

**IN THE HIGH COURT OF FIJI AT LAUTOKA**

**CIVIL JURISDICTION**

**Civil Action No. HBC 117 of 2014**

**BETWEEN**

**RAJESH CHANDRA** as administrator of the **ESTATE OF VIKASH CHAND**

late of Navoli, Ba, Fiji, Welder and in his personal capacity'

**PLAINTIFF**

**AND**

**THE PERMANENT SECRETARY FOR HEALTH**

**FIRST DEFENDANT**

**AND**

**THE MINISTRY FOR HEALTH**

**SECOND DEFENDANT**

AND

**THE ATTORNEY GENERAL OF FIJI**

**THIRD DEFENDANT**

**Counsel** : Mr Padarath N.R. & Ms Devi R. for the Plaintiff  
Mr Mainavolau J. for the Defendants

**Dates of Hearing** : 06<sup>th</sup> & 07<sup>th</sup> July 2023

**Date of Judgment** : 28<sup>th</sup> August 2023

**JUDGMENT**

[1] The plaintiff instituted this action under the Compensation for Relatives Act 1920 and Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 alleging that the death of his father was caused due to the negligence of the doctors who attended to him and seeking damages. The damages sought by the plaintiff are as follows:

- a) General damages.
- b) Damages for nervous shock.
- c) Aggravated and exemplary damages.
- d) Special damages in the sum of \$4000.00 in respect of the Estate of the deceased.

- e) Damages under the Compensation for Relatives Act 1920 for the benefit of the husband of the deceased.
- f) Damages under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 for the Estate of the deceased.
- g) Interest on damages awarded from 20<sup>th</sup> July 2011 to the date of judgment pursuant to the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935.
- h) Costs.

[2] As pleaded in the statement of claim that deceased was diagnosed with Valvular Heart Decease between 11<sup>th</sup> February 2010 and 19<sup>th</sup> February 2010 at Ba Mission hospital and the deceased was transferred to CWM Hospital. On or about 3<sup>rd</sup> March 2010 and 10<sup>th</sup> March 2010 the deceased was examined and he was complaining weakness, nausea and vomiting and weight loss. He was then transferred to Men's Medical Ward for further investigation and was diagnosed with Renal Tubular Acidosis.

[3] Particulars of negligence as averred in the statement of claim are as follows:

- a. Failed to diagnose or suspect that the deceased had suffered any fatal illness and failed to give or procure any treatment for the same or any investigation, which would have discovered the same.
- b. Failure to diagnose the deceased's medical condition at the earliest stage.
- c. Failure to provide adequate advice and give proper medication to treat the initial diagnosis.
- d. Failure to inform the deceased that he needs overseas treatment.
- e. Failure to take due care and attention in the circumstances.

[4] At the pre-trial conference the parties admitted the following facts:

1. The plaintiff is the father of the deceased Vinay Vikash Chand late of Navoli, in the District of Ba, in the Republic of Fiji, Welder.
2. The plaintiff brings this action for the benefit of the dependants of the deceased under the Compensation for Relatives Act 1920 and for the benefit of the deceased's estate under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935.
3. The first and second defendants at all material times provided, managed and maintained the Colonial War Memorial Hospital and Ba Mission Hospital situated at Brown Street, Suva and Namosau, Ba respectively and employed and engaged medical specialists, practitioners, nurses and staff.
4. The third defendant is joined by virtue of section 12 of the State Proceedings Act 1951 and is liable for the torts committed by their servants and agents by virtue of section 3 of the Act.
5. The deceased was diagnosed with Valvular Heart Deceased between 11<sup>th</sup> February 2010 and 18<sup>th</sup> February 2010 at Ba Health Centre and referred to CWM Hospital.
6. The deceased on or about 3<sup>rd</sup> March 2010 and 10<sup>th</sup> March 2010 visited and was examined at the Specialist Clinic (SOPD) of the CWM Hospital as he was complaining of weakness, nausea, vomiting and weight loss.
7. The deceased was admitted to the Men's Medical Ward for further investigation on 31<sup>st</sup> March 2010.
8. The deceased Vinay Vikash Chand died on 20<sup>th</sup> July 2011 at Lautoka Hospital.
9. The deceased's causes of death were septicaemia, acute pulmonary oedema, and end state kidney disease, upper gastro-intestinal bleed, Pneumonia and Anaemia H/D renal tubular acidosis.
10. Particulars of relationship pursuant to the Compensation to relatives Act 1920 are as follows:-

10.1 The names of the persons for whose benefit this action is brought are as follows:-

<b>Name</b>	<b>Relationship</b>	<b>Residence</b>
Rajesh Chandra	Father	Navoli, Ba
Kusuma Wati	Mother	Navoli, Ba

