



arising out of alleged injuries sustained by them in a road accident on 31 October 2013, involving Taxi Registration No. LT-1606 (hereafter referred to as **“the Taxi”**) and Truck Registration No. FW-523 (hereafter referred to as **“the Truck”**).

2. On 7 and 17 March 2016, 1<sup>st</sup> Defendant filed Acknowledgement of Service and Statement of Defence respectively.
3. On 29 March 2016, Plaintiff filed Reply to Statement of Defence.
4. On 18 November 2016 and 20 February 2017, Plaintiffs and 1<sup>st</sup> Defendant filed their Affidavit verifying list of documents respectively.
5. On 22 June 2017, Plaintiffs filed Minutes of Pre-Trial Conference.
6. On 7 August 2017, Plaintiffs filed Copy Pleadings and Summons to Enter Action for Trial which was returnable on 24 August 2017.
7. On 24 August 2017, Order in terms of Summons was made and this matter was referred to a Judge.
8. This matter was called in this Court on 8 December 2017, and adjourned to 24 and 25 August 2018, for trial.
9. Trial concluded on 25 August 2018, when parties were directed to file submissions, which directions they complied with.

### **Background/Undisputed Facts**

10. At the relative time Firstnamed 1<sup>st</sup> Plaintiff was driver of the Taxi and Secondnamed 1<sup>st</sup> Plaintiff and Tanvi Tanisha, 1<sup>st</sup> Plaintiff's daughter were passengers in the Taxi.
11. At the relative time the 1<sup>st</sup> Defendant was the driver of the Truck which was owned by the 2<sup>nd</sup> Defendant.

12. At the relative time 1<sup>st</sup> Defendant was driving the Truck as servant or agent of the 2<sup>nd</sup> Defendant.
13. 1<sup>st</sup> Defendant was charged for the offence of dangerous driving.
14. First Plaintiffs are married to each other.
15. Plaintiffs date of births are as follows:-

Firstnamed1 <sup>st</sup> Plaintiff	:	4 November 1981
Secondnamed1 <sup>st</sup> Plaintiff	:	29 March 1982
Tanvi Tanisha (Minor)	:	13 July 2008

#### **Documentary Evidence as Exhibits**

16. Following documents were tendered in evidence by consent of the parties:-

P1–P26	Documents subject to Agreed Bundle of Documents 24 August 2018.
P27	Medical Report dated 4 April 2018, from Dr Jolyn Buadromo, Valelevu Health Centre in respect to Firstnamed 1 <sup>st</sup> Plaintiff.
P28	Medical Report dated 4 April 2018, from Dr J Buadromo, Valelevu Health Centre in respect to Secondnamed 1 <sup>st</sup> Plaintiff.
P29	Medical Report dated 4 April 2018 from Dr. J. Buadromo, Valelevu Health Centre in respect Tanvi Tanisha.

#### **Plaintiff's Case**

17. Plaintiff's gave evidence themselves and called following witnesses:-
  - (i) Jolyn Buadromo of 65 Ragg Avenue, Namadi Heights, Medical Officer **(PW1)**;
  - (ii) Jale Nawai, PC4113 of Nadi Police Barracks, Nadi, Police Officer **(PW2)**;

18. Plaintiff's Counsel after his opening address called PW1 as Plaintiffs first witness.
19. PW1 during examination in chief gave evidence that:-
- (i) She obtained MBBS Degree in 2014, in 2015 did her internship at CWM Hospital and is currently employed as a Medical Officer at Valelevu Health Centre ("**VHC**");
  - (ii) She knows Plaintiffs from the time Plaintiffs called in at VHC to look for the doctor who examined them on date of accident, whom they were not able to locate;
  - (iii) Rajnesh Prasad said they needed to be reviewed to see how they were doing after the accident;
  - (iv) She then reviewed them (Plaintiffs) and prepared report on 4 April 2018 (Exhibits P27 to P29);
  - (v) Exhibit P26 provides details of injuries sustained by Rajnesh Prasad (Firstnamed 1<sup>st</sup> Plaintiff);
  - (vi) Fracture of the finger has been completely healed and on day of examination he was okay and not in pain.
  - (vii) Since the finger was fractured which resulted in tissues being damaged he cannot use that finger to do what he used to do before the accident;
  - (viii) That could be the reason he complains of pain every now and then;
  - (ix) In her opinion, the pain could be a re-occurring issue for Rajnesh Prasad;
  - (x) Treatment required to deal with his pain would be physiotherapy and for pain relief he would need medications such as Paracetamol non-steroid drugs;
  - (xi) She had nothing else to add in respect to Rajnesh Prasad;
  - (xii) When she examined Rajeshni Ranjeeta Mala (Secondnamed 1<sup>st</sup> Plaintiff) she complained of chest pain, otherwise she looked very comfortable to her;
  - (xiii) Reason for the complaint could be due to muscle pain or infection but there was no history of fever or cough or anything like that;
  - (xiv) She had nothing else to add in respect to Rajeshni Ranjeeta Mala;

- (xv) When she examined Tanvi Tanisha she found her to be very comfortable and did not seem to be in distress;
- (xvi) Muscle pain is normal for children due to overworking the muscle or playing any sports;
- (xvii) In her opinion Tanvi Tanisha had no physical impact and according to initial medical report she did not suffer any physical injury.

20. During cross-examination PW1:-

- (i) In reference to Exhibit P6, P7 and P8 being Fiji Police Medical Examination's Form, stated that she was not sure as to why medical examination was carried out one day after the accident and could not say what was reason for delay.
- (ii) In reference to Exhibit P22 stated that it is possible to have close fracture of fifth finger as a result of a road accident;
- (iii) In reference to Exhibits P28 and P29 stated that there was no sign of physical injury on Rajeshni Ranjeeta Prasad's and Tanvi Tanisha's body.

21. During re-examination PW1:-

- (i) Stated that during examination of accident victims, they look to see if they in distress, check blood pressure/pulse rate/chest and attend to full examination of body from head to toe.
- (ii) Stated that it is possible to have injuries without there being any physical sign of injury.

