisfied that the publication was done with a deliberate, calculated view to making a profit out of that publication and ignoring the fact that damages might be payable because they would be so small, at any rate so small in relation to the potential profit.”

Whether or not to award exemplary/punitive damages?

The guidelines of Lord Reid in **Broome v Cassell & Co. [1972] 2 W.L.R. 645:**

“The only practical way to proceed is first to look at the case from the point of view of compensating the plaintiff. He must not only be compensated for proved actual loss but also for injury to his feelings and for having had to suffer insults, indignities and the like. And where the defendant has behaved outrageously very full compensation may be proper for that. For the tribunal will fix in their minds what sum would be proper as compensatory damages. Then if it has been determined that the case is a proper one for punitive the tribunal must turn its attention to the defendant and ask itself whether the sum which it has already fixed as compensatory damages is or is not, adequate to serve the second purpose of punishment or deterrence. If they think that sum is adequate for the second purpose as well as for the first they must not add anything to it. It is sufficient both as compensatory and as punitive damages. But if they think that sum is insufficient as a punishment they must add to it enough to bring it up to a sum sufficient as punishment. The one thing which they must not do is to fix sums as compensatory and as punitive damages and add them together. They must realize that the compensatory damages are always part of the total punishment”.

- (40) The main purpose of exemplary damages is to punish the defendants.

There is a difference in approach between England and Australia on the issue of exemplary damages. In England Lord Devlin in delivering the judgment in the House of Lords in **Rookes v. Barnard**¹⁴ looked at exemplary damages with disfavor as such damages could confuse the functions of the civil law and criminal law. Therefore, His Lordship confined the award of exemplary damages to three categories. One of the situations for which exemplary damages according to Lord Devlin can be awarded is for oppressive, arbitrary or unconstitutional action by the servants of the state as where police assault a suspect. In Australia to found a claim for exemplary damages the conduct must amount to “**conscious wrongdoing in contumelious disregard of another’s rights**”. This formula was accepted by Knox CJ in **Whilfield v De Lauret & Co. Ltd**¹⁵. Isaac J. explained that exemplary damages are considered “to be punitive for reprehensible conduct and as a deterrent” at p.81. In **Australian Consolidated Press Ltd v Uren**¹⁶ the Privy Council confirmed that this

¹⁴ (1964) 1, ALL ER 36

¹⁵ (1920) 29, CLR 71 at 77.

¹⁶ (1967) 117, CLR 221

expression correctly delineates the defendants' conduct for purposes of award of exemplary damages. Exemplary damages also serve the valuable purpose in restraining the arbitrary and outrageous use of executive power and in vindicating the strength of the law: **Kuddus v. Chief Constable of Leicestershire Constabulary**¹⁷.

- (41) The crucial question whether the defendants' conduct has reached this threshold is a factual one. It really does not matter whether I apply the English or the Australian approach. They both fit the facts of this case.
- (42) The plaintiff surrendered himself to the Nadi Police Station. He was handcuffed and badly beaten by the defendants in two nights. The first defendant threw punches on his stomach with clenched fists and he was hit on both buttocks with a wooden duster. The defendants subjected him to unwarranted indignities. He lost consciousness intermittently during the assault in two nights due to the infliction of severe physical pain on him. He was forced to bath in cold water in the midnight after the beating. As he was drenched in blood, it was an effort by the defendants to wash away the evidence of inhumane treatment complained of. Regardless of how heinous a person's conduct may be, neither the police nor the armed forces have the right to punish a person for such conduct.

The court has a responsibility to ensure that the rights of the individual are respected at all times, but it must be careful also not to hamper the police in their legitimate endeavors to seek out and to identify the criminal. The conduct of the defendants in this case was extraordinarily undignified having no respect to the plaintiff's rights. The defendants had acted maliciously, that is to say, from some motive other than an honest desire to investigate a person whom they suspected to have offended against the state. Malice in this connection does not necessarily connote spite or ill will. The actions of the defendant police officers mock the police motto '*salus populi*'. The words mean that they are the protectors of the people. The plaintiff's claim appears to be a gratuitous exercise of power over the powerless without authority and without responsibility. Besides, it is a naked violation of human dignity and a degradation which destroys, to a very large extent human personality.

In '**Donselar v Donselar**¹⁸ Cooke J said;

"I think that there is a need to have effective sanctions against the irresponsible, malicious or oppressive use of power; and also to maintain a punitive remedy for the common place types of trespass or assault, if accompanied by insult or contumely, which touch the life of ordinary men and women".

- (43) Here the factual matrix places the tortious conduct of the defendants within the first category in **Rookes v Barnard** (supra). This is a proper case for exemplary/punitive damages.

