IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 18 of 2020

BETWEEN: **MUMLESHWAR PRASAD**

PLAINTIFF

AND: **THE MEDICAL SUPERINTENDENT OF LABASA HOSPITAL**

1st DEFENDANT

AND: **THE ATTORNEY-GENERAL OF FIJI**

2nd DEFENDANT

Before: Mr. Justice Deepthi Amaratunga

Counsel: Mr. S.S Sharma and Hassan K for the Plaintiff
Mr. Mainavalau J. for the Defendants

Date of Judgment: 26.02.2025

Catch Words

Right to Personal Liberty-Right to Information- surgery without consent – use of force – deception- medical negligence- informed consent- elevant information - treatment- risks - options access to medical reports- Patient Autonomy- withdrawal of consent- Bolam Test not applied- – Sections 6.7.9,25 of the Constitution of the Republic of Fiji- Bill of Rights – common law- right –development - punitive damages- Code of Conduct.

JUDGMENT

INTRODUCTION

[1] Plaintiff in the amended statement of claim, seeks damages including punitive damages for medical negligence resulting from a surgery conducted without his consent. The claims *inter alia* based on failure to obtain informed consent for surgical intervention for laparotomy and appendectomy and or failure to inform pre and or post-surgical procedures. Plaintiff suffered incisional hernia from laparotomy. Surgery was conducted through deception and using force to administer anesthetic drug. This is violation of basic human right and also

breach of trust and abuse of vulnerability of patient. This conduct is outrageous and condemned it with exemplary (i.e. punitive) damages.

[2] Plaintiff sought treatment for abdominal pain. He came to General Outpatient Department (GOPD) of Labasa Hospital (the Hospital) for treatment but he was admitted for observations and kept for two days. During that time relevant medical tests and imaging of abdomen obtained.

[3] On the evening of second day of admission Plaintiff was taken outside the operating theatre of the Hospital through deception and force was excreted and anesthetic drugs administered to immobilize and to make him unconscious. Then, surgical interventions namely laparotomy and appendectomy was conducted.

[4] Surgical intervention of laparotomy had the risk of incisional hernia which Plaintiff developed. Due to this he suffered pain for more than a year and his mobility restrained.

[5] After discharge from this surgery Plaintiff could not walk and had severe pain and this was informed during post-surgery reviews at the Hospital but was not diagnosed the cause.

[6] So Plaintiff had consulted a private practitioner who had identified the cause of pain as incisional hernia, which required corrective surgical intervention.

[7] Defendant in the statement of defence stated that Plaintiff was informed about the pre and post-surgical procedures and his consent was obtained but failed to provide the written consent of Plaintiff and or the fact that Plaintiff was provided with the information relating to risks of surgical intervention conducted.

[8] Similarly, there were no written evidence as to explanation of surgical procedures including, options available for laparotomy. The usual practice of written consent or explanation of surgical procedure not followed.

[9] Analysis of evidence proves that there was no consent of Plaintiff for performance of surgery.

[10] A patient‘s right to information includes to his medical condition and if required access to medical reports obtained . A patient is also entitled to right to know the diagnosis, or prognosis as well as proposed treatment.

[11] Force was used to conduct surgery against the wishes of Plaintiff. This is a violation common law basic patient’s right to decide on the treatment.

[12] Plaintiff’s vulnerability was abused and his trust breached by actions of medical personnel and para medical personnel of the Hospital when force was

used to administer anesthetics and surgery conducted without informed consent of Plaintiff. The Plaintiff's basic human right under common law as patient to decide on the treatment and right to information and personal liberty under Bill of Rights Chapter in the Constitution interpreted to development of common law.

[13] Plaintiff's claim for medical negligence is based on surgery without informed consent is proved. Plaintiff is granted damages including punitive damages considering the abuse of vulnerability of and breach of trust of a patient.

Facts

[14] The Plaintiff went to the Hospital with lower abdominal pain some medicine which relieved paid and his vital medical reports were obtained and also an ultra sound scan obtained.

[15] He was admitted to the Hospital after physical examination and examination of medical reports including ultra sound scan on 8.6.2019. He was kept under observation till 10.6.2019

[16] Plaintiff was diagnosed with clinical appendicitis. A laparotomy and appendectomy conducted.

[17] Midline Laparotomy with more than twenty seven staples, a complex surgery was performed and there is no evidence of written consent and or written advice as to the risks and options available for such surgical procedures.

[18] Dr . Atinesh said that laparotomy is a complex and risky surgical intervention. This was carried out by doctors of the Hospital without Plaintiff's consent and also despite his refusal for any surgery, anaesthetics were administered by using force that immobilized him and made him unconscious.

[19] When Plaintiff regained consciousness his abdomen was plastered and when inquired the reason were not given by hospital doctors or nurses.

[20] Plaintiff was discharged from hospital on wheelchair and he could not even sit for a long period.

[21] Plaintiff developed severe pain and he consulted a private hospital where he was told that second corrective surgery was required as he had developed Incisional Hernia.

[22] Plaintiff developed Incisional hernia following laparotomy and appendectomy. There is no dispute on this fact. Plaintiff was subjected to second corrective surgery was conducted at a private hospital where his informed consent was obtained. So the claim for medical negligence is regarding laparotomy and

appendectomy and the manner in which Plaintiff was treated prior and post-surgery procedures of laparotomy.

[23] Plaintiff filed this action against the Defendants for particulars of negligence pleaded in paragraph 18 of the statement of claim. This *inter alia* includes negligence based on failure to inform diagnosis, prognosis, information of the surgical intervention recommended including the risks and options available for the said surgery. He also claims damages for surgical intervention against his consent.

ANALYSIS OF EVIDENCE

[24] Plaintiff had gone to the Hospital on 8.6.2019 with pain in his lower abdomen and pain was relieved with medication. After admission for observation. By evening Plaintiff had no pain and he requested a discharge but he was kept in the hospital stating that observations are needed. This shows that there was no medical emergency or impending rapture of appendix.

[25] Plaintiff was diagnosed with clinical appendicitis.

[26] Plaintiff in his evidence explained the circumstances where a surgical intervention was performed through deception by taking him to outside of operating theatre under the guise of observation and then when he refused to be submitted for surgery how a male nurse and another person administered drugs by way of injection, that made him unconscious . When he regained consciousness he could not move his arm and his legs were numb. After a while, he was in severe pain and looking at his abdomen which was fully plastered he had cried as he was helpless and no one had replied to what had happened to his abdomen to be fully plastered.

