ATTORNEY-GENERAL v EDWARD MICHAEL BROADBRIDGE (CBV0005 of 2003S)

SUPREME COURT — CIVIL JURISDICTION

FATIAKI CJ, MASON, WEINBERG and HANDLEY JJ

5, 8 April 2005

Damages — assessment — application for special leave to appeal — motor vehicle accident causing serious injury — ruling for loss of future earnings — whether Court of Appeal departed from conventional approach and contrary to sound policy — whether Court of Appeal seriously erred — "multiplicand/multiplier" approach — Constitution s 122(2)(b) — Supreme Court Act 1998 s 7.

The Attorney-General (Petitioner) filed an application for special leave to appeal from a judgment of the Court of Appeal delivered on May 2003, which challenged the method of assessment adopted by the Court of Appeal in fixing the damages for loss of future earnings. The Respondent was a licensed aircraft maintenance engineer of Air Pacific, who suffered serious injury when his vehicle collided with an army truck driven by a Lance Corporal at a high speed, on the wrong side of the road. At issue is whether a judge who was required to assess loss of future earning capacity may do so without adopting a "multiplicand/multiplier" approach.

The Court of Appeal upheld the High Court's findings of liability against the Lance Corporal, found the Respondent not guilty of contributory negligence, rejected the High Court's finding of loss of future earnings of $1,720,889.43 and ordered a sum of $975,205. The Petitioner submitted that the Court of Appeal's decision was not based on any established principles of law, was contrary to sound policy which had led the Court of Appeal into serious error.

Held — (1) An application for special leave is made pursuant to s 122(2)(b) of the Constitution. The statutory criteria for the grant of special leave are to be found in s 7 of the Supreme Court Act 1998. In relation to a civil matter, the Supreme Court must not grant special leave to appeal unless the case raises a far reaching principle of law, a matter of general or public importance, or a matter that is otherwise of substantial general interest to the administration of civil justice.

(2) The "multiplicand/multiplier" approach was based upon a traditional method of calculating future economic loss that was developed in England over many years. It was however only one of a number of methods that can be used to assess such loss. The adoption by the Court of Appeal of the "present value method", which was based upon the evidence as a whole rather than the multiplicand/multiplier method, was consistent with the developments of common law in both England and Australia. This approach was justified in cases involving great uncertainty such as in the present case, where there were so many uncertainties associated with the Respondent's situation after sustaining his injuries.

(3) There was also no principle, or rule of the common law, that required any judge in Fiji, who must assess future economic loss resulting from personal injury, to adopt a multiplicand/multiplier approach, whether for the purpose of calculating the value of the lost chance of future increased earnings, or for the purpose of calculating the present value, in lump sum terms, of those earnings. In the present case, it was appropriate for the court to calculate the value of the lost earning capacity upon a different basis, though never forgetting to discount for vicissitudes where appropriate, and for the value of a certain lump sum.

(4) The case must not be regarded as a benchmark for the amount to be awarded for future economic loss. Although the damages fixed by the Court of Appeal were significantly greater for future economic loss, it was a product of a combination of factors

which included the evidence led at trial, without objection, regarding this issue. No challenge was made to the use of the discounted present value method. The Respondent who was injured was an engineer and was also training as a pilot, one of the highest paid occupations in Fiji. On the evidence, had he qualified as a commercial pilot he has a good chance to continue in that position until retirement. The loss that the Respondent sustained was substantial and he should be fully compensated for it.

Application for special leave allowed. Appeal dismissed.

Cases referred to

Hall v Wheeler [1962] QWN 40; *Hayman v Forbes* (1975) 13 SASR 225; *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1984] 1 AC 729; *Leis v Gardner* [1965] Qd R 181; *Mallett v McMonagle* [1970] AC 166; [1969] 2 All ER 178; *Paul v Rendell* (1981) 34 ALR 569; *Rouse v Port of London Authority* [1953] 2 Lloyd's Rep 179; *Wade v Allsopp* (1976) 10 ALR 353; *Wells v Wells; Thomas v Brighton Health Authority; Page v Sheerness Steel Co Plc* [1997] 1 WLR 652; [1997] 1 All ER 673, cited.