I award the plaintiff a sum of FJ\$ 10,000.00 as exemplary/punitive damages.

¹⁷ (2002) 2 A.C. 122 at 147

¹⁸ (1982) 1 NZLR 97 at page 106.

Constitutional Claim

- (44) The plaintiff is claiming damages for constitutional breaches. Certainly there was no justification for infliction of injury of this nature thus violating the plaintiff's fundamental rights under the constitution. However, the court cannot grant damages twice for the same wrong—one for tort and one for breach of constitutional rights. That would be against the whole object of compensatory damages. Hence, I cannot grant him any damages under this head.

Interest

- (45) Interest was not prayed for in the statement of claim of the plaintiff.
- (46) In Fiji it is well established that interest has to be specifically pleaded to be granted. In **Tacirua Transport Co. Ltd –v- Virend Chand**¹⁹ the award of interest by the High Court was set aside as it was not pleaded. Referring to S.3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act (cap.27) the Court of Appeal stated:

*“This provision must, however, be regarded as subject to the general provision that a claim for interest as for any other relief, must first be pleaded. This was a matter considered by this Court in **Usha Kiran –v- Attorney General of Fiji** F.C. No. 25 of 1989 delivered on 23 March 1990. In that case the Court noted the English rule under which it is mandatory to plead specifically any claim for interest. The Court observed that there was no comparable rule in Fiji, but, following the reasoning in the English Supreme Court Practice White Book”1991 edition para.18/8/10 considered that interest, if sought, be specifically pleaded. That judgment was followed and applied in **Attorney General of Fiji –v- Waisale Naicegulevu** FCA No. 22 of 1989 delivered on 18 May 1990. We see no reason for departing from what is now the established practice of this Court.”*

The decision in **Tacirua Transport Co. Ltd –v- Virend Chand** was followed in **Shankar –v- Naidu**²⁰ and therefore further established the law relating to the granting of interest in that it has to be specifically pleaded to be granted.

Indemnity Costs

- (47) The plaintiff seeks indemnity costs.

I turn to the applicable law and the judicial thinking in relation to the principles governing **“indemnity costs”**.

Order 62, rule 37 of the High Court Rules, 1988 empower courts to award indemnity costs **at its discretion**.

For the sake of completeness, **Order 62, rule 37** is reproduced below.

Amount of Indemnity costs (0.62, r.37)

37.- (1) *The amount of costs to be allowed shall (subject to rule 18 and to*

¹⁹ (1995) 41 F.L.R. 44

²⁰ [2001] FJCA 19; ABU0003U.2001S (18 October 2001)

any order of the Court) be in the discretion of the taxing officer.

The following passage is illuminating;

G.E. Dal Font, on “Law of Costs”, Third Edition, writes at Page 533 and 534;

‘Indemnity’ Basis

“Other than in the High Court, Tasmania and Western Australia, statute or court rules make specific provision for taxation on an indemnity basis. Other than in the Family Law and Queensland rules - which define the ‘indemnity basis’ in terms akin to the traditional ‘solicitor and client basis’ - the ‘indemnity basis’ is defined in largely common terms to cover all costs incurred by the person in whose favour costs are ordered except to the extent that they are of general law concept of ‘indemnity costs. The power to make such an order in the High Court and Tasmania stems from the general costs discretion vested in superior courts, and in Western Australia can arguably moreover be sourced from a specific statutory provision.

Although all costs ordered as between party and party are, pursuant to the ‘costs indemnity rule’, indemnity costs in one sense, an order for ‘indemnity costs’ or that costs be taxed on an ‘indemnity basis’, is intended to go further. Yet the object in ordering indemnity costs remains compensatory and not penal. References in judgments to a ‘punitive’ costs order in this context must be seen against the backdrop of the reprehensible conduct that often justifies an award of indemnity costs rather than impinging upon the compensatory aim. Accordingly, such an order does not enable a claimant to recover more costs than he or she has incurred.”

I will pause here to consider the principles underlying the exercise of the courts discretion when considering whether or not to award indemnity costs.

The principles by which courts are guided when considering whether or not to award indemnity costs are discussed by Hon. Madam Justice Scutt in “**Prasad v Divisional Engineer Northern (No. 02)**”, (2008) FJHC 234.