[27] Doctors or nurses had not replied to his queries and had avoided answering as to why he was operated and had consoled him by stating he has a good heart and kidney, for which he had no medical issues.

[28] The Plaintiff gave evidence and called a doctor who recommended corrective surgery for incisional hernia at private Hospital. Dr. Atinesh's report dated 30 .6.2020 was based on information provided to him by the Plaintiff and also his observations and recommendation.

[29] Plaintiff did not dispute that he was clinically diagnosed with appendicitis from the medical records. So the allegation that Plaintiff was not properly examined and further examination by imaging through X ray or CT scan is not proved.

[30] The Defendant's sole witness was Dr. Maloni, the Head Consultant Surgeon at Labasa Hospital. His evidence based on medical records and was not a person who treated Plaintiff.

[31] Dr Maloni gave evidence

(i) The Plaintiff was admitted to the Hospital on 8 .6.2019 with complaints of abdominal pain.

(ii) After taking the Plaintiff's history, a physically examined the pain site and an ultra sound scan imaging, blood count, urine test and histopathology reports were obtained.

(iii) These were the required tests for diagnosing appendicitis. The tests were also done to eliminate other pathologies that the Plaintiff might have had, such as cancer. This was conducted after laparotomy and appendectomy.

(iv) The tests required for diagnosis of probable cause of abdominal pain including appendicitis conducted.

(v) Prognosis of the Plaintiff's abdominal pain was appendicitis and there was no need to obtain x ray or CT scan imaging. Ultra Sound scan of Plaintiff's abdomen along with other reports were adequate for diagnosis.

(vi) The blood test and the urine test showed the presence of infection associated with appendicitis. The ultra-scan showed a swelling of the appendix to a size of 2.5cm.

[32] Analysis of evidence of Dr. Maloni along with the medical records , show that Plaintiff was examined and there was no proof of lack of duty of care or negligence, in the examination and diagnosis of clinical appendicitis.

[33] Dr. Maloni further in his evidence stated that, Plaintiff's surgery would not have happened in the absence of his written consent, but he was unable to explain how such vital evidence was missing. So there is no evidence to contradict Plaintiff's direct oral evidence as to the manner he was operated at the Hospital. Plaintiff's evidence corroborate the lack of written consent or explanation as to surgical intervention and risks and options.

[34] Following facts are not disputed;

a. Plaintiff was a patient at the Hospital and was diagnosed of clinical Appendicitis on the 8.6. 2019.
b. Plaintiff was born on 4.7.1981
c. First Defendant is in charge of management and administration of the Hospital.
d. Second Defendant is the legal representation of the Government and joined pursuant to State Proceedings Act 1951.

e. First Defendant owed a duty of care to Plaintiff to ensure at all time to take reasonable care that there was safe system of health care provided at the Hospital.
f. This duty included a duty to ensure that there were proper and effective means of communication in place including communication of risks and or information to patients.
g. Plaintiff upon admission some laboratory tests were carried out and ultra sound scan obtained. After examination of these diagnosed clinical appendicitis
h. Plaintiff was subjected to surgical procedure on 10.6.2019. Plaintiff was subjected to laparotomy and appendectomy.

i. Plaintiff was discharged after above surgical procedures on 12.6.2019

j. When he was discharged he could not walk and used wheelchair and was in severe pain.

k. Plaintiff attended to review of the operation as outpatient and issued with medical certificates periodically extending time he was not fit for work.

l. Plaintiff developed incisional hernia after laparotomy and suffered pain and due to this corrective surgery was conducted

[35] Plaintiff was physically examined by doctors and according to evidence there was no need for such further examination by x ray or CT scan imaging. On the balance of probability it is proved that Plaintiff was suffering from clinical appendicitis.

[36] After examination he was admitted to hospital for further examinations and observations. Plaintiff said that he wanted to leave as the pain had relieved, but he was admitted for observation. So Plaintiff was not informed about surgery at the time of admission.

[37] Plaintiff was admitted to the hospital on 08.6.2019 after 6 pm after he initially came for GOPD around 10.10 am with a complaint of abdominal pain. He was kept under observations till 10.6.2019 for two days.

[38] There was no medical emergency considering the time taken for admission was more than eight hours after he was examined by doctors of GOPD. Surgery more than a day after admission. Plaintiff did not have persistent or acute pain and it relieved after initial medication. He wanted to go home without admission, but he was admitted for further observations.

[39] So the submission of Defendants that medical team had to act quickly as the situation was fatal cannot be accepted. (See paragraph 5.13 of Defendant's submission). There was no evidence to support such contention and medical reports or evidence does not support, fatal or emergency situation. So the contention that there was an emergency situation is not supported by evidence in the analysis and rejected.

[40] It is Plaintiff's evidence that he had no pain at the time he was taken for surgery and that was one reason for him to object to any surgical intervention. Plaintiff's evidence is credible and reliable and consistent with his conduct and circumstantial evidence of the case.

[41] His desire to discharge is consistent with clinical appendicitis diagnosed, as this diagnosis was not communicated to Plaintiff and he was kept in the dark and was told further observations required.

[42] Plaintiff stated that he was not explained about surgical procedure to be administered. He was not informed who and when this surgical intervention would be administered to him and specifically, the risks associated with such surgical intervention and options available. This shows lack of communication between patient and the medical personnel including doctors involved.

[43] This shows lack of communication between patient and doctor as to diagnosis and also proposed treatment and risks involved and abuse of vulnerability of indignant patients.

[44] Plaintiff's evidence is reliable and credible. In cross examination his evidence was not disproved as to any material fact.

[45] The fact that his consent was not obtained proved with cogent evidence of Plaintiff. It is the quality of the evidence that proves a fact or fact in issue and not the number of witnesses.

[46] There is no evidence that Plaintiff granted consent to surgical intervention. The person who gave evidence for Defence had neither seen nor treated Plaintiff . He had not inquired about absence of written consent of Plaintiff for surgical intervention. There is no evidence that he or any other person investigated the Plaintiff's serious allegation of conducting a surgery using force and deception.

[47] Plaintiff had complained about failure to obtain his consent for surgery to first Defendant as the person in charge of the Hospital as soon as he could walk. He said he could not even sit and complain, due to severe pain. This shows he had complained about not obtaining his consent for surgery as soon as he could do so. He was not fully recovered from surgery at that time. He had also complained to Minister of Health, at that time. His first complaint to first Defendant was oral, but there was no evidence that it was investigated.