Andrews v Grand & Toy Alberta Ltd [1978] 2 SCR 229; *Biesheuvel v Birrell* [1999] PIQR Q40; *Blamire v South Cumbria Health Authority* [1993] PIQR Q1; *British Transport Commission v Gourley* [1956] AC 185; [1955] 3 All ER 796; *Cookson v Knowles* [1979] AC 556; [1978] 2 All ER 604; *Lee Transport Co Ltd v Watson* (1940) 64 CLR 1; *Malec v J C Hutton Pty Ltd* (1990) 169 CLR 638; 92 ALR 545; *Norris v Blake (by his tutor Porter) (No 2)* (1997) 41 NSWLR 49; 25 MVR 101; *Ratnasingam v Kow Ah Dek* [1983] 1 WLR 1235; *Robertson v Lestrange* [1985] 1 All ER 950; *Thatcher v Charles* (1961) 104 CLR 57; [1961] ALR 586; *Thurston v Todd* [1965] NSWR 1158; *Todorovic v Waller* (1981) 150 CLR 402; 37 ALR 481; *Wells v Wells* [1999] 1 AC 345; [1998] 3 All ER 481; *Wynn v NSW Insurance Ministerial Corporation* (1995) 184 CLR 485; 133 ALR 154, considered.

J. J. Udit and *S. N. Sharma* for the Petitioner

J. Apted for the Respondent

[1] Fatiaki CJ, Mason, Weinberg and Handley JJ. This is an application by the Attorney-General of Fiji for special leave to appeal from a judgment of the Court of Appeal delivered on 30 May 2003. That court had allowed, in part, an appeal from Byrne J who, in an action for personal injuries resulting from a motor vehicle accident, had awarded the plaintiff the sum of $1,720,889.43. The Court of Appeal ordered that the amount be reduced to $975,205.

[2] The application for special leave is made pursuant to s 122(2)(b) of the Constitution. The statutory criteria for the grant of special leave are to be found in s 7 of the Supreme Court Act 1998. In relation to a civil matter, the Supreme Court must not grant special leave to appeal unless the case raises a far reaching principle of law, a matter of general or public importance, or a matter that is otherwise of substantial general interest to the administration of civil justice.

[3] This being a challenge to the method of assessment adopted by the Court of Appeal in fixing the damages for loss of future earnings, or earning capacity, the Attorney-General is required to demonstrate, in order to obtain special leave, that the judgment below was erroneous, not just in terms of the level of damages fixed, but in its application of principle as well.

[4] In substance, the Attorney-General contends that, with regard to the vast majority of personal injury claims, the common law in Fiji permits one method by which loss of future earnings capacity is to be assessed, and no other.

He describes the requisite approach as "the multiplicand/multiplier approach". He submits that the Court of Appeal, by departing from that approach, has sanctioned a new and unpredictable method of assessing future economic loss which is neither supported by authority, nor consistent with well established practice in the field of personal injury law in this country.

The factual background

[5] On 20 April 1991, the Respondent, Edward Michael Broadbridge, then a licensed aircraft maintenance engineer employed by Air Pacific, suffered serious injury when the vehicle he was driving collided with an army truck being driven by Jone Maka, who at that time held the rank of Lance Corporal. Mr Broadbridge was then aged 22. He had no recollection of the actual collision because of the seriousness of the injuries that he suffered. However, two eyewitnesses gave evidence that the collision was brought about by Lance Corporal Maka's having driven at a high speed, on the wrong side of the road.

[6] Mr Broadbridge sustained a fractured forearm and a fractured hip joint. He was taken to the Colonial War Memorial Hospital, in Suva, for treatment. A plaster cast was fitted to his hip, but it appears that his condition was not properly diagnosed. It was not discovered, at that stage, that he had in fact suffered a very severe dislocation of the hip, with significant damage to the surrounding area. It subsequently became necessary for him to undergo further surgery, which was ultimately performed in New Zealand. Regrettably, the severity of the injury, and its residual effects, meant that he continued to suffer chronic pain in his hip and knee joint.