As to the “General Principles”, Hon. Madam Justice Scutt said this:

- *A court has ‘absolute and unfettered’ discretion vis-a-vis the award of costs but discretion ‘must be exercised judicially’: **Trade Practices Commission v. Nicholas Enterprises** (1979) 28 ALR201, at 207*
- *The question is always ‘whether the facts and circumstances of the case in question warrant making an order for payment of costs*

other than by reference to party and party': Colgate-Palmolive Company v. Cussons Pty Ltd [1993] FCA 536; (1993) 46 FCR 225, at 234, per Sheppard J

- *A party against whom indemnity costs are sought 'is entitled to notice of the order sought': Huntsman Chemical Company Australia Limited v. International Cools Australia Ltd (1995) NSWLR 242*
- *That such notice is required is 'a principle of elementary justice' applying to both civil and criminal cases: Sayed Mukhtar Shah v. Elizabeth Rice and Ors (Crim Appeal No. AAU0007 of 1997S, High Court Crim Action No. HAA002 of 1997, 12 November 1999), at 5, per Sir Mod Tikaram, P. Casey and Barker, JJA*
- *'...neither considerations of hardship to the successful party nor the over-optimism of an unsuccessful opponent would by themselves justify an award beyond party and party costs. But additional costs may be called for if there has been reprehensible conduct by the party liable': State v. The Police Service Commission; Ex parte Beniamino Naviveli (Judicial Review 29/94; CA Appeal No. 52/95, 19 August 1996), at 6*
- *Usually, party/party costs are awarded, with indemnity costs awarded only 'where there are exceptional reasons for doing so': Colgate-Palmolive Co. v. Cussons Pty Ltd at 232-34; Bowen Jones v. Bowen Jones [1986] 3 All ER 163; Re Malley SM; Ex parte Gardner [2001] WASCA 83; SDS Corporation Ltd v. Pasonnay Pty Ltd & Anor (2004) WASC 26 (23 July 2004), at 16, per Roberts-Smith, J.*
- *Costs are generally ordered on a party/party basis, but solicitor/client costs can be awarded where 'there is some special or unusual feature of the case to justify' a court's 'exercising its discretion in that way': Preston v. Preston [1982] 1 AER 41, at 58*
- *Indemnity costs can be ordered as and when the justice of the case so requires: Lee v. Mavaddat [2005] WASC 68 (25 April 2005), per Roberts-Smith, J.*
- *For indemnity costs to be awarded there must be 'some form of delinquency in the conduct of the proceedings': Harrison v. Schipp [2001] NSWCA 13, at Paras [1], [153]*
- *Circumstances in which indemnity costs are ordered must be such as to 'take a case out of the "ordinary" or "usual" category ...': MGICA (1992) Ltd v. Kenny & Good Pty Ltd (No. 2) (1996) 140 ALR 707, at 711, per Lindgren J.*
- *'...it has been suggested that the order of costs on a solicitor and client basis should be reserved to a case where the conduct of a party or its representatives is so unsatisfactory as to call out for a special order. Thus, if it represents an abuse of process of the*

Court the conduct may attract such an order': **Dillon and Ors v. Baltic Shipping Co.** (*The Mikhail Lermontov*) (1991)2 Lloyds Rep 155. at 176, per Kirby, P.

- *Solicitor/client or indemnity costs can be considered appropriately whenever it appears that an action has been commenced or continued in circumstances where the applicant, properly advised, should have known ... he had no chance of success*: **Fountain Selected Meats (Sales) Pty Ltd v. International Produce Merchants Ltd & Ors** [1988] FCA 202; (1998) 81 ALR 397, at 401, per Woodward, J.
- *Albeit rare, where action appears to have commenced/continued when 'applicant ... should have known ... he had no chance of success', the presumption is that it 'commenced or continued for some ulterior motive or ... [in] willful disregard of the known facts or ... clearly established law' and the court needs 'to consider how it should exercise its unfettered discretion'*: **Fountain Selected Meats**, at 401, per Woodward, J.
- *Where action taken or threatened by a defendant 'constituted, or would have constituted, an abuse of the process of the court', indemnity costs are appropriate*: **Baillieu Knight Frank (NSW) Pty Ltd v. Ted Manny Real Estate Pty Ltd** (1992) 30 NSWLR 359, at 362. per Power, J.
- *Similarly where the defendant's actions in conducting any defence to the proceedings have involved an abuse of process of the court whereby the court's time and litigant's money has 'been wasted on totally frivolous and thoroughly unjustified defences*: **Baillieu Knight Frank**, at 362, per Power, J.
- *Indemnity costs awarded where 'the defendant had prima facie misused the process of the court by putting forward a defence which from the outset it knew was unsustainable ... such conduct by a defendant could amount to a misuse of the process of the court'*: **Willis v. Red bridge Health Authority** (1960) 1 WLR 1228, at 1232, per Beldam, U
- *'Abuse of process and unmeritorious behaviour by a losing litigant has always been sanctionable by way of an indemnity costs order inter parties. A party cannot be penalised [for] exercising its right to dispute matters but in very special cases where a party is found to have behaved disgracefully or where such behaviour is deserving of moral condemnation, then indemnity costs may be awarded as between the losing and winning parties'*: **Ranjay Shandil v. Public Service Commission** (Civil Jurisdiction Judicial Review No. 004 of 1996, 16 May 1997), at 5, per Pathik, J. (quoting Jane Weakley, 'Do costs really follow the event?' (1996) NLJ 710 (May 1996)
- *'It is sufficient ...to enliven the discretion to award [indemnity] costs that, for whatever reasons, a party persists in what should on proper consideration be seen to be a hopeless case'*: **J-Corp Pty Ltd v. Australian Builders Labourers Federation Union of Workers** (WA