[48] He had also stated this fact to Dr. Atinesh who had recorded this fact in his medical report. This is consistent with his allegation of conducting surgery against his wishes through force. Plaintiff was not informed about the outcome of the said complaint. There was no evidence that his complaint was acted upon by the authorities of the Hospital including first Defendant.

Informed Consent

[49] Bill of Rights Chapter of the Constitution of the Republic of Fiji (The Constitution) recognizes access to information and Section 25 states,

"Access to information

25.(1) Every person has the right of access to—
(a) Information held by any public office; and
(b) Information held by another person and required for the exercise or protection of any legal right.
(2) Every person has the right to the correction or deletion of false or misleading information that affects that person.
(3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.'

[50] So in Fiji right to information is enshrined in the Constitution and section 6(2) of the Constitution obliges every person holding public office, to respect to promote and fulfil the rights in Bill of Right Chapter. The Bill of Rights 'Chapter apply according to their tenor' in terms of Section 6(5) of the Constitution

[51] Section 7 of the Constitution deals with the interpretation of Bill of Rights Chapter and how the provisions can be applied for development of common law rights. Section 7 of the Constitution states,

"Interpretation of this Chapter

7.(1) In addition to complying with section 3, when interpreting and applying this Chapter, a court, tribunal or other authority

(a) **must promote** the values that underlie a democratic society based on **human dignity, equality and freedom**; and

(b) may, **if relevant, consider international law**, applicable to the protection of the rights and freedoms in this Chapter.

(2) This Chapter does not deny, or prevent the recognition of, any other right or freedom recognised or conferred by common law or

written law, except to the extent that it is inconsistent with this Chapter.

(3) A law that limits a right or freedom set out in this Chapter is not invalid solely because the law exceeds the limits imposed by this Chapter if the law is reasonably capable of a more restricted interpretation that does not exceed those limits, and in that case, the law must be construed in accordance with the more restricted interpretation.

(4) When deciding any matter according to common law, a court must apply and, where necessary, **develop common law in a manner that respects the rights and freedoms recognised in this Chapter.**

(5) In considering the application of this Chapter to any particular law, a court must **interpret this Chapter contextually, having regard to the content** and consequences of the law, including its **impact upon individuals** or groups of individuals." (emphasis added)

[52] Right to information read with Right to personal liberty provisions in the Constitution, required to develop common law in a manner that respects the rights and freedoms recognised in Bill of Rights chapter of the Constitution.

[53] The information to patient about treatment can be through oral communication. These can be of the diagnosis along with any medical reports or imaging be available and also interpretation and explanation of such reports. Such in written and or oral communication should be in a form understandable to patient.

[54] It is also important that autonomy of the patient is paramount and patient should be granted opportunity , to obtain opinion of an expert of his choice if requested with all the medical reports and imaging being available to the patient in order to obtain an opinion when requested.

[55] Informed consent is development of common law right of patient to decide on the treatment. For this patient should be provided with information about diagnosis and this should be in a position that is understandable to patient. If requested all medical information, including and not limited to medical reports including reports of imaging should be provided either free or at reasonable fee. This can allow patient to seek medical treatment opinion and treatment, including surgery to be conducted by a surgeon considering all the options and or available resources.

[56] UK Supreme Court decision of *Montgomery v Lanarkshire Health Board* [2015] 2 All ER 1031 [2015] 2 All ER 1031 at 1051-1052 held,

"[80] In addition to these developments in society and in medical practice, there have also been developments in the law. Under the stimulus of the Human Rights Act 1998, the courts have become increasingly conscious of the extent to which the common law reflects fundamental values. As Lord Scarman pointed out in *Sidaway*'s case, these include the value of self-determination (see, for example, *S v S* [1970] 3 All ER 107 at 111, [1972] AC 24 at 43per Lord Reid; McColl v Strathclyde Regional Council 1983 SC 225 at 241; *Airedale NHS Trust v Bland* [1993] 1 All ER 821 at 866, [1993] AC 789 at 864per Lord Goff of Chieveley). As well as underlying aspects of the common law, that value also underlies the right to respect for private life protected by art 8 of the European Convention on Human Rights. The resulting duty to involve the patient in decisions relating to her treatment has been recognised in judgments of the European Court of Human Rights, such as *Glass v UK* (2004) 77 BMLR 120 and *Tysiac v Poland* (2007) 22 BHRC 155, as well as in a number of decisions of courts in the United Kingdom. The same value is also reflected more specifically in other international instruments: see, in particular, art 5 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, concluded by the member states of the Council of Europe, other states and the European Community at Oviedo on 4 April 1997."

[57] Irrespective of Fiji not being party to any of the above mentioned conventions in *Montgomery* (supra). This shows international recognition of '*duty to involve the patient in decisions relating to her treatment*'. This is recognition of patient autonomy. This is a relevant international law that can be applied for recognition of right to information as well as right to personal liberty of patients for development of common law right of patient to decide on treatments. Fiji Medical Council had also recognized requirement for 'signed informed consent'. It is more transparent and recognition of rights of patients.

[58] Plaintiff is entitled for medical information about his medical condition and treatment or diagnosis recommended for him before his consent was obtained for surgical intervention. This right is equally applicable to any medical treatment.

[59] Equally such international law stated in *Montgomery* (supra) are relevant to protection of Right to personal liberty in terms of Section 9(1)(h) of the Constitution. This right is recognized in professional body such as Fiji Medical Council.

[60] Fiji Medical Council had complied 'Medical Practitioner Code of Professional Conduct'. This is Practice Guide for medical practitioners [1] and it states,

3.0 Working with patients

[1] https://fijigp.com/wp-content/uploads/2020/08/Medical-Practitioner-code-of-profeesional-conduct-.pdf

3.1 Introduction it is important to recognize that in order to develop and maintain a good partnership with patients there must always be **respect, honesty, trust, good communication and empathy**.

3.2 Doctor-patient relationship Professional conduct is paramount and involves practicing with:

3.2.1 **Courtesy, respect, honesty, dignity, and empathy**;

3.2.2 Protecting every patient's privacy unless disclosure is necessitated pursuant to law or public interest considerations;

3.2.3 Proper conduct by **not misusing a patient's trust and vulnerability** for physical, emotional, sexual or financial gain or **otherwise;**

3.2.4 Encouragement of patients to be well informed about their health and medical condition and to use such **information for making informed and proper decisions**." (emphasis added)

[61] It is clear from the evidence such good practice not followed by medical practitioners of the Hospital. It required conduct by medical practitioners not to misuse patient's '*trust and vulnerability'*. Plaintiff's vulnerability was misused and trust breached by the conduct.