22. PW2 during examination in chief gave evidence that:-

- (i) He knew Rajnesh Prasad as he attended road accident involving taxi driver by Rajnesh Prasad;
- (ii) He cannot remember if anyone else was in the taxi as he saw the driver;
- (iii) Exhibits P9(A) and P9(B) are photographs of scene of accident whilst exhibits P9(C) is rough sketch plan of the accident scene drawn by him

- (iv) Truck (FW523) shown on sketch plan was going from Nausori to Suva;
- (v) There are two lanes going from Nausori to Suva and the Truck in the rough sketch plan is in between the two lanes;
- (vi) At the time of accident, there was only one lane going from Suva to Nausori but currently there are two lanes on both sides of the road;
- (vii) Exhibits P9(D) and P9(E) are photographs taken on date of accident and these are not showing the Taxi and Truck at point of impact as shown in rough sketch plan as they were taken after measurements were taken;
- (viii) Exhibit P20(A) is Police Report, P(20)(B) is Summons issued to Rakesh Prasad, P20(C) is his statement, P20(D) is Rajnesh Prasad's statement and P20(E) is Record of Interview of Rakesh Prasad;
- (ix) Truck Registration number in Exhibit P20 should have been FW523 and not FN523.

23. During cross-examination PW2:-

- (i) Stated that he attended scene of accident on 31 October 2013, and when he arrived he checked the accident scene and there were casualties but not serious;
- (ii) Stated that Exhibit P5 is Police Report which is dated 5 November 2013, five days after the accident;
- (iii) Stated that Exhibits P20(A) is Police Report prepared on 19 September 2016;
- (iv) Stated that he drew the rough sketch plan (Exhibit P9(C) and the line next to vehicle number on the left hand corner meant, the driver had to sign but there is no signature;
- (v) Confirmed that he said position of Truck in Exhibit P9(K) is not at point of impact and position of Truck in rough sketch plan and Exhibit P9(E) are at different place;
- (vi) Stated that Exhibit P20(B) is Summons with Truck No. as FN523 and he is not aware if the Summons had been amended;
- (vii) Stated that Exhibit P20(C) is his statement which is true and the vehicle number in line 3 and 4 of the statement should be FW523 instead of FN523;

- (viii) Stated that he did not give any statement to Police to rectify the defect;
- (ix) Stated that Record of Interview (Exhibit P20(E) is dated 31 October 2013 and reads question 5 of answer to question 5.
- (x) Stated that he asked Rakesh Prasad if anybody was injured during the accident at question 17 and the owner said “No.”

24. Rajnesh Prasad, Firstnamed 1<sup>st</sup> Plaintiff (hereinafter referred as **“FNFP”**) during examination in chief gave evidence that:

- (i) His occupation on 31 October 2013, was that of taxi driver as he was driving the Taxi which he still drives;
- (ii) At about 3.15pm on 31 October 2013, he was going in the Taxi with his wife Rajeshni Ranjeeta Mala and daughter Tanvi Tanisha who was five(5) years old then, to pick his son from Rishikul Sanatan School;
- (iii) At time of the accident, he was driving along Kings Road to Rishikul from Nausori side towards Suva side;
- (iv) Nausori to Suva road had two lands whilst Suva to Nausori had one lane.
- (v) At time of the accident he was driving the Taxi on the outer lane next to the footpath before the Nasinu Road junction, the Truck hit the Taxi door which made the Taxi swing around three (3) times and hit the wall towards Suva to Nausori side of the road;
- (vi) When the Truck hit the Taxi, the Truck was on the right going from Nausori to Suva and right hand front corner of the Truck hit the Taxi;
- (vii) When the Truck hit the Taxi he automatically left steering wheel, Taxi went forward swung three (3) times and because his seat went back he does not know what happened after;
- (viii) After swinging three (3) times the Taxi hit soft stone and stopped;
- (ix) After the Taxi stopped he tried to open his door but could not do so and he had to come out through the window on driver’s side door;
- (x) After he came out, his wife came out through front passenger side door and took daughter out through driver’s side door window;
- (xi) After the accident, he saw the front right hand door of the Taxi had

- dent and there was dent near rear tyre;
- (xii) State of the Taxi was as shown in Exhibit P9(A) and the Taxi owner came to the scene and took pictures on the same day;
  - (xiii) After the accident his daughter was scared and did not show any sign of injury;
  - (xiv) His wife was scared and standing beside him;
  - (xv) When he pulled his daughter out of the car he saw his hand was swollen and he had to put his daughter down;
  - (xvi) After, he exited Taxi, he called the owner of the Taxi who came with his garage staff;
  - (xvii) Owner of the Taxi saw the vehicle and sent his staff to call the Police, which he think the staff did;
  - (xviii) Police came to the scene of the accident, drew sketch plan and took them to the Police Station where they wrote their Statement;
  - (xix) After that they went home, had shower and slept as they were scared;
  - (xx) They could not sleep whole night because:-
    - (a) His hand and leg was in pain;
    - (b) His wife's ribs was in pain;
    - (c) Daughter's leg and side of head was in pain and she was complaining of pain.
  - (xxi) He did not do anything about the pain and complaints;
  - (xxii) Next morning, they all went to hospital where they were examined and his hand was x-rayed;

***Tanvi Tanisha (Daughter)***

- (xxiii) Doctor examined her and stated that no injury was sustained by her but said she had internal injuries;
- (xxiv) Tanvi complained to him about head and leg pain;
- (xxv) Doctor gave Tanvi Panadol and painkiller which she took;
- (xxvi) Tanvi's pain has improved over time and at time of accident was really painful but now it is okay;
- (xxvii) After the accident Tanvi was scared to travel at night time and after he dropped her to school he would get call around 9.00am to 10.00am from school that she has headache;
- (xxviii) He asked teacher to not let Tanvi take part in outdoor activities;



- (xxix) They took Tanvi to doctor every 2<sup>nd</sup> or 3<sup>rd</sup> day and doctors informed them that they are wasting time and she had no injuries;
- (xxx) Doctors suggested for her to go to Physiotherapist and do swimming exercise which he did not do because it costs money;

***Rajeshni Ranjeeta Mala (Wife)***

- (xxxi) His wife was examined by doctor whose name he cannot recall;
- (xxxii) Doctors did not prescribe any treatment for his wife and gave paracetamol and was sent home;
- (xxxiii) His wife complained to him about pain in her ribs and legs for which she took two (2) paracetamol tablets three (3) times a day;
- (xxxiv) She took painkillers for two (2) months;
- (xxxv) She takes painkillers when in pain during her menses, when she is sick or has pain to her ribs;
- (xxxvi) At time of accident his wife was thirty-one (31) years old.