The proceedings in the High Court

[7] Mr Broadbridge brought proceedings in the High Court in 1993. He named Lance Corporal Maka and the Attorney-General as Defendants. There was no dispute about the vicarious liability of the Attorney-General in the event that negligence on the part of Mr Maka could be established.

[8] By his amended statement of claim, filed in 1999, Mr Broadbridge also alleged negligence on the part of the Colonial War Memorial Hospital in its treatment of him after the accident. He claimed that the failure of the hospital medical staff to diagnose the seriousness of his hip dislocation, and to perform surgery in a timely manner, had aggravated his injuries. As with Lance Corporal Maka, the Attorney-General accepted that he was vicariously liable for any negligence that might be demonstrated on the part of the hospital, or its employees.

[9] After a trial lasting some 6 days, his Lordship found both Lance Corporal Maka and the Colonial War Memorial Hospital liable to Mr Broadbridge. He rejected pleas of contributory negligence.

[10] On the question of quantum, Bryne J noted that at the time of the accident, Mr Broadbridge's annual salary as a maintenance engineer had been $23,304. By the time of the trial, that figure had increased to $26,503. There was unchallenged evidence that Mr Broadbridge would not be in a position to earn significantly more than that amount, at least for the foreseeable future.

[11] Prior to the accident, Mr Broadbridge had held a private pilot's licence. He was, at that time, training to qualify for a commercial pilot's licence. He had completed 90 hours flying time, but still had 110 more hours to achieve in order to qualify for a commercial licence.

[12] There was a substantial body of evidence, which Byrne J characterised as "comprehensive and compelling", that suggested that, had it not been for the accident, Mr Broadbridge would have qualified for a commercial pilot's licence by September 1993, when he would have been aged 25. The evidence also suggested that, but for the accident, Mr Broadbridge might have expected to be promoted to the position of first officer, with Air Pacific, by early 1996. As a first officer, he would have been paid a salary of just over $40,000, together with a tax-free allowance of $1000 per month. The evidence went on to suggest that had Mr Broadbridge followed a normal, and expected, career path, he would have been likely to achieve promotion to the position of Captain of a Boeing 737 aircraft by 2003, and further promotion to the position of Captain of a Boeing 767 aircraft by 2006. He would have been expected to continue working as a pilot until he reached the normal retirement age of 60 in 2029. By then, he would have been earning a salary in excess of $136,000.

[13] Regrettably, Mr Broadbridge's injuries were so serious that they precluded him from following his chosen career in commercial aviation. This was particularly unfortunate as he had developed an interest in flying from an early age. Indeed, he had been employed in the aviation industry from the age of 17, always with a view to qualifying as a commercial pilot.

[14] There was a substantial body of evidence led in support of Mr Broadbridge's claim for future economic loss.

[15] Professor Keith Petrie, of the Faculty of Medicine and Health Science at the University of Auckland had, for many years been a consultant to Air New Zealand. As part of his duties, he had been responsible for assessing all pilots interviewed for employment. His evidence was that, had it not been for the accident, Mr Broadbridge would have had an excellent chance of completing his training, and of being hired by a commercial airline.

[16] Two other witnesses, Steve Tizzard, Air Safety Controller for the Civil Aviation Authority, and Francis Christofferson, a licensed aeronautical engineer with Air Fiji, gave evidence to the same effect. Mr Christofferson said that he knew Mr Broadbridge well. He described him as a diligent worker, and noted that his engineering experience would have been of great advantage to him as a pilot.

[17] In support of his case, Mr Broadbridge called Captain Nitin Hiralal, Vice-President of the Fiji Airlines Pilots' Association, and an experienced pilot with Air Pacific. Captain Hiralal tendered a table which showed the probable career path and earnings of a pilot entering service with Air Pacific in 1996 at age 27. His table showed the pilot becoming captain of a Boeing 767 aircraft in the year 2006, at age 37, and continuing in that role until retirement at age 60.