[62] Medical Practitioner Code of Professional Conduct' further states under 'Signed Informed Consent' following;

"**Signed informed consent**[2]

Informed consent refers to the voluntary decision of a patient regarding which options, treatments and other relevant medical advice s/he will opt for. It is made with full understanding of the risks and benefits involved.

Informed consent in terms of good medical practice involves:

3.5.1 Ensuring that the **patient is given proper and full disclosure** regarding his or her **condition, diagnosis, prognosis and treatment options including the risks;**

3.5.2 Ensuring that the patient fully understands all the information that s/he has been provided with;

3.5.3ensuring that **informed consent is first had and obtained prior to conducting any medical procedures** or examination including involving a patient in research or teaching provided this may not apply during an emergency;

3.5.4ensuring that the patient is fully advised of all fees and charges through the display of a schedule of fees;

3.5.6 Ensuring that in a situation where the patient requires a referral or further investigation or examination that the patient is

[2] ibid

fully and properly advised that additional fees and charges may apply."(emphasis added)

Did the Doctors at Labasa Hospital breach their duty of care?

[63] Dr. Maloni in his evidence mentioned about the above mentioned Medical Practitioner Code of Professional Conduct' and said accordingly, that the hospital adheres to strict protocol when acquiring patient consent. He said that there is a system in place for establishment of informed consent.

[64] He could not explain why such written documentation as to details of the treatment including its risks associated and consent was not available.

[65] There was no evidence of Plaintiff was provided with information relating to risks associated with the laparotomy. Dr. Atinesh said that it is a complex and risky surgical procedure. This fact was not challenged. Plaintiff's abdomen contains a large scar and twenty seven staples were applied . A plaster was applied and the time taken for surgery , shows the complexity of laparotomy.

[66] Plaintiff could not walk when he was discharged from the hospital and he had taken more than one year to recover. Plaintiff had developed incisional hernia as a result of surgical intervention and due to this he was suffering from severe pain for more than a year till a corrective surgery was done.

[67] There are three allegations in statement of claim relating to duty of care and they are failure to o provide Information, treatment, and advice as to pre and post-surgery procedure and management and failure to diagnose and treatment.

[68] The analysis of evidence show that Plaintiff was neither informed nor his consent obtained despite having a policy of obtaining informed consent. Dr. Maloni did not state that Plaintiff was informed about the risks associated with laparotomy.

Negligence

[69] Denial of patient autonomy through want of relevant information relating to treatment is a breach of duty of care and if resulted in injury or damage, it can be compensated. If non-disclosed risks had caused or resulted an injury which caused pain and suffering, it is compensated by a monetary award for damages after assessment. This should be clearly distinguished from an award based on violation of right without proof of damage.

[70] In *Montgomery* at p1041 (Lord Kerr and Lord Reed held (with whom Lord Neuberger, Lord Clarke, Lord Wilson and Lord Hodge agreed).

"At the other end of the spectrum was the speech of Lord Scarman, who took as his starting point **'the patient's right to make his own decision, which may be seen as a basic human right protected by the common law'** (1985] 1 All (1985] 1 All ER 643 at 662, [1985] AC 871 at 882). From that starting point, he inferred (1985] 1 All (1985] 1 All ER 643 at 651, [1985] AC 871 at 884–885):

'If, therefore, the failure to warn a patient of the risks inherent in the operation which is recommended does constitute a failure to respect the patient's right to make his own decision**, I can see no reason in principle why, if the risk materialises and injury or damage is caused, the law should not recognise and enforce a right in the patient to compensation by way of damages.'**

[44] In other words, if (1) the patient suffers damage, (2) as a result of an undisclosed risk, (3) which would have been disclosed by a doctor exercising reasonable care to respect her patient's right to decide whether to incur the risk, and (4) the patient would have avoided the injury if the risk had been disclosed, then the patient will in principle have a cause of action based on negligence.'(emphasis is mine)

[71] In UK Supreme Court decision of *Montgomery v Lanarkshire Health Board* [2015] 2 All ER 1031 rejected *Bolam* test for medical negligence regarding denial of information to a patient relating to treatment including surgical intervention. In *Montgomery* (supra) emphasised the right of patient to know the risks involved and options available before such treatments elected. This case relied primarily on common law right which is a basic human right of patient. This right is more fortified in Fiji in the Constitution in Bill of Rights Chapter in terms of Right to information and Right to personal liberty.

[72] *Montgomery* (supra) did not follow the *Sideway v Board of Governors of Behlem Royal Hospital and Maudsley Hospital* [1985] AC 871 where Bolam test was applied to determine as to disclosure of information to patient.

[73] The correct position applicable for information available for a patient relating medical treatment does not depend on medical practice or professional judgment unless such information could pose a significant harm to patient or patient had specifically informed not to reveal such information. This is an exception to the norm, and proof is with Defendant to prove such exception.

[74] The decision for treatment is subjective and may not always rely solely on medical objective as patient may not have revealed all factors that affect his decision for medical treatment as there may be non-medical reasons or factors that can affect the decision for treatment and also options available. It is numerous to mention such factors here and some examples were provided in *Montgomery* (supra) eg life expectancy, post treatment management, costs, and personal preferences of treatment options , ect to name a few.

[75] In *Montgomery* (supra) doctors did not warn the claimant who was diabetic of the risks involved in vaginal delivery of a baby and due to this there was a permanent damage to baby during delivery. In that case UK Supreme Court did not apply Bolam test for proof of negligence based on denial of information and stated there is duty to inform all material risks to patient.

