

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 368 of 2015

BETWEEN

MOHAMMED FAZEEL FAREEK by his mother and next friend
AISHA of Lot 3 Topline, Caubati, Nasinu, Fiji, Tailor.

PLAINTIFF

AND

SAKIT ALI of 38 Davuilevu Housing, Nausori, Fiji,
Bus Driver.

FIRST DEFENDANT

AND

NAIR'S TRANSPORT COMPANY LIMITED, a duly incorporated company
under the Companies Act having its registered office at Lot 81,
9 Miles, Nasinu, Fiji.

SECOND DEFENDANT

AND

ABDL SALMAN KHAN of Lot 26 Topline, Caubati,
Nasinu, Fiji.

AND

THRID DEFENDANT

ABDUL SHAMIM of Lot of Lot 26 Topline, Caubati,
Nasinu, Fiji.

FOURTH DEFENDANT

Counsel : Mr. Prakash R. with Ms. Maharaj K. for the Plaintiff
Ms. Qioninasa B. for the 1st and 2nd Defendants
3rd and 4th Defendant absent and unrepresented

Dates of Hearing : 09th March 2020

Date of Judgment : 30th March 2020

JUDGMENT

- [1] The plaintiff instituted these proceedings seeking the following reliefs;
- a) Special damages in the sum of \$7967.00;
 - b) Damages for loss of amenities of life, costs of future care and treatment and loss of future earnings;
 - c) General damages;
 - d) Interest pursuant to Section 3 of the Law Reform (Miscellaneous Provisions)(Death and Interest) Act 1935;
 - e) Any further or other relief the Court deems just and equitable; and
 - f) Costs.
- [2] The court on 18th April 2016 entered default judgment against the 3rd and 4th defendants.
- [3] At the commencement of the trial against the 1st and 2nd defendant and the hearing of the assessment of damages against the 3rd and 4th defendants the plaintiff moved that the action against the 1st and 2nd defendants be discontinued. The court accordingly discontinued the proceedings against the 1st and 2nd defendants and proceeded to hear the witnesses for assessment of damages against the 3rd and 4th defendants.
- [4] In evidence it was established by tendering the Vehicle Registration Certificate the registered owner of the Car is the 4th defendant.
- [5] It is evident that the plaintiff, at the time of the accident, was a student of the University of South Pacific and was about to be graduated.
- [6] The plaintiff called three doctors to testify at the hearing of assessment of damages and three medical reports were tendered in evidence.

[7] The evidence of the mother of the plaintiff is that the plaintiff needs someone to look after him. On the advice of the doctors she found a job for him in “Digicel” but he could not continue with the employment due to the brain injuries he suffered.

[8] In the report of the St Giles Hospital dated 20th February 2015 it is stated;

The Left Sided Hemiparesis is not treatable with medication both local and overseas. The primary mode of intervention is Occupational Therapy, Physiotherapy and Vocational Rehabilitation. The condition is likely to be permanent though some improvement may occur over time. The examinee will need special support services in his pursuit of further education and in the workplace.

Over the course of assessments, the examinee was assessed as Class 3 (Moderate Impairment) on Activities of Daily Living, Class 4 (Marked Impairment) on Social Functioning, Class 4 (Marked Impairment) on Concentration, Persistence and Pace, and Class 5 (Extreme Impairment) in Adaptation to Complex or Work like Settings.

Over the course of assessments, the examinee was assessed as at 41-50% (any serious impairment in social, occupational or school functioning)

[9] Dr. Savenaca Vakanodo Rusaqoli is a General Surgeon at C.W.M. Hospital. He testified, referring to his report dated 11th October 2013, that he attended to the patient (the plaintiff) and when the plaintiff was admitted with severe head injury and he was unconscious. The C.T. Scan had shown a skull fracture. The plaintiff had later been transferred to Tamavua Rehabilitation Centre.

[10] Dr. Pratima Devi Singh is the Medical Officer In-Charge of the National Rehabilitation Medicine Hospital. Her evidence is that the plaintiff was referred to her Department on 5th June 2020 and he had difficulty in walking and his behavior was aggressive. The doctor also said he did not complain of any pain.

[11] In her report the doctor states:

Neurologic impairment due to alteration in Mental status, and Highest Integrative Function (MSCHIF) - his memory is moderately affected as assessed by Mental Status exam, and moderate abnormalities on neuropsychological testing. Alteration in MSCHIF significantly interferes with ability to assume normal roles = 35%

Upper Extremity Dysfunction - can use the involved extremity for some ADL, can grasp and hold objects with difficulty but has poor digital dexterity of non-dominant upper limb = 15%

Combining 35% + 15% using the Combined Values Chart = 45% Whole Person Impairment

[12] It is important to note that there is not formula to follow in assessing damages for pain and suffering. The court must assess the amount of damages arbitrarily but the assessment must be reasonable.

[13] The plaintiff was 20 years at the time of the accident and he must have someone to look after his for the rest of his life. He had been participating in sports activities. From the medical evidence adduced before the court it appears that the plaintiff needs some assistance in his day to day work. Taking all these factors into consideration the court is of the view that it is reasonable to award \$250,000.00 for pain and suffering and loss of amenities of life.

[14] The plaintiff also claimed damages for future loss of income but no evidence was adduced to establish the claim.

[15] The plaintiff by way of special damages claimed \$7967.00. According to the evidence adduced at the hearing of the assessment of damages the plaintiff has incurred to following expenses:

To fix a hot water shower	-	\$294.00
Taxi fare to go to the hospital	-	\$1440.00

The other expenses for food, diapers etc.	-	\$3714.26
The amount paid to the person who looked after him	-	\$1440.00
To obtain a Police Report	-	\$23.00
To obtain medical report	-	\$57.50

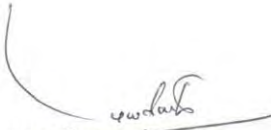
[16] According to the evidence of the plaintiff's mother the total amount incurred by her for the maintenance of the plaintiff after he sustained injuries is \$6968.76.

ORDERS

1. The 3rd and 4th defendants are ordered to pay the plaintiff \$256,968.76.
2. The 3rd and 4th defendants are also ordered to \$10,000.00 as costs (summarily assessed) of this matter.



30th March 2020


Lyone Seneviratne

JUDGE