

OSEA VOLU

v.

WILSON THOMAS MAWI

[SUPREME COURT, 1977 (Tuivaga J.) 31st October]

Civil Jurisdiction

Damages—assessment—motor vehicle accident—severe injuries to right hip—permanent loss of employment as bar manager—loss of prospective earnings—pain and suffering and loss of amenities.

As a result of the negligent driving of the defendant, the plaintiff aged 55 suffered severe injuries to his right hip which necessitated a hip replacement operation in Australia. Even after this operation, his right leg was longer by half an inch and there was pain and limitation of movement at the hip. His permanent incapacity was put at 40%.

After a long career in the army, the plaintiff secured employment as a bar manager at one of the local hotels which post he was forced to relinquish as a result of the accident and there was no prospect of his being fit enough to take up this or a similar post in the future as a result of his injuries.

Held: 1 Six was the proper multiplier for assessing his claim for loss of prospective earnings.

2. \$4,000.00 was the proper amount for pain and suffering and loss of amenities.

Action for damages in the Supreme Court for negligent driving.

R. I. Kapadia for the plaintiff.

N. S. Arjun for the respondent.

TUIVAGA J.: [31st October 1977]—

This is an action for damages for negligent driving arising out of a motor accident at Wailekutu on 8th February 1976 between a landrover Reg. No. AL136 driven by the defendant and a Datsun motor car Reg. No. AM33 owned and driven by the plaintiff. As a result of the accident the plaintiff's car was damaged beyond economical repairs and the plaintiff himself suffered a severe injury to his right hip and other less serious injuries as well.

The question of liability for negligence is not now in dispute as this was admitted by the defendant during the course of hearing. This leaves only the question of quantum of damages to be determined by this court.

The plaintiff claims special damages in the sum of \$8,110.50, particulars of which are set out in full in the pleadings. However, the main general items of special damages are under:

	\$
A Medical expenses in Fiji.....	12.20
Medical expenses in Australia	1,043.00
Transport expenses in Fiji during treatment	140.00
Transport and other expenses in Australia	88.00
Airfares—Nausori to Nadi and accommodation.....	64.00
Return airfares Nadi/Australia	583.30
B Loss of salary to 2.10.77.....	4,280.00
Damage to car.....	1,900.00
	\$8,110.50
	\$8,110.50

C Except for items relating to loss of salary and damage to car no serious dispute is made over the other items which in my judgment are clearly owing as special damages. As to the contested items, I will advert to them later in this judgment.

The plaintiff also claims general damages under two main heads:

- (i) loss of prospective earnings; and
- (ii) pain and suffering and loss of amenities of life.

D Following the accident the plaintiff was admitted to the C.W.M. Hospital in Suva. The medical evidence which is not in dispute and which I accept was given by Dr. D. D. Sharma, Consultant Surgeon at the C.W.M Hospital. According to him the plaintiff suffered bruises to his chest, hips, right shoulder and right knee in the accident. The plaintiff also had fracture dislocation of the right femoral head which was the most serious of the injuries sustained by the plaintiff. The fracture was reduced and the plaintiff spent six weeks in bed on traction. After this he was gradually mobilised and was discharged from hospital on 28th March 1976.

E A week after the plaintiff was discharged from hospital he developed severe pain in his right hip and an X-ray showed a fracture of the femoral neck. This further fracture was caused by the weakening of the bone due to the fracture dislocation. On 27th May 1976 nailing of the hip was attempted but without success as the broken piece was too small. It therefore became obvious that the plaintiff needed a total hip replacement which could not be done in Fiji. He was advised to seek such treatment overseas. In July 1976 the plaintiff underwent a complete hip replacement in Sydney, Australia. Although the operation in Sydney has benefitted the plaintiff a great deal and has enabled him to walkabout, he has got a non-union of part of the bone (greater trochanter) at the hip as a result of the operation. The right leg has become longer by half an inch and there is slight pain and limitation of movement at the hip. Dr Sharma estimated that the plaintiff's permanent residual incapacity as forty percent.

H The plaintiff whose evidence I also accept is 55 years of age. At the time of the accident the plaintiff was employed as bar manager at Korolevu Beach Hotel in Nadroga. He commenced employment there on 1st January 1975 and was regarded as a good and conscientious worker by the management. Prior to his employment at Korolevu, the plaintiff was a soldier in the Royal Fiji Military Forces. He spent over 23 years in the army which he served efficiently and with much distinction. In the army he was for many years in charge of the officers' mess and responsible for

catering of foods and drinks. The plaintiff developed such a skill and flair for that type of work that his services were often sought and utilised in high Government circles. It was at his own request in order to take on his Korolevu employment which was better paid and with promising prospects that he was released from the army on a pension of \$72.61c a month. Until the accident the plaintiff had been a fairly active man who took much interest and pride in tending to his vegetable and root-crop gardens. He is a person who used to enjoy outdoor life during his spare time. The plaintiff has sober habits, having been a teetotaler for the past sixteen years. He is a dedicated family man who has his own house in Oneata Street, Samabula, with only a relatively small mortgage left on it.