[76] *Montgomery* (supra) at p 1042-1043 further stated that clinical judgment alone cannot decide a treatment to a patient. Treatments have their own risks and also side effects and or recovery or post recovery management and there are subjective factors which only patient will be able to assess to arrive at a decision, and practically impossible for medical person to be aware such factors. It was Held,

> **"[45]** Lord Scarman pointed out that the decision whether to consent to the treatment proposed did not depend solely on medical considerations (1985] 1 All (1985] 1 All ER 643 at 652, [1985] AC 871 at 885–886):
>
> 'The doctor's concern is with health and the relief of pain. These are the medical objectives. But a patient may well have in mind circumstances, objectives and values which **he may reasonably not make known to the doctor but which may lead him to a different decision** from that suggested by a purely medical opinion.'
>
> **[46]** This is an important point. The relative importance attached by patients to quality as against length of life, or to physical appearance or bodily integrity as against the relief of pain, will vary from one patient to another. Countless other examples could be given of the ways in which the views or circumstances of an individual patient may affect their attitude towards a proposed form of treatment and the reasonable alternatives. **The doctor cannot form an objective, 'medical' view of these matters, and is therefore not in a position to take the 'right' decision as a matter of clinical judgment**.
>
> **[47]** In Lord Scarman's view, if one considered the scope of the doctor's duty by beginning with the right of the patient to make her own decision whether she would or would not undergo the treatment proposed, it followed that the **doctor was under a duty to inform the patient of the material risks inherent in the treatment.** A risk was material, for these purposes, if a reasonably prudent patient in the situation of the patient would think it significant. The doctor could however avoid liability for injury resulting from the occurrence of an undisclosed risk if she could show that she reasonably believed that communication to the patient of the existence of the risk would be detrimental to the health (including the mental health) of her patient.
>
> **[48]** It followed from that approach that medical evidence would normally

be required in order to establish the magnitude of a risk and the seriousness of the possible injury if it should occur. Medical evidence would also be necessary to assist the court to decide whether a doctor who withheld information because of a concern about its effect upon the patient's health was justified in that assessment. The determination of the scope of the doctor's duty, and the question whether she had acted in breach of her duty, were however ultimately legal rather than medical in character.

[49] Lord Scarman summarised his conclusions as follows (1985] 1 All (1985] 1 All ER 643 at 655, [1985] AC 871 at 889–890):

'To the extent that I have indicated, I think that **English law must recognise a duty of the doctor to warn his patient of risk inherent in the treatment which he is proposing and especially so if the treatment be surgery**. The critical limitation is that the duty is confined to material risk.The test of materiality is whether in the circumstances of the particular case the court is satisfied that a reasonable person in the patient's position would be likely to attach significance to the risk. Even if the risk be material, the doctor will not be liable if on a reasonable assessment of his patient's condition he takes the view that a warning would be detrimental to his patient's health.'

[50] Lord Bridge of Harwich, with whom Lord Keith of Kinkel agreed, accepted that a **conscious adult patient of sound mind is entitled to decide for herself whether or not she will submit to a particular course of treatment proposed by the doctor.** He recognised the logical force of the North American doctrine of informed consent, but regarded it as impractical in application. Like Lord Diplock, he emphasised patients' lack of medical knowledge, their vulnerability to making irrational judgments, and the role of 'clinical judgment' in assessing how best to communicate to the patient the significant factors necessary to enable the patient to make an informed decision (1985] 1 All (1985] 1 All ER 643 at 662, [1985] AC 871 at 899).” (emphasis added)

Application

[77] Plaintiff‘s common law basic human right to make his own decision as a patient, regarding surgical intervention was violated

a. Due to undisclosed risk of incisional hernia from laparotomy.
b. Performance of surgery against his wishes using force

[78] Section 7(4) of the Constitution states, that ‘a *court must apply and, where necessary, develop common law in a manner that respects the rights and freedoms recognised in this Chapter* “.

[79] Plaintiff's right to information as well as right to Personal liberty is recognized in Bill of Rights and the development of common law right of patient to decide the treatment to informed consent.

[80] So, *Bolam v Friern Hospital Committee* [1957] 1 WLR 582 at 586-587 [1957] 2 All ER 118 relied by Defendants, in the submission, is not the test applicable for negligence based on violation right to informed consent for treatment of patients.

[81] In UK as well as in other countries where European Convention on Human Rights applicable patient autonomy is recognised. US and Canada had also recognised this right of patient. (see *Montgomery v Lanarkshire Health Board* [2015] 2 All ER 1031 UK Supreme Court)

[82] *Sidaway v Bethlem Royal Hospital Governors and others* [1985] 1 All ER 643 Lord Scarman (dissenting) held,

> "It would be a strange conclusion if the courts should be led to conclude that our law, which undoubtedly recognises a right in the patient to decide whether he will accept or reject the treatment proposed, should permit the doctors to determine whether and in what circumstances a duty arises requiring the doctor to warn his patient of the risks inherent in the treatment which he proposes.

Further held,

> 'The right of 'self-determination', the description applied by some to what is no more and no less than the right of a patient to determine for himself whether he will or will not accept the doctor's advice, is vividly illustrated where the treatment recommended is surgery. A doctor who operates without the consent of his patient is, save in cases of emergency or mental disability, guilty of the civil wrong of trespass to the person; he is also guilty of the criminal offence of assault. The existence of the patient's right to make his own decision, which may be seen as a basic human right protected by the common law, is the reason why a doctrine embodying a right of the patient to be informed of the risks of surgical treatment has been developed in some jurisdictions in the United States of America and has found favour with the Supreme Court of Canada.'

[83] The *Bolam* test has continued to be applied medical negligence cases in Fiji, but this is not the correct test regarding medical negligence for failure to provide informed consent for reasons given in *Montgomery*(supra) and the also Bill of Rights Chapter in the Constitution which recognizes Right of Information and Right of Personal Liberty.

[84] In this action the claim for medical negligence can be established on two grounds. Doctor must explain the material risks of treatment in order for the Patient to take an informed decision taking all factors subjective to the patient

known or disclosed by patient. It is practically impossible for a medical practitioner to know all the factors that affect Plaintiff when a decision involving risks are taken. The duty of care lies with medical practitioner to provide information relating to surgery and risks and options and

a. Lack of consent and using force and deception to conduct surgery; or

b. Absence of information provided specially risks and options available to laparotomy conducted.

[85] Plaintiff proved on balance of probability that his consent was not obtained so the alternate ground for medical negligence based on lack of information is not determinative in this action. Alternate ground is considered in this judgment as additional ground considering its importance and requirement to develop common law rights of patients in terms of international law and recognition of patient autonomy, under Bill of Rights Chapter of the Constitution.

[86] As stated in *Montgomery* (supra) action for damages based on failure to obtain informed consent of patient is a professional negligence that need not rely on professional opinion. It is basic human right of patient to know information about the treatment including risks and options available and the decision to submit for treatment or surgery is left with the patient except when patient is not of sound mind or unconscious or such revelation can cause harm to patient.