Branch) (No. 2) (1993) 46IR 301, at 303, per French, J.

- *'... where a party has by its conduct unnecessarily increased the cost of litigation, it is appropriate that the party so acting should bear that increased cost persisting in a case which can only be characterised as "hopeless"... may lead the court to [determine] that the party whose conduct gave rise to the costs should bear them in full': **Quancorp Pty Ltd & Anor v. MacDonald & Ors (1999) WASC101**, at Paras [6]-[7], per Wheeler, J*
- *However, a case should not be characterised as 'hopeless' too readily so as to support an award of indemnity costs, bearing in mind that a party 'should not be discouraged, by the prospect of an unusual costs order, from persisting in an action where its success is not certain' for 'uncertainty is inherent in many areas of law' and the law changes 'with changing circumstances': **Quancorp Pty Ltd and Anor v. MacDonald & Ors [1999] WASC 101**, at Paras [6]-[7], per Wheeler, J.*
- *The law reports are replete with cases which were thought to be hopeless before investigation but were decided the other way after the court allowed the matter to be tried: **Medcalf v. Weather ill and Anor [2002] UKHL 27** (27 June 2002), at 11, per Lord Steyn*
- *Purpose of indemnity costs is not penal but compensatory so awarded 'where one party causes another to incur legal costs by misusing the process to delay or to defer the trial and payment of sums properly due; the court 'ought to ensure so far as it can that the sums eventually recovered by a plaintiff are not depleted by irrecoverable legal costs': **Willis v. Redbridge Health Authority**, at 1232, per Beldam, LI*
- *Actions of a Defendant in defending an action, albeit being determined by the trial judge as 'wrong and without any legal justification, the result of its own careless actions) do 'not approach the degree of impropriety that needs to be established to justify indemnity costs ... Regardless of how sloppy the [Defendant] might well have been in lending as much as \$70,000 to [a Plaintiff], they had every justification for defending this action ... The judge was wrong to award [indemnity costs] in these circumstances. He should have awarded costs on the ordinary party and party scale': **Credit Corporation (Fiji) Limited v. Wasal Khan and Mohd Nasir Khan** (Civil Appeal No. ABU0040 of 2006S; High Court Civil Action No.HBC0344 of 1998, 8 July 2008), per Pathik, Khan and Bruce, JJA, at 11*

Indeed, as was set out in ***Carvill v HM Inspector of Taxes*** (Unreported, United Kingdom Special Commissioners of Income Tax, 23 March 2005, Stephen Oliver QC and Edward Sadler) (Bailii: [2005] UKSPCSPC00468, <http://www.bailii.org/cgibin/markup.cgi?doc=/uk/cases/UKSC/2005/SPC00468.HTML>), **"reprehensible conduct"** requires two separate considerations (at paragraph 11):

"The party's conduct must be unreasonable, but with the further characteristic that it is unreasonable to an extent or in a manner that it earns some implicit expression of disapproval or some stigma."


As I indicated in paragraph (42) and (43) above, the actions of the defendants as servants of the government, had been oppressive, arbitrary and unconstitutional. Besides, the conduct of the defendants had been high-handed, insolent, vindictive or malicious. They had exhibited a 'contumelious' disregard of the plaintiff's rights.

In the light of the above, I have no hesitation in holding that an award of indemnity costs is warranted.

(F) ORDERS

- (i) Judgment for the plaintiff.
- (ii) The defendants to pay FJ\$ 35,000.00 as general damages to the plaintiff for the past pain and suffering. The damages to be paid within (14) days from the date of the Judgment.
- (iii) The defendants to pay FJ\$ 10,000.00 as exemplary/punitive damages to the plaintiff within (14) days from the date of the Judgment.
- (iv) I decline to award damages for the constitutional claim.
- (v) The claim for indemnity costs is allowed.
- (vi) The plaintiff is directed to file and serve his detailed costs for the assessment of indemnity costs before the Master within (14) days from the date of the Judgment.




08/11/2019.
Jude Nanayakkara
[Judge]

At Lautoka,
Friday, 08th November, 2019.