The plaintiff suffered much pain and suffering from his injuries in the accident. As a result of the fracture dislocation of the right femoral head, the plaintiff had to spend six weeks in bed on traction with its attendant great discomfort and inconvenience. The plaintiff spent more than a month and a half in hospital before being discharged. However, further complications arose a week later when a severe pain developed in his right hip. An X-ray showed a fracture of the femoral neck which was caused by weakening of the bone due to the initial fracture dislocation. Treatment of this was not successful so that the plaintiff was advised that a total hip replacement was required and this could not be obtained in Fiji. The plaintiff subsequently went to Australia where he underwent an operation for hip replacement. Though the operation has been characterised as successful, it has unfortunately caused his right leg to be a little longer than his left leg resulting in a rather awkward limp, a condition he will carry with him throughout life. The plaintiff could not move about freely as before and easy mobility is a thing of the past. He still suffers pain in the hip area every now and again, particularly during changes in the weather and this condition will probably continue for a long time. Moreover, the plaintiff gets tired easily and finds it impossible to do heavy physical exertions. He finds it difficult to remain standing or seated for long periods and needs more rest in bed. The plaintiff's condition is such that he could no longer carry on his employment as bar manager at the Korolevu Beach Hotel and of course he is no longer so employed. It is not likely and I wholly rule out the possibility of the plaintiff being ever sufficiently fit again to be able to find a job as a bar manager for which he has experience and suitable qualifications. His permanent disability has been medically assessed as forty percent and this must necessarily handicap the plaintiff very much on the labour market which, as is well-known, is highly competitive because of the rate of unemployment in the country. In such a market only a persons of undoubted fitness would be preferred. Thus the outlook for the plaintiff of finding employment suited to his condition must be regarded as bleak indeed. For the purpose of this judgment I must regard the plaintiff as virtually unemployable on the paid labour market because of his physical handicap.

It is clear that if the plaintiff had not been involved in the accident in question and sustained injuries, he would no doubt still be working as bar manager at Korolevu and would probably continue to do so for several years. The plaintiff is 55 years of age and while I am well conscious of the fact that life is not without its contingencies and uncertainties, I think it is reasonable to suppose that the plaintiff who was apparently of good health prior to the accident would have continued in remunerative employment for as much as a further 6 years. Beyond that it becomes

A impossible to say what the future might hold for the plaintiff. I am satisfied that bearing in mind his sober habits and his age and modest life-style the plaintiff but for the accident would almost certainly have remained in remunerative employment for a further 6 years.

B Thus as regards the claim for loss of prospective earnings which the plaintiff is alleged to have suffered I would regard 6 years as the proper multiplier for assessing this claim. It is in evidence that the plaintiff was at the time of the accident earning a net salary of \$214 a month or \$2,568 a year. Applying the multiplier of 6 to the sum of \$2,568, it comes to \$15,408. I am satisfied that such is the amount this Court ought to award for the plaintiff's loss of prospective earnings as the result of the accident.

C As for pain and suffering and loss of amenities of life, I think a reasonable amount of compensation for this, bearing in mind what the plaintiff has gone through after the accident and bearing in mind the fact that his full enjoyment of life in the years ahead has been much curtailed, would be \$4,000.

D As stated earlier there is dispute as to the amount claimed for loss of earnings totalling \$4,280.00. However, on the evidence placed before this Court it is clear that such an amount which is computed from the time of the accident to the date of trial represents the plaintiff's actual loss of earnings as a result of the accident. I am satisfied therefore that such an amount should be reimbursed to the plaintiff.

As for the damage to the plaintiff's car, evidence is not controverted that the pre-accident value of the car was \$2,500. The wreck was sold for \$600, leaving the amount claimed of \$1,900. I am satisfied that this amount should also be reimbursed to the plaintiff.

E In all I assess damages as under—

	\$
<i>Special damages</i>	8,110.50
<i>General damages:</i>	
(i) Loss of prospective earnings	15,408.00
F (ii) Pain and suffering and loss of amenities of life	4,000.00
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Total	\$27,518.50
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Accordingly there will be judgment for the plaintiff against the defendant in the sum of \$27,518.50 with costs which by agreement of both counsel I fix at \$500.

G *Judgment for plaintiff in sum of \$27,518.50*