***Rajesh Prasad***

- (xxxvii) Immediately after accident he had injuries to his finger, shoulders and legs;
- (xxxviii) At the hospital, doctors did x-ray and found that his finger was fractured and his shoulder was injured;
- (xxxix) After 1 November 2013, they visited hospital every 2<sup>nd</sup> or 3<sup>rd</sup> day as his wife and daughter complained of pain;
- (xl) He was not sure as to when he went to Health Centre next after 1 November 2013;
- (xli) His toe is alright but still has pain in his shoulder and finger which is less than what was at time of accident;
- (xlii) Pain to his shoulder and finger was more at time of accident;
- (xliiii) Doctor asked him to attend to Physiotherapy and gave 500mg of Voltaren;
- (xliv) Now he takes 25mg of Voltaren if he has pain which is given free at the hospital;
- (xlv) He did not attend to Physiotherapy because of high cost;
- (xlvi) At time of accident he was driving the Taxi on contract whereby he had to give owner \$250 per week and he used to keep about \$350

- per week for himself;
- (xlvi) After accident he did not drive taxi for three (3) months as his hand was bandaged and he was being reviewed;
  - (xlviii) After three (3) months when he was driving taxi his source of income dropped to half because he had pain when he was driving which made him come home early;
  - (xlix) Drop in his income lasted for two (2) years when he drove with his hand in bandage;
  - (l) Before accident he drove taxi till late but now he cannot do so as his hand pains;
  - (li) Before accident he played soccer and played for Waidamudamu Sanatan Team;
  - (lii) After accident he is not able to play soccer, gained weight and affected his physical relationship.

***Tanvi Tanisha***

- (liii) Cannot play outside with her brother and cries at night because of pain in her head.

***Rajeshni Ranjeeta Prasad***

- (liv) Before accident his wife use to do house work like making roti, and was planting/selling flowers.
- (lv) After accident for two (2) months she was unable to make roti or do house work which they had to do themselves.
- (lvi) She is but okay now but unable to do gardening by planting plants such as chilly, eggplant, and pot plants (flowers).
- (lvii) She does not do any activities now.
- (lviii) Before accident she would earn income from this activity which was about \$500 per month. His wife has not earned any income after the accident.

25. During cross-examination FNFP:-

- (i) Stated that on date of accident he left home at 3.10pm to pick his son from school and accident took place at 3.15pm;

- (ii) Stated that he stays at Naulu, Nakasi and distance between his home and place of accident is about 4km;
- (iii) Stated that at the time of accident he was travelling at 50km/hr and did not exceed that speed at any point;
- (iv) Confirmed giving statement to Police on 31 October 2013, (Exhibit P20(D) which is signed by him;
- (v) In reference to line 14 to 32 of Exhibits P20(D) when it was put to him that in front of his taxi, **was taxi, then a bus and then the Truck he denied and stated that there was a bus, after that the Truck**, after that a taxi and then his taxi;
- (vi) Stated that road markings was being carried on the outer line but at time of accident road marking truck was parked;
- (vii) Stated that he was travelling at normal speed because at that time they passed Laqere Village which is 50km/hr zone;
- (viii) After road marking, taxi in front of him and he indicated to move into outer lane which they did and at that time he was traveling at 50km/hr;
- (ix) At some point he was going past the Truck;
- (x) Agreed when it was put to him that if he was travelling at 50km/hr then the Truck must have been travelling at 50km/hr as well;
- (xi) When it was put to him that according to driver of the Truck, when he indicated to move into outer lane road was clear, he stated that they were following truck for long and never saw truck indicating;
- (xii) When it was put to him that it took him five minutes to drive from home to Nasinu Road because he was speeding at that time he denied it and stated that he stopped at Laqere Traffic lights;
- (xiii) Stated that estimated distance from Laqere traffic light to point of impact is about 400m;
- (xiv) Stated that if he was speeding then he would have passed the Truck and accident would not have taken place;
- (xv) Stated that when he came out of the Taxi he took his wife and daughter out and then he saw damages sustained by car;
- (xvi) When it was put to him that injury to his hand could have been exaggerated when he lifted his daughter out of the car he stated that his hand was already swollen.
- (xvii) Agreed that at that time he went to Police Station and informed Police

Officer that there were no serious injuries.

- (xviii) Stated that Truck driver's staff came and dropped him home and after going home he had shower and slept.
- (xix) Stated that they went to hospital for medical the next day and were examined after 5.00pm.
- (xx) Stated that they went to hospital in the afternoon on the next day because they did not have transport and waited for his cousin to return from work.
- (xxi) When asked why he did not call his boss for him to take them to hospital, he stated that his boss did not drop him home after accident then why would he pick them up.
- (xxii) Stated that he visited hospital many times after accident.
- (xxiii) When asked if he has any evidence to substantiate his claim he stated that his hospital folder has changed and they write in book.
- (xxiv) Agreed that him, his wife and daughter visited Valelevu Health Centre on 4 November 2018.
- (xxv) Agreed that Medical Officer gave evidence that she examined him and his physical condition is normal.
- (xxvi) When it was put to him that he told Court he has pain in finger, toe and shoulder, he stated that his finger is still paining, there is no pain in his toe and his shoulder pains sometimes.
- (xxvii) Agreed that Medical Officer's evidence is that his wife's condition is normal and he is saying she has chest pain.
- (xxviii) Agreed that Medical Officer stated that Tanvi's leg pains when she plays or runs a lot.
- (xxix) When it was put to him that Medical Officer says she is normal and he says she has pain and headaches and stated she still has pains.
- (xxx) Stated that in 2013, he earned \$350 per week and his wife earned \$500 per month.
- (xxxi) Agreed that he said Doctor gave them nothing other than Voltaren and Panadol.
- (xxxii) When it was put to him that his wife's pain is not related to the accident he stated that before she was normal.
- (xxxiii) Stated that he started driving taxi after three (3) months after the accident.
- (xxxiv) Stated that it took almost one (1) year to get the taxi repaired but the

owner bought new car which owner kept for himself.

