

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

Civil Action No.: HBC 380 of 2015

**BETWEEN** : **MICHAEL SAUDAR SINGH**

**PLAINTIFF**

**AND** : **NAVNIT VISHAL SINGH**

**1<sup>st</sup> DEFENDANT**

**AND** : **RAKESH KUMAR**

**2<sup>nd</sup> DEFENDANT**

Counsel : Plaintiff: Mr D Singh  
: 1<sup>st</sup> Defendant: No Appearance  
: 2<sup>nd</sup> Defendant: Mr R. Dayal  
Date of Hearing : 01.11.19  
Date of Judgment : 20.11.19

**JUDGMENT**

**INTRODUCTION**

1. Plaintiff filed action against two Defendants who were driver and owner of the vehicle FT319 that collided with another vehicle, where Plaintiff was a passenger. The driver who is first Defendant did not file acknowledgment of service or statement of defence or appear in court. Despite interlocutory judgment being served to him he did not appear at hearing. Second Defendant who is the owner of vehicle FT 319 did not give evidence at the hearing. In his statement of defence he had admitted that he was the owner of vehicle registration FT 319 and also that first Defendant was the driver of the vehicle at the

material time of the accident. Plaintiff did not plead in the statement of claim how he is maintaining his claim against second Defendant. Second Defendant should have been struck off from the action if such an application was made as there was no reasonable cause of action pleaded against him. Even at hearing no evidence was given as to vicarious liability, but in the written submission had tried to implicate second Defendant without any evidence and or pleading. It is too late for the Plaintiff to implicate owner of vehicle FT319, without any pleadings and or evidence to support. So no action for damages can be maintained against second Defendant for damages and he is struck off from action. Plaintiff in his evidence stated that motor accident happened due to negligent manner in which first Defendant drove his vehicle registration No FT319. There is interlocutory judgment entered against first Defendant so there is no need of proof of that from evidence. So what remained was assessment of damages against first Defendant.

### **ASSESSMENT OF DAMAGES**

2. Plaintiff was 43 years old when accident happened. He was a passenger in a car that was travelling opposite to the vehicle driven by first Defendant. There is no evidence of contributory negligence.
3. Due to accident he had suffered a fracture in his right foot and Left and left foot dislocation.
4. According to the Plaintiff he was in hospital for seven days. The document submitted as 'Discharge Summary' has no date of discharge recorded. At the time of accident age of the Plaintiff was 43 years old. He said that he was able to walk only after six months.
5. Plaintiff in his evidence stated that he has obtained internationally recognized certificate on electrical wiring and was self-employed at the time of accident. He stated that he was an electrician and was earning a monthly income of about \$250-300 per week.
6. After accident Plaintiff said that his right foot was fractured he said that he was admitted to hospital and treatments were given. He said he could not walk for three months and also he had to stop work for six months.
7. Plaintiff said that due to type of his work that needed climbing as industrial wiring and domestic wiring were the main type of his work. He also said he needed to stand on upright position on ladders as an electrician he could not work as usual after the accident. So he had hired an assistant.
8. Plaintiff's leg was plastered for three months and stated he had a severe pain.
9. He said that for medical expenses he had spent more than \$500.

10. Travelling expense of \$1,000.
11. For Special Damages \$1,500 is granted considering length of time it had taken to heal the injuries.

**GENERAL DAMAGES**

12. Documents 1 in the bundle of documents submitted indicate in brief medication given and the nature and extent of injury of the Plaintiff. Considering that the injury was fracture of right leg and dislocation of left and the time it had taken to heal was more than six months a general award of \$20,000 is awarded. Plaintiff stated in the evidence that he was in pain for over six months and he was confined to bed for three months. Considering the nature of injuries and medication given recorded in 'discharge summary' there is no need to employ any person on full time for his needs. So no award for gratuitous care can be awarded.
13. He also said after the accident he could not walk long distance or stand upright for long time as required in his work as an electrician. He said that he had difficulty in climbing ladders and could not move his body as usual.
14. According to the evidence Plaintiff had some impairment and this is affecting his future income as an electrician. Considering that Plaintiff's age and type of work and earning an amount of \$25,000 is granted as the loss of further earnings. An interest of 3% is granted for general and special damages. The cost of this action is summarily assessed at \$3,000.

**CALCULATION**

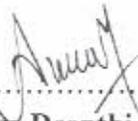
<b>General Damages</b>		
Past Pain and Suffering	\$20,000.00	
Interest of 3% from date of writ to date of trial (9.12.2015 to 1.11.2019)	\$2339.18	<b>\$22,339.18</b>
Special Damage	\$1,500.00	
Interest of 3% from date of writ to date of trial (9.12.2015 to 1.11.2019)	\$175.44	<b>\$1,675.44</b>
Future Loss of earning		\$25,000.00
<b>Total</b>		<b>\$49,014.62</b>

## FINAL ORDERS

- a. Plaintiff is awarded general damages for past loss of amenities of life and pain and suffering of \$20,000 and interest of \$2339.18.
- b. Plaintiff is awarded special damages of \$1,500 and interest of \$175.44.
- c. Plaintiff is awarded loss of future earning \$25,000.
- d. The cost of this action is summarily assessed at \$3,000.

Dated at Suva this 20<sup>th</sup> day of November, 2019.



  
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Justice Deepthi Amaratunga  
High Court, Suva