[18] A particularly important witness, as regards assessment of future economic loss, was Bruce Sutton. Mr Sutton was a chartered accountant, retained on behalf of Mr Broadbridge to carry out a series of tasks designed to enable the trial judge to arrive at an appropriate figure for loss of earning capacity. He was asked to accept the figures prepared by Captain Hiralal as to projected earnings as a pilot, and calculate the difference between those amounts, and the salary paid to Mr Broadbridge as a licensed aircraft maintenance engineer. He was then asked to calculate the "after tax difference" in each year by subtracting tax at the top personal rate of 34% from the taxable component of the difference. Finally, he was asked to ascertain the present value of each figure so arrived at by discounting it at a rate of 2% per annum and to enter that result in his own table.

[19] The resulting amount was $1,423,775 which, Mr Sutton concluded, was the present value of Mr Broadbridge's lost future earnings.

[20] Mr Sutton was not cross-examined upon his calculations. Nor was it suggested that it was in any way inappropriate to proceed upon the basis that Mr Broadbridge had a life expectancy that exceeded 60 years, and that he would have continued to work as a commercial pilot until retirement age. Having concluded that the present value of the lost future earnings was the amount arrived at by Mr Sutton, Byrne J proceeded to deduct from that figure the sum of $80,000, which was the present value of the total premiums that an Air Pacific pilot would be required pay over the relevant period under the existing arrangements for insurance cover. He noted that this was an expense that Mr Broadbridge would necessarily have incurred had he eventually become a commercial pilot.

[21] In summary, Byrne J assessed damages under the following heads:

Pain, suffering and loss of amenities of life		$75,000
Future expenses		$61,560
Loss of future earnings	$1,423,775 $ 80,000	$1,343,775
Less allowance for contingencies		
		$1,480,335

[22] With regard to the matter of interest, his Lordship concluded that Mr Broadbridge had been guilty of inordinate and inexcusable delay in bringing the action to trial. Accordingly, he awarded interest from 9 July 1998 only, and not for any period preceding that date. He fixed interest at the rate of 5%, but over the entire amount awarded, thereby bringing the total amount of the judgment to $1,720,889.43.

The proceedings before the Court of Appeal

[23] By amended notice of appeal filed on 4 February 2003, virtually all of Byrne J's findings were challenged. It was submitted that the finding that Mr Maka had been negligent, should be set aside. It was further submitted that the Court of Appeal should, in any event, find that Mr Broadbridge had been guilty of contributory negligence in relation to the collision. Finally, in relation to liability, it was contended that the finding of negligence of the part of the hospital could not be supported.

[24] More relevantly for present purposes, it was submitted that Byrne J ought not to have assessed damages for future economic loss upon the basis of Mr Sutton's calculations. It was submitted that those calculations were based upon a series of erroneous assumptions, and did not accord with the normal, and established principles which governed the assessment of such damages in Fiji. More specifically, it was submitted that his Lordship had adopted an inappropriate multiplier when applying the multiplicand/multiplier method for assessing future economic loss, and this had resulted in an award of damages that was both unprecedented, and excessive.

[25] It was also submitted that the sum of $75,000 awarded for pain, suffering and loss of amenities was excessive. It was contended that there was no justification for awarding interest on that part of the judgment that represented

future pain and suffering, future expenses and future economic loss. Finally, it was submitted that a rate of 5% was excessive.

[26] On 23 May 2003, the Court of Appeal (Tompkins, Henry and Penlington JJA) upheld Byrne J's findings as to liability as against Lance Corporal Maka. Their Lordships also upheld Byrne J's finding that Mr Broadbridge had not been guilty of contributory negligence. However, they concluded that the evidence did not support the finding of negligence on the part of the hospital. In practical terms, that made no difference to the result, since the Attorney-General was, in any event, vicariously liable in respect of the negligent driving of the army truck.