26. During re-examination FNFP:-

- (i) Stated that owner bought new vehicle and he continued driving same taxi three (3) months after the accident.
- (ii) Stated that when he came to Laqere Traffic lights it was red and there are two lanes at this Traffic light.
- (iii) Stated that at the Traffic lights his taxi was next to centre line and was second in line and in front of the Taxi was the Truck.
- (iv) Stated that a bus was parked on the outer lane with another taxi behind it.
- (v) Stated that road marking truck was parked on the other side of the road with cones placed around it.
- (vi) Stated that road marking was done after a bus stop past the Traffic lights.
- (vii) When the Traffic lights went green bus went first, after which the truck went and then another taxi and then his taxi merged in one lane.
- (viii) Stated that after travelling for about 300m, they were going from inner lane to outer lane.
- (ix) Stated that taxi in front of his taxi moved into the outer lane and the Truck was in the inner lane.
- (x) Stated that distance between his taxi and taxi in front was about 2 car lengths.
- (xi) Stated that taxi in front went past the Truck.
- (xii) Stated that according to his knowledge, at that time of accident he went past the Truck.

27. Rajeshni Ranjeeta Mala, the Secondnamed First Plaintiff (“**SNFP**”) during examination in chief gave evidence that:-

- (i) On 31 October 2013, there was a collision between the Taxi and the Truck when her husband was driving the Taxi with herself and her daughter being passengers in the Taxi.
- (ii) Prior to accident, the Taxi was going on outer lane whilst the Truck

- was on inner lane and when the Taxi passed the Truck it came towards the Taxi and bumped driver's side door of Taxi which made the Taxi go in the front and after that the Truck hit near the rear tyre.
- (iii) After that impact, the Taxi swung three (3) times and went on the other side of the road, hit the soft stone and stopped.
  - (iv) After the Taxi stopped her husband went out of the Taxi through driver's side window and asked if she was okay when she replied she was.
  - (v) She then took off her seatbelt, went outside and stood beside her husband.
  - (vi) Then her daughter shouted and was pulled out by her husband through driver's side front window.
  - (vii) Exhibit P9(B) is the picture of the Taxi taken after the accident.
  - (viii) When accident took place her daughter Tanvi Tanisha was tumbling at the back on both side of legs and head.
  - (ix) From next day they used to carry her to washroom and feed her because she was not able to do it on her own.
  - (x) They took her to doctor next day at about 8.00pm when they gave Panadol and recommended that she be taken for physiotherapy which they did not do because of cost involved.
  - (xi) After that, they took her to hospital every time she complained of head or leg pain.
  - (xii) Her condition (pain) improved over time but not completely and when she **plays a lot** with her brother she complains of leg pain, when she uses Vicks or Zandu and cloth soaked in warm water to relieve the pain.
  - (xiii) Prior to accident she was normal but now complains of leg pain when she plays and after they drop her at school, they receive call from her teachers that she is complaining about headache which happens mostly when it is cold.
  - (xiv) They advised her teachers to keep her inside the room during recess and lunch break.

**Rajnish Prasad (Husband)**

- (xv) Immediately after the accident she observed that her husband was shocked.

- (xvi) Her husband received injuries to his left hand (little finger), right toe, scratches on leg, injury to right shoulder and chest.
- (xvii) Next day when they went to hospital, doctor told him that his left little finger was fractured which was then put in plaster.
- (xviii) His left finger was in plaster for two (2) months and when he was referred to CWM Hospital, doctor told him that that injury will be there for lifetime.
- (xix) He is not able to do hard work and as he tries to put power his hand starts to pain.
- (xx) Before the accident her husband could do gardening, socializing, play soccer.
- (xxi) After the accident he couldn't drive taxi for long and almost two (2) years he drove taxi with his hand bandaged.
- (xxii) Their physical relationship has been affected because of injury in his hand and she had to take care of him.

**Rajeshni Ranjeeta Mala**

- (xxiii) Immediately after accident she suffered injury to her ribs and leg.
- (xxiv) She saw the doctor next day at 8.00pm who gave painkillers (Ibuprofen and Paracetamol Tablets).
- (xxv) After that day she saw doctors whenever she was in pain.
- (xxvi) When she saw doctor for the pain they recommended that she see physiotherapist which she did not do because of costs.
- (xxvii) After the accident she started feeling weak and for first two (2) months she could not make roti.
- (xxviii) Her weakness has improved but in cold weather she feels pain.
- (xxix) Before the accident, she would finish her housework quickly but now it takes time and she used to sell pot plants and did gardening which she completely stopped.
- (xxx) She completely stopped selling pot plants/gardening because she had to take care of husband and daughter and was not able to buy buds for pot plants.

28. During cross-examination SNFP:-

- (i) Confirmed that accident took place on 31 October 2013, and they

went to see doctor the next day.

- (ii) Stated that delay in seeing the doctor was due to there being no transport, they were in shock and Truck driver's staff dropped them home after the accident.
- (iii) Stated that taxi fare from their home to Valelevu Health Centre is \$10.
- (iv) Stated that her husband's cousin came back from work and went to their place at around 7.00 or 7.30pm and took them to hospital.
- (v) Stated that her understanding of what is stated at Part D(15) of Exhibit P7 is that Doctor says there is no follow up for medical.
- (vi) Stated that after 1 November 2013, she went to see doctor for which there was no evidence in Court because before Valelevu Health Centre had folders but now they write in book.
- (vii) Agreed that medical reports being (Exhibit P28) was prepared after she was examined which says that her physical examination is normal and her vitals are stable.
- (viii) Confirmed that medical report is true report.
- (ix) Stated that she has not visited any other clinic besides Valelevu Health Centre.
- (x) Stated that she said her husband started working after three (3) months from date of accident.
- (xi) Stated that during that period her sister, who worked in a Bank supported them.
- (xii) Agreed that it was possible for her daughter to have pain while playing outside.
- (xiii) When asked as to where in medical report (Exhibit P27) it says that her husband has lifetime injury and is to refrain from doing housework she stated that it is not written.
- (xiv) When it was put to her that she was exaggerating hers, her husband's and her daughter's injury she stated that they can feel pain and her husband's finger is still in pain.

29. During re-examination SNFP:-

- (i) Stated that when they take Tanvi out at night she gets scared when she sees big vehicles and she was not like this before the accident.
- (ii) Stated that her sister helped them by taking them to hospital, buying



groceries and given a loan of \$2,000.00 which they said they will pay once her husband started working.

(iii) Stated that the said loan has not been paid in full.

30. Tanvi Tanisha during examination in chief gave evidence that:-

(i) She goes to school and is in Class 4.

(ii) She remembers accident on 31 October 2013, in which she was involved and suffered injuries to her head and leg.