[87] In carrying out the operation on the Plaintiff, the doctors at the Hospital

(i) Did not obtained the written consent of the Plaintiff.
(ii) Did not explained the surgical procedure Midline Laparotomy and the risks and options available. Apart from that no time or place and or surgeon who would perform the surgery was not informed to Plaintiff.
(iii) Plaintiff was deceived and taken to outside of operating theatre where a doctor examined him and there after force was used with anaesthetics injected to Plaintiff , to conduct the surgery
(iv) Laparotomy and appendectomy and the surgery lasted more than forth two minutes and twenty seven staples and plaster to close the large cavity of abdomen due to surgical intervention.
(v) The surgery was complex and risky and Plaintiff developed incisional hernia.
(vi) Plaintiff was discharged on wheel chair and could not sit or walk properly and could not return to his usual work for more than one year ,
(vii) Plaintiff attended numerous review clinics and complained of the excessive pain but could not diagnose the cause of pain as incisional hernia.

[88] As Plaintiff's pain persisted he consulted Dr Atinesh who diagnosed the cause of pain as incisional hernia and recommended second surgery which was conducted at a private hospital.

[89] Consent must be informed and voluntarily given by a person who is conscious and not suffering from mental disability or infirmity such as below the age of consent. Consent may be expressed or implied. For example Plaintiff voluntarily submitted for Ultra Sound Scan and blood and urine tests and also submitted to medication given. There is no claim based on such treatment for lack of consent. These were impliedly consented by Plaintiff. This is the usual practice regarding such examination and treatment and needs to be clearly distinguished from surgical intervention.

[90] In my mind even examinations which are risky such as x ray or CT scan, requires full disclosure to patients and this can be through written or verbal communication prior to submission for such tests. Radioactive exposure such as X Rays (approx. radiation of 0.1 mSv)[3] and risks of such medical procedure can be informed to the patient. Another option for imaging such as CT scan[4] (10- 25 mSv) may expose a person for significantly increased dosage of radiation. So Patients needs to be explained and informed about the risks of radiation for the body and imaging options such as Xray or CT scan can be decided by informed patient.

[91] There is no requirement that consent be in writing although model consent forms have now been in use for surgeries in hospitals considering the inherent risks involved in such treatments. The use of the forms not only good practice but also a transparent process to safeguard a basic human right protected by the Constitution. More important part of consent is the information provided which should include risks and options and relative advantages of such options.

[92] It is not enough to get a patient to sign a form expressing consent to a procedure with no explanation. The doctor must explain the implications of the procedure. The explanations should be in terms which the patient can understand and options available and also relative advantages of such options be explained to the patient.

[93] It is imperative that risks and options for such intervention are discussed and let the patient to take a decision, when the surgery is not required immediately

[3] A single chest x-ray exposes the patient to about 0.1 mSv. This is about the same amount of radiation people are exposed to naturally over the course of about 10 days
https://www.cancer.org/cancer/diagnosis-staging/tests/imaging-tests/understanding-radiation-risk-from-imaging-tests.html

[4] A PET/CT exposes you to about 25 mSv of radiation. This is equal to about 8 years of average background radiation exposure.

after diagnosis. Patient should be allowed sufficient time to take a decision and even after consent was granted it could be withdrawn prior to surgery at any time irrespective of some process had initiated upon consent.

[94] Failure to obtain informed consent for surgery can give rise to an action in battery which is actionable *per se*: without proof of damage.[5] Plaintiff had not pleaded battery as cause of action but had opted for cause of action based on negligence of the medical officers of the Hospital.

[95] An action can be instituted in negligence for breach of duty for failure to provide information. See *Montgomery* (supra) which deviated from *Sidaway v Board of Governors of the Bethlehem Royal Hospital*,[6] . In that case legal standard to be applied in assessing whether a doctor was negligent in relation to the provision of advice about treatment was the *Bolam* test: a doctor would not be held to have acted negligently if he acted in accordance with a reasonable body of medical practice.

[96] Plaintiff can succeed in this case even applying the overruled *Bolam t*est as the usual method of obtaining written consent after explanation of surgical procedure was not followed, and the surgery was conducted using deception and force, but this is not the proper test to be followed as *Sideway* (supra) majority decision was not applied in *Montgomery v Lanarkshire Health Board* [2015] 2 All ER 1031 UK Supreme Court)

[97] *Sideway,* (supra) majority rejected the approach of Lord Scarman, who, having considered the doctrine of informed consent as applied in the American case of **Canterbury v Spence**[7], and the Canadian case of **Reibl v Hughes**[8] concluded that the law:

> 'must recognise a **duty of the doctor to warn his patient of risk inherent in the treatment which is proposed; and especially so, if the treatment be surgery**. The critical limitation is that the duty is confined to material risks. The test of materiality is whether in the circumstances of the particular case the court is satisfied that a **reasonable person in the patient's position would be likely to attach significance to the risk**. Even if the risk is material, the doctor will not be liable if upon a reasonable assessment of the patient's condition, he takes the view that a warning would be detrimental to the patient's health.'

[98] In *Montgomery v Lanarkshire Health Board (General Medical Council intervening)* [2015] 2 All ER 1031 at 1053 having considered UK law and comparative commonwealth jurisprudence held,

[5] Chatterson v Gerson [1981]QB 432 at 443
[6] [1985] AC 871
[7] 464 F 2d 227.
[8] (1980) 114 DLR (3d)

"[86] **It follows that the analysis of the law by the majority in *Sidaway* is unsatisfactory**, in so far as it treated the doctor's duty to advise her patient of the risks of proposed treatment as falling within the scope of the *Bolam* test, subject to two qualifications of that general principle, neither of which is fundamentally consistent with that test. It is unsurprising that courts have found difficulty in the subsequent application of *Sideway*, and that the courts in England and Wales have in reality departed from it; a position which was effectively endorsed, particularly by Lord Steyn, in *Chester v Afshar*. There is no reason to perpetuate the application of the *Bolam* test in this context any longer."

[99] As to the correct test to be applied it was held in *Montgomery* (supra) at 1053

"[87] The correct position, in relation to the risks of injury involved in treatment, can now be seen to be substantially that adopted in Sidaway by Lord Scarman, and by Lord Woolf MR in Pearce, subject to the refinement made by the High Court of Australia in *Rogers v Whitaker*, which we have discussed at paras [77]–[73]. An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor **is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments.** The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.

[88] The doctor is however entitled to withhold from the patient information as to a risk if he reasonably considers that its disclosure would be seriously detrimental to the patient's health. The doctor is also excused from conferring with the patient in circumstances of necessity, as for example where the patient requires treatment urgently but is unconscious or otherwise unable to make a decision. It is unnecessary for the purposes of this case to consider in detail the scope of those exceptions."(emphasis added)

Did the Doctors at Labasa Hospital breach their duty of care?