[27] The Court of Appeal concluded that the primary judge had fallen into a series of errors on the issue of quantum. First, it held that the sum of $75,000 for pain, suffering and loss of amenities was excessive. It ordered that that amount be reduced to $60,000. That finding is not the subject of the present application to this court, and nothing further need be said about it.

[28] Second, the Court of Appeal rejected Byrne J's finding that the loss of future earning capacity should be assessed at $1,423,775, less $80,000 for future insurance premiums. It regarded that figure as excessive, essentially because it failed to take into account what it described, in general terms, as "contingencies".

[29] The Court of Appeal noted that Byrne J had proceeded on the basis that there was certainty that Mr Broadbridge would have earned, as a commercial pilot, at least the predicted amount through to the year 2029. No account had been taken of the possibility that he may not have obtained his commercial pilot's licence, or that he may not have achieved the status of Captain of a Boeing 737 by 2003, or a Boeing 767 by 2006. Even if he did achieve one or other of those positions, there was no certainty that he would have maintained it through to 2029. Possible redundancy in a somewhat fragile industry could not be ignored, nor could survival itself for such a period be taken for granted.

[30] In rejecting Byrne J's assessment, the Court of Appeal was conscious of the need to keep in mind that not all contingencies in life were unfavourable. It recognised the possibility that Mr Broadbridge might advance to the position of Captain of a 747 aircraft at a still higher salary than that allowed for by Mr Sutton. None the less, what Mr Broadbridge was entitled to was a lump sum which theoretically represented what he would have earned until age 60 as a commercial pilot. It was contrary to principle not to make an allowance for the contingencies of life.

[31] The Court of Appeal then determined that having regard to Mr Broadbridge's age, the stage in his career that he had reached in 1991, and the projections upon which the assessment of loss of earnings had been made, there had to be a substantial discount from the theoretical figure. Based on the court's own experience, and applying "an objective common sense approach" their Lordships considered that the discount had to be of the order of 30 per cent.

[32] In arriving at this conclusion, the Court of Appeal specifically rejected the Attorney-General's submission that the only method by which loss of earning capacity should be assessed in a case of this nature was the conventional multiplicand/multiplier approach. Their Lordships saw nothing wrong with departing from that approach, in favour of a "discounted present value method" for assessing loss of future earnings. They observed that precisely that method had been used in New Zealand before the introduction of the no fault accident compensation scheme in that country.

[33] The Court of Appeal, in rejecting the Attorney-General's submission, observed:

> We are unaware of any rule of law in Fiji which requires a Court to assess loss of future earnings in a personal injury claim on a "specific basis", such as that used in the multiplicand/multiplier approach. The simple proposition is that compensation should as nearly as possible put the injured person in the same position he or she would have been, had the wrong not been sustained. This principle applies to probable financial loss in future years. As always, assessment of such loss will be a matter of evidence, and will also require judgment calls because the future with its inherent uncertainties is under consideration. Here, the respondent has chosen to present evidence on the basis we have outlined. It happens to be one which was usually applied by the New Zealand courts prior to the advent of the no-fault accident compensation legislation. No challenge was made at trial to the right of the respondent to have this assessment made on the basis of Mr Sutton's evidence. In their submissions, the appellants simply contended for a multiplicand/multiplier approach, without specifying other alternative figures which it was said have been used. We see no error in the basis upon which the assessment was made.

[34] However, the Court of Appeal went on to observe that Byrne J had erred in several important respects. Included in Mr Sutton's table, and accepted by the primary judge, were assessments from the year 1996 to the date of trial. These losses had to be classified as special damages, because they were actually suffered as at trial date. As such, they had to be separately pleaded and proved, and this had not been done. The amount wrongly included in the schedule as part of the overall calculation of loss totalled $124,282. After also allowing for the $80,000 representing the cost of future insurance premiums, the resulting figure was $1,219,493. From that figure there would be a further deduction for contingencies of 30%, or $365,848. The loss of future earnings component would therefore become $855,645.