(iii) Immediately after the accident her injuries were worse as she was in lot of pain.

(iv) She suffered injury to both side of her head and right shin.

(v) She did not see doctor immediately after the accident.

(vi) As for now, when it gets cold it starts paining and after she goes to school her head starts paining which happens when it is really cold.

(vii) She has pain when she plays a lot.

(viii) After injuries she has not been travelling at night as she hardly does travelling with her father and most of the time she stays with her mum.

31. During cross-examination Tanvi Tanisha:-

(i) Stated that she is in Class 4 at Rishikul Primary School which class has 34 students and her favourite subjects are English and Maths.

(ii) Stated that she last sat for examination was Monday/Tuesday last week and she does not have her result with her.

(iii) Stated that she likes to play rugby and cannot kick rugby ball.

(iv) Stated she does not like to play any other sports and stays in her classroom.

(v) Stated that she likes to play with her brother but cannot play now.

(vi) Stated that she played hee with brother but cannot play now.

(vii) Stated that she cannot remember when she last missed school.

(viii) Stated that she likes going to school and sometimes she misses school.

(ix) Stated that her dad takes her to school and picks her after school.

## **Defendant's Case**

32. 1<sup>st</sup> Defendant during examination in chief gave evidence that:-

- (i) He has been employed by Fiji Ports Authority for more than two (2) years and prior to that he was employed by 2<sup>nd</sup> Defendant for ten (10) years as a driver for ten wheeler prime mover.
- (ii) He has been driving since he was 17 years old and in 2013, he was driving 10 wheeler prime mover.
- (iii) He started driving truck during his early twenties.
- (iv) In Defendant Company he usually drove fuel supply trucks and mostly between Labasa, Savusavu, Taveuni and Suva and he usually drove for 8 hours.
- (v) Sometimes he would do night shifts.
- (vi) He recalled that on 31 October 2013, at around 3.15pm he was driving 10 wheeler prime mover registration FW523 from Nausori to Suva to have trailer fitted at the terminal.
- (vii) From Laqere junction there are two lanes on way to Suva.
- (viii) He was all alone and driving at 45km/hr on the right side lane.
- (ix) Truck has two side mirrors with top one is used to see at a distance and bottom one is used to see at bottom side.
- (x) While travelling at 3.15pm on that day he saw on right hand side mirror and saw traffic behind the Truck.
- (xi) He wanted to move the Truck to the left side and saw a taxi pass by.
- (xii) He wanted to turn the Truck to the left side and saw on the left side mirror that left side was clear.
- (xiii) After that he gave trafficator and was turning left when a taxi came very fast in front of the Truck from left side.
- (xiv) After that the Taxi went to back of the Truck and went on the other side of the road.
- (xv) He stopped the Truck and went to see the Taxi and see if anyone got injured.
- (xvi) Exhibit P9(C) shows the road and the Truck and point of impact is where the Truck is shown.
- (xvii) Asked driver of the Taxi, wife and daughter if they got injured and

they said "No".

- (xviii) They then called Police and he is not aware as to what time Police Officer came.
- (xix) After Police Officer came he took measurements, asked him to park his truck on the left side and he parked the Truck as shown in Exhibit P20(E).
- (xx) The Taxi Driver, Police Officer and him went to Police Station in the Truck.
- (xxi) At the Police Station, Police Officer took his statement together with that of the Taxi Driver, his wife and daughter.
- (xxii) After that Police Officer asked the Taxi Driver, his wife and daughter if they need medical and they said they not injured.
- (xxiii) He was not asked about medical check-up.
- (xxiv) Police Officer released him and the Taxi Driver and family said they would go home by bus.
- (xxv) He then called his boss to have them dropped home and then his boss sent van with lady driver who dropped the Taxi driver, his wife and daughter at 9 miles.
- (xxvi) After the accident he continued working for 2<sup>nd</sup> Defendant and left that Company in 2015 and joined Fiji Ports Authority.
- (xxvii) From date of accident until now he has not been involved in any road accident.

33. During cross-examination 1<sup>st</sup> Defendant: -

- (i) Agreed that on 31 October 2013, the Truck was on inside lane at the Traffic lights.
- (ii) Disagreed that truck size of his Truck should always be on outer lane.
- (iii) Agreed that after the Traffic lights turned green he stayed in same lane for about 400m and just before the accident a white taxi passed him.
- (iv) When asked if the Taxi was only two (2) car lengths behind the taxi that passed he stated that after white taxi passed he saw the left side mirror, saw it clear, gave trafficator to turn left and when turned a bit towards outer lane the Taxi came in front.
- (v) Stated that he is now aware how the Taxi came in front.

- (vi) Agreed that front of the Truck (bumper) hit the driver's side front door of the Taxi and then Taxi came in front when place near rear tyre of the Taxi was hit.
- (vii) Agreed that after the first contact the Taxi spun around.
- (viii) In reference to Exhibit P5 under the heading "Police Section" agreed that Police Officer told him that he could be charged for the event arising out of accident and in 2016, he received Summons for offence of dangerous driving.
- (ix) Stated that he did not see the Taxi driver next day.
- (x) Stated that he had the Taxi driver's contact, who he called on following day to check on their condition when the Taxi driver told him that he was fine and everything was okay.
- (xi) Stated that he does not know that the Taxi driver, his wife and daughter did medical on 1 November 2013.
- (xii) Stated that he does know the Taxi driver's family and is not in regular touch with them.
- (xiii) When it was put to him that they suffered injuries which affects them today he stated that he does not know and all he knows is that there was no injury with no medical done.
- (xiv) Agreed that he does not have any medical training.

34. During re-examination 1<sup>st</sup> Defendant:-

- (i) Agreed that at Traffic lights he was at centre lane and he continued to drive on right lane.
- (ii) Stated that reason he drove in inner lane is that it takes time to pull.
- (iii) Stated that he decided to pull into left (outer) lane because he saw traffic was behind him with left lane being clear.

### **Issues for Determination**

35. Issues that need to be determined are:-

- (i) Whether First Defendant owed duty of care to the Plaintiffs;
- (ii) If so, Whether First Defendant breached duty of care owed to the Plaintiff;

- (iii) Whether Second Defendant is vicariously liable for First Defendant's negligence;
- (iv) Whether Plaintiff was contributory negligence?
- (v) Whether Plaintiff suffered loss and damage as a result of the injuries sustained in the accident? If so, then what is the quantum of Damages?