[100] Plaintiff has proved on cogent evidence, that his consent was not obtained, and he was not informed about the risks of surgical intervention performed. He had complained this to authorities of the Hospital. When he was not informed about outcome of his complaint Plaintiff had also complaint to the minister in charge at that time.

[101] Defendant lead evidence of Dr Maloni, who relied on records but at the same time cold not produce any recorded evidence as to Plaintiff being informed about the risks and or options available.

[102] There were no records of written consent of Plaintiff for surgery. It is improbable to loose such a vital document, especially when Plaintiff had made a complaint about the surgery conducted without his consent. If his consent was available there was no reason not to inform this to him as soon as complaint was made.

[103] Plaintiff was neither informed risks associated with laparotomy nor options such as surgery without laparotomy to remove appendix.

[104] In *Montgomery* (supra) it was held,

> " In the law of negligence, this approach entails a duty on the part of doctors to take reasonable care to ensure that a patient is aware of material risks of injury that are inherent in treatment. This can be understood, within the traditional framework of negligence, as a duty of care to avoid exposing a person to a risk of injury which she would otherwise have avoided, but it is also the counterpart of the patient's entitlement to decide whether or not to incur that risk. **The existence of that entitlement, and the fact that its exercise does not depend exclusively on medical considerations, are important. They point to a fundamental distinction between, on the one hand, the doctor's role when considering possible investigatory or treatment options and, on the other, her role in discussing with the patient any recommended treatment** and possible alternatives, and the risks of injury which may be involved.
>
> [83] The former role is an exercise of professional skill and judgment: what risks of injury are involved in an operation, for example, is a matter falling within the expertise of members of the medical profession. **But it is a non sequitur to conclude that the question whether a risk of injury, or the availability of an alternative form of treatment, ought to be discussed with the patient is also a matter of purely professional judgment**. The doctor's advisory role cannot be regarded as solely an exercise of medical skill **without leaving out of account the patient's entitlement to decide on the risks to her health which she is willing to run** (a decision which may be influenced by non-medical considerations). Responsibility for determining the nature and extent of a person's rights rests with the courts, not with the medical professions."(emphasis added)

[105] The patient's autonomy is recognised in *Montgomery* (supra) and this is applicable to Fiji considering the common law right and right to information recognised in Bill of Rights of the Constitution and development of common law right in terms of Section 7(4) of the Constitution. Accordingly Plaintiff was

entitled to know the risks associated with laparotomy and the options available and denial of that was negligence of medical officers of Labasa Hospital including second Defendant who was the person in charge of such officers.

[106] Plaintiff had proved alternate cause of action for medical negligence for failure to provide information regarding risks associated with midline laparotomy and also the options available to said surgery.

GENERAL DAMAGES

PAIN, SUFFERING AND LOSS OF AMENITIES

[107] The Defendants do not dispute that the Plaintiff would have suffered pain and discomfort and loss of amenities as a consequence of incisional hernia arising out of laparotomy. He had suffered severe pain for more than a year despite attending post-surgical reviews at Hospital. Considering the time and other factors such as unable to walk or sit and periodic medical certificates given recommending unable and or unfit , to return to usual work . For past pain and suffering $50,000.

SPECIAL DAMAGES

[108] The Plaintiff has submitted an updated Schedule of Special Damages totalling $20,200.00.

[109] Plaintiff had claimed S1000 as transportation cost and this is allowed as receipts are not issued for taxi fare. Plaintiff had to travel to Suva for treatment and had several times attended reviews at the Hospital and he could not walk and or sit for a long period, hence needed mode of transportation other than public transport.

[110] similarly for accommodation Plaintiff had claimed $2,000 as he had to travel to Suva for treatment at private hospital for several instances before and after corrective surgery. So this amount is allowed as accommodation expense for several instances Plaintiff private hospital in Suva.

[111] Plaintiff had also claimed $300 for medication and this can be allowed considering that he was under pain for more than one year and medication obtained to relieve pain .

[112] Plaintiff did not produce evidence of cost of his operation and said it was paid by insurance.

[113] Total of special damages is $3300.

LOSS OF PAST EARNING

[114] The Plaintiff has not pleaded loss of earning either past or future in his Statement of Claim he failed to produce evidence as to his salary details for assessment which is a special damage.

[115] There is no proof of permanent loss affecting his future employment as there is no impairment assessment produced. Plaintiffs complain about the pain and his reduce ability to active life which he enjoyed earlier. Considering facts proven such as large opening of abdomen which used twenty seven staples to close and also developed incisional hernia makes a person can have a pain and restricted movement.

[116] Plaintiff is complaining of pain and there is a large scar on the abdomen. Considering the available evidence it is proved that Plaintiff had not fully recovered to his earlier status and the surgery and scar had affected his usual ability to work and have a reduced capability. Considering these a global award of $10,000 awarded for future contingencies considering the nature of the damage to abdominal tissues and probable future contingencies.

Exemplary Damages/ Punitive Damages

[117] ". Punitive damages: basic principles.[9]

Punitive damages (otherwise known as 'exemplary damages'), aimed overtly at punishing the defendant and dissuading wrongdoing, have a long history in the common law"

[118] Lord Devlin's in **Rookes v Barnard [1964] AC 1129 (HL),** had confined exemplary damages or punitive damages to three broad categories Those are cases of **oppressive, arbitrary or unconstitutional conduct by government servants acting in that capacity**, cases of conduct aimed at making a profit in excess of the compensation payable to the claimant, and cases where statute authorizes an award of punitive damages.

[119] The utility of punitive or exemplary damage has not lost with time and more recent case UK House of Lords decision of *Kuddus v Chief Constable of Leicestershire Constabulary* [2001] 3 All ER 193 [2001] 3 All ER 193 at 214-215(Per Lord Hutton) emphasized the requirement of the courts to award additional damages to condemn the action when such actions cannot be tolerated. Held,

> "in my opinion the power to award exemplary damages in such cases serves to uphold and vindicate the rule of law because it makes clear that the courts will not tolerate such conduct. It serves to deter such

[9] Halsbury's Laws of England (Vol 29)(2024) (Damages)(Punitive Damages)

actions in future as such awards will bring home to officers in command of individual units that discipline must be maintained at all times. In my respectful opinion the view is not fanciful, as my noble and learned friend Lord Scott of Foscote suggests, that such awards have a deterrent effect and such an effect is recognized by Professor Atiyah in the passage from his work on Vicarious Liability in the Law of Torts (1967)cited by Lord Scott of Foscote in his speech. Moreover in some circumstances where one of a group of soldiers or police officers commits some outrageous act in the course of a confused and violent confrontation it may be very difficult to identify the individual wrongdoer so that criminal proceedings may be brought against him to punish and deter such conduct, whereas an award of exemplary damages to mark the court's condemnation of the conduct can be made against the Minister of Defence or the Chief Constable under the principle of vicarious liability even if the individual at fault cannot be identified."