11. At the time of the death of the deceased he was 33 years.
12. The deceased was employed as a welder doing odd jobs.

[5] The plaintiff's evidence is that on 25<sup>th</sup> January 2010 the deceased was complaining of headache and he was taken to Ba Health Centre where he was given an injection. When he came home he fell down and he could not open his mouth and he was taken back to the Ba Health Centre. He was attended to by Dr Dragon who was confused and talked to one Dr Narayan in Lautoka Hospital and the deceased was given another injection. When they came home the deceased was unconscious and he was again taken to Ba Health Centre. After tests were done they were informed that the deceased had some heart issues and advised the plaintiff to take the deceased to a bigger hospital that is Suva or Lautoka Hospital. On 18<sup>th</sup> February 2010 the deceased was taken to CWM Hospital and was admitted to the Emergency Unit. The Referral Form was tendered in evidence marked as "P2". The deceased was in CWM Hospital for two months after discharging from CWM Hospital the plaintiff had taken the deceased to Dr De Asa on 20<sup>th</sup> April 2010 and Dr De Asa had told that the deceased only had some kidney issues. Discharge Summary was tendered in evidence marked as "P3".

[6] The plaintiff also said while in CWM Hospital the deceased was discharged for two days for him to have a haircut and during that period the plaintiff had taken him to Dr De Asa who conducted a CT Scan and informed them that the deceased had a kidney issue and not heart issues. The plaintiff had then taken the deceased to CWM

Hospital and Dr Maloni and Dr Mai Ling had advised the plaintiff to take the deceased to India for treatment and undertook to provide a medical certificate. Dr Deo Narayan, Consultant Physician in his evidence said that he totally agreed with the recommendation of Dr Perman for treatment abroad.

[7] The plaintiff said that after the deceased was discharged from the hospital he was given baking soda and another yellow tablet and it is his evidence that after discharging from the hospital the deceased was OK.

[8] Dr. Mai Ling P Perman had issued the letter dated 19<sup>th</sup> July 2010 (P4) to facilitate the plaintiff to take the deceased to India for treatment with the following recommendation:

It is not clear at this stage, the cause of renal decease. Though renal biopsy can be done locally, complete evaluation is not possible without electron microscope and immunostaining, both of which are not available in Fiji. Thus, I do recommend that he goes abroad for further work-up with renal biopsy to help guide further management of his renal decease and also to confirm the RTA.

[9] When the plaintiff submitted this letter to the Ministry for Health they had advised him to write a letter which he did (P5). The Ministry for Health obtained quotations from three different hospitals in India and selected Batra Hospital which was the lowest quotation and also agreed to pay for return airfares (P14). From the evidence of the plaintiff it appears that the deceased died while the plaintiff was raising funds for his treatment abroad.

[11] Dr. Perman was one of the doctors who treated the deceased at C.W.M. Hospital. In her evidence said that the deceased was admitted to C.W.M. Hospital on 31<sup>st</sup> March 2010. Referring to her report (P4) she said that the deceased had been having kidney issues and from ultrasound scan it appeared that both his kidneys were

small and he had been having it for quite a while. The doctor testified further that his potassium level was low and after he was treated his potassium level became normal. Referring to notes the doctor said on 19<sup>th</sup> April 2010 his potassium level was 3.2 and on 27<sup>th</sup> April 2010 it was 3.5 (D1 & D2).

[12] Referring to pages 12 and 13 of the Defendants' Bundle of Documents (DBD) the doctor said that was the test she conducted to identify the kidney decease. She said that these were the tests conducted to diagnose kidney decease. Her opinion is that both chronicle kidney decease and renal tubular acidosis can be controlled but they both are irreversible.

[13] In cross-examination Dr Mai Ling Perman was asked as to why the biopsy test was not done and in reply she said biopsy serial tests showed that he was improving and that is why the biopsy test was not done. The doctor also said biopsy test also has complications and it is risky. It may lead to losing the kidney, especially when kidneys are small.

[14] Dr Narayan said he was asked to prepare a report after the demise of the deceased. His evidence was mainly based on the report (D7) prepared by him. For the ease of reference I will reproduce below the last six paragraphs of the report:

He was assessed as being in a fluid overload state secondary to end stage Chronic Kidney Decease [CKD], Pneumonia, Sepsis, Anaemia, Hyponatremia and Thrombocytopenia.

He was treated with sodium bicarbonate, calcium carbonate, frusemide, KCL, cloxacillin, ceftriaxone, fluid restriction and hypertonic saline.

During the subsequent days, he remained stable and his urine output was around 500ml/24 hours. On 22/06/11, he was noted to be very violent and aggressive, thought to be due to uremic encephalopathy. He was also in severe metabolic acidosis (on ABG). On 26/06/2011, he passed out maelena

stools and he was diagnosed with uremic gastritis and peptic ulcer disease. During his stay in hospital, his blood culture grew Pseudomonas Fluorescence and he was treated with Ciprofloxacin.