**Whether First Defendant owed duty of care to the Plaintiff?**

- 36. It is trite law and well established that a road user owes a duty to other road users whether it be other drivers, passengers, pedestrians, joy riders and he/she is not to be negligent.
- 37. It is undisputed fact that the 1<sup>st</sup> Defendant was driving the Truck at the time of accident.
- 38. 1<sup>st</sup> Defendant as driver of the Truck owed duty of care to the Plaintiffs.

**Whether First Defendant Breached The Duty Of Care Owed To The Plaintiff?**

- 39. After carefully analysing the oral evidence, demeanour of witnesses and the documentary this Court makes following findings:-
  - (i) The accident took place on 31 October 2013, between 3.15pm and between the Taxi driven by FNFP and the Truck driven by 1<sup>st</sup> Defendant at the material time.
  - (ii) At the Laqere Traffic lights the Taxi was parked behind a white taxi, in front of white taxi was the Truck and in front of the Truck was a bus. These vehicles were all in the inner lane at this time.
  - (iii) After travelling for about 300m from traffic lights the Taxi and white taxi took the outer lane.
  - (iv) White taxi passed the Truck and whilst the Taxi driven by FNFP was about to overtake the Truck, attempted to turn into the outer lane and hit the Taxi on the driver's side front door.

- (v) 1<sup>st</sup> Defendant turned into outer lane without keeping a proper look out and without being aware that the Taxi is on the outer lane.
- (vi) The Taxi was travelling at about 50km/hr and the Truck was travelling at the same or below that speed limit.
- (vii) The Taxi then swung three (3) times and stopped on the other side of the road after hitting soft stone wall as shown in Exhibit P9.
- (viii) Court does not accept that 1<sup>st</sup> Defendant indicated that he will turn into the outer lane.

40. This Court therefore finds that 1<sup>st</sup> Defendant breached his duty of care owed to the Plaintiff and that is required of a prudent driver under the circumstances of the case.

#### **Whether Plaintiff Contributed To His Injuries?**

41. On this issue I adopt the following statement from **Gani v. Chand** [2006] FJCA 65; ABU 0117.2005 (10 November 2006) with approval:-

***“The basic principle of contributory negligence is that, when a court is awarding damages to the plaintiff for injuries caused by the defendant, it may reduce the award if the plaintiff can be shown to have contributed to the injury by some negligence on his part. However, whilst the liability of the defendant arises from a duty towards the plaintiff, the assessment of contributory negligence is not based on a similar duty on the plaintiff towards the defendant.”***

- 42. 1<sup>st</sup> Defendant claims that Plaintiff drove at high speed and came very fast.
- 43. FNFP’s evidence was that after they left Laqere Traffic lights he was driving at around 50 km/hr which this Court has no reason to doubt.
- 44. 1<sup>st</sup> Defendant’s evidence was that he was driving the Truck at around 45 km/hr.

45. It is therefore apparent that 1<sup>st</sup> Defendant was driving the Truck slower than the Taxi.
46. This means that there was nothing stopping the Taxi to go past the Truck when it was going at the speed of 50 km/hr which was the normal speed.
47. This Court finds that FNFP in no way contributed to his or his passengers injury from the accident.

**Whether Second Defendant is Vicariously liable for First Defendant's negligence?**

48. There is no dispute that at time of accident 2<sup>nd</sup> Defendant was the owner of the Truck with 1<sup>st</sup> Defendant being employed by 2<sup>nd</sup> Defendant at the material time.
49. This Court notes that 2<sup>nd</sup> Defendant chose not to file Statement of Defence and take part in this proceeding.
50. This Court has no hesitation in making a finding that 2<sup>nd</sup> Defendant is vicariously liable for the negligence of 1<sup>st</sup> Defendant.
51. This Court finds 2<sup>nd</sup> Defendant vicariously liable for 1<sup>st</sup> Defendant's negligence.

**Whether Plaintiff suffered injuries as a result of the accident and if so, then what is extent of such injuries?**

52. On day of accident Plaintiffs did not attend medical examination as they felt they did not receive any injuries.
53. Court accepts 1<sup>st</sup> Defendant's evidence after the collision when he went to see Plaintiffs and asked them if they have any injuries and Plaintiffs response was that they did not receive any injury.

54. Plaintiff felt that pain after they went home which resulted in them going for medical examination the next day at around 7.30pm.
55. After the medical examination the medical officer who examined them made following finding:-

**Rajesh Prasad - Exhibit P6**

- (i) Abrasions on right shin, right ankle and big toe.
- (ii) Tender, swollen left 4<sup>th</sup> and 5<sup>th</sup> finger
- (iii) Pain in and slightly decreased range of motion of right shoulder.

**Rajeshni Ranjeeta Mala - Exhibit P7**

No obvious visible sign of injury.

**Tanvi Tanisha - Exhibit P8**

- (i) Nil obvious visible sign of injury.
- (ii) Complaining of body pains but no visible marks noted.

56. SNFP's evidence was that she had pains in her ribs and chest and her daughter Tanvi Tanisha tumbled in the Taxi after the Taxi swung three (3) times which resulted in Tanvi hurting her head and leg.
57. Even though Rajeshni Ranjeeta Mala and Tanvi did not receive any physical injury, they have some discomfort and very slight injury to their body because of the accident.
58. This Court accepts that Rajesh Prasad (FNFP) fractured his little finger, had swollen hand which affected his right shoulder and had abrasions to his right shin, ankle and toes.
59. This Court finds that those injuries were caused as a result of the accident.



## **Damages**

### **Special Damages**

60. Plaintiffs have claimed for Medical Expenses, Travelling expenses, Medical Report, Police Report, Police Report and Medicine in the Statement of Claim.
61. This Court states in no uncertain terms that special damages in respect to personal injury claim is not liquidated amount and needs assessment by Court after considering the evidence produced at trial. Hence, even if Plaintiff stated specific amount for each special damages claimed it is up to Court to assess the amount of special damages.

### **Medical and Transport Expenses and Medicine**

62. Plaintiffs claim \$520.00.
63. SNFP's evidence was that taxi fare from their home to Valelevu Health Centre is \$10.00.
64. There is no evidence that Plaintiff attended regular clinics in respect to injuries sustained during the accident.
65. Also FNFP's evidence that the painkillers such as Voltrane, Paracetamol and Panadol was given free by the hospital.
66. In view of what is stated above Court awards \$100.00 for medical and travel expenses.