[120] In my mind conduct complained to the authorities of the Hospital and facts proved in this case where force was used to administer anesthetic drugs and to conduct a complex and risky surgery without consent of Plaintiff , satisfies an award of punitive damage of $50,000.

[121] In *Devi v Nandan [2013] FJCA 104; ABU0031.2011 (decided on 3.10.2013)* Court of Appeal held, (Per Chandra JA)

> *"... Having dealt with the allegation of malingering by the Appellant as above, the learned trial Judge at paragraph 40 of the judgment, proceeded to consider the redress that could be granted to the Appellant and stated:*
> *"... apart from compensating loss, harm and/or injury, another object of awarding damages is to penalize the wrongdoer for the wrongful act. That this object is sought to be achieved by awarding, in addition to the usual compensatory damages, if any, exemplary, punitive, vindictive or retributory damages, which comes into play when the defendant's conduct shows a disregard or insolence or the like to the plaintiff (See McGregor on Damages; Harley McGregor, 13th Edit. Sweet and Maxwell, 1972 p.303). The principle of awarding punitive damages against a wrongdoer was accepted and applied in Uren v Fair Fax and Sons Pvt Ltd [1966] 117; Lamb v Cotogno [1987] 164 CLR and Fontin v Katapodis [1962] HCA 63; [1962] 108 CLR 177."*
>
> *The principles relating to the granting of punitive damages was correctly set out by the learned trial Judge as stated above but the question that arises is as to whether the circumstances of this case warranted the application of such principles. "*

further held,

> In *Seniloli v Voliti* [2000] FJHC 234' [2000] 2 FLR 6 (22 February 2000) Justice Shameem in dealing with a case of false imprisonment granted punitive damages and in the course of her judgment cited the New Zealand decision of *X v Attorney General* (1996) NR 623 where Justice Williams at p.631 stated:
>
> "As to punitive or exemplary damages,..... it is enough to note that such damages are only awarded to punish the defendants because of the outrageous or contumelious way in which they have conducted themselves in committing the tort for which they are sued (*Donselaar v Donselaar* [1982] NZCA 13; (1982) 1 NZLR 97 ... As Auckland City Council v Blundell [1986] NZCA 86; (1986) 1 NZLR 732 at p.739 make clear, exemplary damages must be 'fairly and reasonably commensurate with the gravity of the conduct thus condemned."
>
> The present case was a simple case of negligence on the part of the Respondent which resulted in the occurrence of the accident which was complained about by the Appellant. As far as the evidence was concerned there was nothing extraordinary apart from his negligent driving which indicated any contumelious conduct on his part. The law is quite clear regarding the grant of punitive damages that there should be some untoward or contumelious conduct or malice on the part of the defendant to justify the award of punitive damages as punitive damages are granted more to punish a wrongdoer rather than with the idea of compensating the person wronged. The evidence in the present case does not show any such circumstances which would warrant the granting of punitive damages."

[122] Facts of this case and conduct proved by Plaintiff is in sharp contrast to abovementioned Court of Appeal decision. Conduct of Defendant is oppressive, arbitrary, unconstitutional and outrageous, due to

a. Plaintiff was admitted to hospital for observation and was never informed about specific surgical intervention and or diagnosis.
b. He was not informed about the details of such surgical intervention more specifically the risks associated and also options available. Laparotomy is complex and inherently risky operation that may and in haft develop incisional hernia which can even be fatal if corrective surgery is not done. This is a painful situation too.
c. Defendants' witness stated Plaintiff was diagnosed with clinical appendicitis if so there was optional less risky surgery instead of laparotomy this option was not informed to Plaintiff.
d. Plaintiff was taken to outside of the operating theatre through deception of observation by a doctor.

e. **Force was used to keep his body and head down and anaesthetics used to immobilize him and also make him unconsciousness**.
f. Plaintiff was subjected to risky surgical operation without his consent and even after surgery his questions were not answered this made him more helpless and sorrowful and helpless.
g. After surgery plaintiff's abdomen was plastered and no medical or non-medical personnel explained the surgical procedure conducted without his consent and post-surgical management.
h. Plaintiff's complaint regarding surgery without his consent was not investigated and or outcome known to him this shows that such serious conduct was not considered serious to inform the Plaintiff the outcome or investigation.

i. No evidence of the Hospital and or institutional measures taken to prevent such incidents in future.
j. In contrast such grave violations of patients' rights are taken lightly and try to cover up stating consent form is missing.
k. Self-denial of such grave nature and future impact of medical personnel of the hospital and basic.

[123] Patients who are admitted in hospitals are expecting a level of trust and professional conduct from the medical and para medical staff. They are vulnerable and most of them are helpless due to medical conditions they suffer. So, a patient does not expect medical and para medical personnel to use force and administer aesthetic drugs to them. This is a serious violation of trust by hospital. Considering all the above factors and cumulate effect of violation of Plaintiff's basic human right punitive cost of $50,000 awarded as punitive damage.

COST

[124] Cost of this action is summarily assessed at $6,000 to be paid by Defendants within 21 days.

INTEREST UNDER LAW REFORM

[125] Plaintiff is granted 6% per annum, interest for both general and special damages from the date of the writ to date of judgment 18.2.2025.

Calculations	
Special Damages	$ 3300.00
Interest at 6% from 5.5.2020 to 18.2.2024(1270days)	$ 688.93
	$ 3988.93

General Damages	
Past Pain and suffering	$50,000

Interest @ 6% from 5.5.2020 to 18.2.2024	$10,438.36
	$60,438.36
Punative Damage	$50,000
Future loss of earning	$10,000
Total Damages	**$123,988.91**

Final Orders;

a. Defendants to pay Plaintiff $123,988.91 as damages including punative damages.
b. Defendants to pay Plaintiff cost of this action assessed summarily in the sum of $6,000.

.....
Deepthi Amaratunga
Judge

At Suva this 26th February, 2025.

Solicitors
Sushil Sharma Lawyers
Attorney-General's chamber