He collapsed and died on 20/07/11 and the causes of death were as follows:

1. Pseudomonas Septicaemia
2. Chronic Kidney Disease (end stage)
3. Pulmonary oedema and fluid overload secondary to above
4. Pneumonia
5. Upper GI bleed
6. Anaemia
7. Renal Tubular Acidosis

In summary, Vinay was admitted in CWMH on 31/03/2010 and he was diagnosed with Renal Tubular Acidosis (RTA) and Chronic Kidney Disease (stage 3). Dr Mai Ling had recommended for further investigation and treatment abroad. Ministry of Health made an arrangement for him to travel to Batra Hospital in India and had agreed to pay for the Airfare and had asked the patient to pay for his treatment costs from June 2010 till 15/06/2011.

Vinay's father failed to arrange funds to evacuate Vinay to India. On admission to Lautoka Hospital on 15/06 2011, Vinay was in a critical condition with end stage CKD, severe acidosis, septicaemia and Anaemia. Short term haemodialysis would not have solved the problem as he needed to be on life-time haemodialysis or kidney transplant, both which he could not afford.

[15] In his evidence Dr Narayan also said that short term dialysis was given to patients with acute kidney disease but not for the patients with chronic kidney disease.



[16] The plaintiff alleges that the doctors failed to diagnose or suspect that the deceased had suffered any fatal illness and failed to give or procure any treatment for the same or any investigation, which would have discovered the same.

[17] **Narayan v Ministry of Health [2008] FJHC 432; Civil Action 43 of 2004 (25 July 2008) -**

Until fairly recent times in Fiji Courts have considered this question in the light of the direction to the jury of McNair J. in the case of Bolam v Friern Hospital Management Committee [1957] 1 WLR 582 at 586.

In Sidaway -v- Board of Governors of Bethlem Royal Hospital [1985] UKHL 1; [1985] AC 871. Lord Scarman who dissented in the decision stated the Bolam principle in these terms:

"The Bolam principle may be formulated as a rule that a doctor is not negligent if he acts in accordance with a practice accepted at the time as proper by a responsible body of medical opinion even though other doctors adopt a different practice. In short, the law imposes the duty of care: but the standard of care is a matter of medical judgment".

In Rogers -v- Whitaker [1992] HCA 58; [1992] 109 ALR 625 the High Court of Australia refused to follow the practice of English Courts in applying Bolam to cases of medical negligence. The High Court rejected the Bolam approach and held that the question is not whether the conduct accords with the practice of the medical profession or some part of it, but whether it conforms to the standard of reasonable care demanded by the law. That is a question for the Court, and the duty of deciding it cannot be delegated to any profession or group in the community. The Court expressly disapproved Bolam and the House of Lords decision in Sidaway -v- Board of Governors of

Bethlem Royal Hospital. In doing so the High Court quoted with approval the remarks of King C. J in F -v- R [1983] 33 SASR 189 at 194 that:

"The ultimate question, however is not whether the Defendant's conduct accords with the practices of his profession or some part of it, but whether it conforms to the standard of reasonable care demanded by the law. That is a question for the Court and the duty of deciding it cannot be delegated to any professional group in the community".

In my judgment Rogers -v- Whitaker is to be preferred in Fiji to Bolam's case, and I shall apply it to the facts of this case.

[18] The plaintiff in this matter solely relied on his evidence. He could only say what transpired from the day the deceased was taken to the Ba Health Centre until his death. The plaintiff did not call any expert witness to counter the evidence of the doctors who was called to testify by the defendant. From the evidence of the two doctors who testified at the trial it is clear that both Hospitals, C.W.M and Lautoka, has taken good care of the deceased and also the doctors who attended to him had diagnosed the illnesses correctly although there was a slight delay which cannot be construed as negligence on their part.

[19] Section 38 of the Constitution provides:

- (1) The State must take reasonable measures within its available resources to achieve the progressive realisation of the right of every person to health, and to the conditions and facilities necessary to good health, and to health care services, including reproductive health care.
- (2) A person must not be denied emergency medical treatment.

(3) In applying any right under this section, if the State claims that it does not have the resources to implement the right, it is the responsibility of the State to show that the resources are not available.

[20] The evidence of Dr Perman, as stated earlier in this judgment, is that she informed the deceased that electron microscope and immunostaining were not available in Fiji and advised him to go abroad for treatment. Hence there is no breach of section 38 of the Constitution.

[21] The court is of the view that the plaintiff has failed to establish negligence on the part of the doctors who treated the deceased.

### **ORDERS**

1. The plaintiff's action is dismissed.
2. There will be no order for costs.

  
Lyone Seneviratne



**JUDGE**

28<sup>th</sup> August 2023