### **Medical and Police Report**

67. This Court awards \$62.00 as cost for the Reports claimed by Plaintiffs.

### **Loss of Income Past**

68. Even though FNFP's and SNFPs evidence was that he FNFP did not work for three (3) months after the accident income reduced to half, they have not claimed for loss of income and provided particulars of such loss in Statement of Claim. As such loss of past income is now awarded.

69. Since the special damages was incurred by FNFP, the sum of \$162.00 is to be paid to him.

### **General Damages**

70. Plaintiffs claim for pain and suffering, loss of amenities of life and loss and damages.

### **Pain and Suffering**

71. Plaintiffs relied on following cases:-

- (i) **Marika Lawanisavi and Isei Ravisivi v. Pesamino Kapieni** Civil Appeal No. ABU0049/98S
- (ii) **Prakash v. Khan** [2009] FJHC 160
- (iii) **Ashish Mudliar v. Rajesh Rama & Ors.** [High Court Civil Action No. 3 of 2012]
- (iv) **Sarojini Devi & Ors v. Vidya Wati** [Civil Action 462 of 2002]
- (v) **Dinesh Kumar v. John Elder** C.A. 560/95(S)
- (vi) **Kumar v. Laisike** [1999] FJHC 170; HBC 216.1996 (29 November 1999)
- (vii) **Deo v. Kumar** HBC 037 of 2008

72. **Ravisivi's** case, the Appellant/Plaintiff suffered from a wedge compression fracture of the 12<sup>th</sup> thoracic vertebra, was admitted for almost 8 days during which period he was confined to bed. High Court awarded Plaintiff \$40,000.00 for general damages which was reduced to \$25,000.00 by Court of Appeal.

73. In **Prakash v Khan (ante)** the Plaintiff suffered fracture of left inferior pubic ramus and superficial abrasion over his right shoulder. Plaintiff was admitted for two (2) days and treatment was bed rest, analgesia and physiotherapy. Plaintiff was awarded \$30,000.00 for pain and suffering.

74. In **Mudaliar's** case, the Plaintiff sustained a right comminuted closed midshaft femur fracture which required skin traction and insertion of rod.

The rod was removed after 13 days. The Plaintiff being a young person was awarded \$60,000.00 for pain, suffering and loss of amenities of life.

75. In **Devi's** case the 1<sup>st</sup> Plaintiff first suffered from complete loss of her flexor compartment of muscle; radial artery, ulna artery and nerves from mid-forearm down to the wrist. 1<sup>st</sup> Plaintiff's forearm bones were exposed and there was no fracture. 1<sup>st</sup> Plaintiff was admitted at the hospital for 11 days. 1<sup>st</sup> Plaintiff was awarded \$80,000.00.

2<sup>nd</sup> Plaintiff being four (4) years old at time of accident suffered from closed fracture of the third metacarpal bone on the right hand with foreign bodies in the left and right distal forearm. 2<sup>nd</sup> Plaintiff was admitted for 22 days. 2<sup>nd</sup> Plaintiff was awarded \$10,000.00.

3<sup>rd</sup> Plaintiff suffered no bone injury compared to other two Plaintiffs. Court found that he suffered from pain and his studies at school was affected due to accident and had undergone emotional psychological trauma. 3<sup>rd</sup> Plaintiff was awarded \$7,500.00.

76. In **Prakash v Parma** the Plaintiff suffered from fracture of left ankle, his left leg was shortened by approximately 2cm and walks with a limp. Plaintiff was awarded \$45,000.00.

77. In **Kumar's** case the Plaintiff had pieces of glasses in her eyes, some of which were taken out on date of accident and some later. A large piece of glass was taken out of her eyes some two (2) years later. Court found that Plaintiff suffered a great deal of pain at the time of accident. Court awarded Plaintiff \$10,000.00.

78. In **Deo's** case Plaintiff suffered with lacerations to her skin over her calf muscle with skin loss had split skin graft and walked with an abnormal gait. Plaintiff was admitted for a month. Plaintiff was awarded \$40,000 for pain and suffering and loss of amenities of life.

79. In this instant Court will look at each Plaintiff's case separately as the injuries sustained by them are not the same.

**Rajnesh Prasad (FNFP)**

- (i) Injuries suffered by FNFP during the accident is stated at paragraph 55 of this Judgment.
- (ii) Immediately after the accident Plaintiff suffered minor pain in hand which as he was in a position to check on his wife/daughter and called his boss and waited for Police Officer to come over.
- (iii) He waited for Police Officer to complete the investigation and then travelled to Police Station, gave Statement and then went home.
- (iv) He went home, had shower and slept.
- (v) From what is stated in the preceding paragraph it is evident that Plaintiff did suffer pain immediately after the accident.
- (vi) Court accepts FNFP's evidence that he developed pain later in the right hand the next day which resulted in him going for medical examination.
- (vii) Court also accepts that his little finger on left hand was fractured, shoulder was in pain and had slight injury on his toe.

**Rajeshni Ranjeeta Mala (SNFP)**

- (i) From Exhibit P7 it is clearly evident that SNFP did not suffer any physical injury - see paragraph 55 of this Judgment.
- (ii) SNFP got out of the Taxi by herself and stood next to her husband waited for Police Officer to arrive, waited for Police Officer to carry out the investigation.
- (iii) This Court accepts SNFP's evidence that she had pain in her ribs and was shocked.
- (iv) Court finds that SNFP suffered slight pain for a month or so only and not thereafter.
- (v) Court awards SNFP for slight pain/suffering in the sum of \$5,000.00.

**Tanvi Tanisha**

- (i) From Exhibit P8 it is clearly evident that Tanvi did not suffer any physical injury or any serious injury at all.
- (ii) After she was pulled out of the Taxi she was put down by her father and since then she stayed at scene of accident with her parents.
- (iii) If Tanvi would have been in serious pain she would have been taken to hospital straight away but nothing as such happened.

- (iv) This Court accepts SNFP's evidence that when the Taxi swung three (3) times, Tanvi bumped her head and legs at the back of the Taxi.
- (v) This would naturally have caused Plaintiff bit of pain which she suffered after going home or next day.
- (vi) Tanvi being five (5) years old at time of accident would definitely have suffered from shock.
- (vii) Tanvi definitely would have gone through psychological trauma which affected her studies and interest in school work.
- (viii) This Court awards Tanvi \$8,000.00 for pain and suffering.

### **Loss of Amenities of Life**

80. This Court is of the view that First Plaintiffs exaggerated their claim for loss of amenities.

### **Rajnish Prasad (FNFP)**

81. FNFP during cross-examination stated that his shoulder and toe injuries have healed and his finger hurts during cold weather.
82. This Court does not accept FNFPs and SNFPs evidence that FNFP is unable to do what he used to do prior to the accident in particular about their physical relationship or his inability to play soccer. If his physical relationship is affected or him not playing soccer it cannot be attributed to injury sustained by him in the accident.
83. His medical report obtained prior to the trial (Exhibit P23) which is in dispute states as follows:-

*“Otherwise well today but he still complains of pain of his left little finger. His physical examination is normal and his vitals are stable today. A repeat X-Ray was done today and results show old fracture seen but no new injuries.”*

84. This Court finds that FNFP has no loss of amenities arising out of the accident.

### **Rajeshni Ranjeeta Mala (SNFP)**

85. This Court does not accept FNFP's and SNFP's evidence that injuries which suffered by them in accident has contributed to her physical relations or her ability to do the chores including gardening prior to accident.

86. Her medical report obtained prior to trial (Exhibit P28) which is not in dispute states as follows:-

*“Otherwise today she still complains of left lower chest pain at times but no shortness of breath. Her physical examination is normal and her vitals are stable today. A Chest X-Ray was done and results came back normal.”*

87. This Court finds that SNFP has no loss of amenities arising out of the accident.

#### **Tanvi Tanisha**

88. This Court finds that pain Tanvi has after playing outdoors and with her brother is not attributed to very negligible injuries sustained by her during the accident.

89. Her medical report (Exhibit P29) obtained prior to trial which is not in dispute states as follows:-

*“Otherwise well today just having some leg pain on and off when playing or running a lot. Her physical examination is normal and her vitals are stable today.”*

90. This Court finds that Tanvi has no loss of amenities arising out of the accident.

#### **Loss of Earning Capacity**

91. In view of what is stated at paragraphs 81 to 84 of this judgment this Court has no hesitation in making a finding that First Plaintiffs have not lost their earning capacity.

92. I re-iterate that any loss of income suffered by FNFP was his inability to was for two (2) months which should have been claimed past loss of income with particulars but was not done so.
93. In any event Plaintiff has not claimed for future income loss with particulars.

### **Interest**

94. In exercise of Court's discretion pursuant to Section 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27, I award interest on general damages at the rate of six percent (6%) per annum and four percent (4%) on special damages.

### **Costs**

95. In awarding costs I have taken into consideration the fact that trial lasted for two days and both parties filed Submissions.
96. This Court also takes into consideration the following evidence of FNFP which is unchallenged:-
- (i) Soon after the accident FNFP wrote to Sun Insurance with a view to resolve this matter (Exhibit P12).
  - (ii) On 5 February 2014, Sun Insurance wrote to FNFP advising that they are not Third Party Insurer (Exhibit P13).
  - (iii) FNFP then wrote to New India Assurance (Exhibit P14).
  - (iv) FNFP approached 2<sup>nd</sup> Defendant to settle this matter but was chased by 2<sup>nd</sup> Defendant.
97. I award costs in favour of the Plaintiffs in the sum of five thousand dollars (\$5,000.00).

### **Conclusion**

98. The damages and interest I award to Plaintiff is as follows:-

Special Damages (paragraphs 66 & 67)	\$ 162.00	
Interest at 4% per annum from 31/10/13 (date of accident) to 7/12/2021 (date of judgment) (2,960 days)	\$ 53.00	\$ 215.00

99. General Damages and Interest are awarded as follows:-

**Rajnish Prasad**

Pain and Suffering	\$20,000.00	
Interest at 6% per annum from 27/1/2016 (date of Writ) to 7/12/2021 (date of Judgment) (2,142 days)	\$7,042.00	<u>\$27,042.00</u>

**Rajeshni Ranjeet Mala**

Pain and Suffering	\$5,000.00	
Interest at 6% per annum from 27/1/2016 (date of Writ) to 7/12/2021 (date of Judgment) (2,142 days)	\$1,760.00	<u>\$ 6,760.00</u>

**Tanvi Tanisha**

Pain and Suffering	\$8,000.00	
Interest at 6% per annum from 27/1/2016 (date of Writ) to 7/12/2021 (date of Judgment) (2,142 days)	\$2,817.00	<u>\$10,817.00</u>

**Orders**

100. I make following Orders:-

- (i) Defendants jointly and severally pay Rajnish Prasad, the Firstnamed 1<sup>st</sup> Plaintiff a sum of \$27,257.00 (Twenty-seven thousand two hundred fifty-seven dollars) including interest upto date of judgment;



- (ii) Defendants jointly and severally pay Rajeshni Ranjeeta Mala, the Secondnamed 1<sup>st</sup> Plaintiff a sum of \$6,760.00 (Six thousand seven hundred sixty dollars) including interest upto date of judgment;
- (iii) Defendants jointly and severally pay Rajnesh Prasad and Rajeshni Ranjeeta Mala a sum of \$10,817.00 (Ten thousand eight hundred seventeen dollars) including interest upto date of judgment;
- (iv) Rajnesh Prasad and Rajeshni Ranjeeta Mala hold the sum of \$10,817.00 that will be paid under paragraph 100(iii) of this Judgment in an interest being account with a Bank in Fiji in trust for Tanvi Tanisha until Tanvi Tanisha attains the age of eighteen (18) years and upon Tanvi Tanisha attaining the age of eighteen (18) years do transfer the said sum of \$10,817.00 plus accrued interest to Tanvi Tanisha absolutely.
- (v) Defendants jointly and severally pay the 1<sup>st</sup> Plaintiffs jointly cost of this action assessed in the sum of \$5,000.00 within thirty (30) days from date of this Judgment.



A handwritten signature in blue ink, consisting of a large, stylized 'K' followed by a horizontal line and a small flourish.

K. Kumar  
**Chief Justice**

**At Suva  
7 December 2021**

**Solicitors:**

**REDDY AND NANDAN LAWYERS for the Plaintiffs**

**NANDS LAW for the 1<sup>st</sup> Defendant**