[35] With regard to interest, the Court of Appeal noted that counsel were agreed that interest was not payable on the loss of future earnings, or on future medical and other expenses. Counsel also agreed that the appropriate rate should be 4% rather than the 5% fixed by the primary judge. For the reasons given by Byrne J, interest would only run from 9 July 1998 to the date of judgment, 7 November 2001.

[36] In summary, therefore, the appeal was substantially successful on the issue of quantum. The figure of $1,720,889.43 was set aside. In lieu thereof, it was ordered that there be judgment for Mr Broadbridge in the sum of $975,205. That sum was made up as follows:

Pain, suffering and loss of amenities	$ 60,000.00
Future medical and other expenses	$ 61,650.00
Loss of future earnings	$853,645.00
	$975,205.00

[37] To that figure there would be added interest at the rate of 4% on the sum of $60,000 to be calculated from 9 July 1998 to 7 November 2001. The Court of Appeal directed that there be no order as to costs on the appeal, and that the order for costs made by the primary judge should stand.

The application for special leave

[38] The application for special leave raises for the consideration of this court the question whether a judge who is required to assess loss of future earning capacity may do so without adopting what is described as "a specific basis such as that used in multiplicand/multiplier approach".

[39] In substance, the Attorney-General's contention is that the figure of $853,645 fixed by the Court of Appeal as compensation for Mr Broadbridge's loss of future earnings was not based upon "any established principles of law". It is further submitted that if, notwithstanding its own professed rejection of the multiplicand/multiplier approach in the present case, the Court of Appeal had, in substance, adopted that method, it had done so in a manner that was erroneous. In effect, the court, by its adoption of Mr Sutton's calculations, had tacitly, and perhaps unknowingly, applied a multiplier that significantly exceeded the figure that would normally be used in personal injury cases in Fiji. In support of that submission, we were provided with a table said to contain a representative sample of multipliers that had been used by both the High Court, and the Court of Appeal, adopting the conventional approach. The examples given went back over a number of years, and generally ranged between about 13 and 15.

[40] Some of the cases in which a multiplier of about 15 had been used were said to bear some similarity to the present case. However, a cursory appraisal of a number of those cases suggested that they all had their own particular features, and that no general principle could be drawn from them.

[41] The Attorney-General submitted that the effect of the Court of Appeal's assessment, even after allowing for the 30% reduction for contingencies, left a multiplier in place of 22.6. He submitted that there was no justification for the use of such a high figure. The decision to depart from the conventional approach had been unwarranted, and contrary to sound policy. It had led the Court of Appeal into serious error.

[42] It was submitted that the common law in Fiji had developed in such a way that the only method that could be used to assess future economic loss in personal injury cases was the multiplicand/multiplier approach. It was further submitted that, under the common law as applied in this country a multiplier of about 16 was the most that could ever be used. It must be said, however, that none of the cases to which we were taken specifically supported the latter proposition.

[43] In order to understand the Attorney-General's argument fully, it is necessary to appreciate just what he means when he refers to "the multiplicand/multiplier" approach. As indicated above, that expression has a long history in Fiji. It is based upon a traditional method of calculating future economic loss that developed in England over many years. It assumes that the method by which lost future earnings are converted into a lump sum is to multiply the net annual loss (the multiplicand) by a figure, based upon the number of years of duration of the lost earning power, that is discounted so as to take into account the fact that the lump sum is being paid immediately, rather than being spread over a number of years, as would have been the case had the accident not occurred (the multiplier). The object of this exercise is to provide a lump sum which, when invested, will equal the income lost during the working life of the claimant, assuming a combination of interest payments and gradual withdrawal of capital, leaving nothing in the fund at the end of the period.

[44] This approach plainly requires the quite separate assessment of a multiplier, and of a multiplicand. In general, the multiplicand is first assessed. In *Cookson v Knowles* [1979] AC 556; [1978] 2 All ER 604, the House of Lords held that the starting point was the amount that the plaintiff would have been earning at the date of trial had it not been for the accident. If the plaintiff is able to earn more in the future, that fact must be taken into account. Under this approach, the court does not take account of future inflation but assesses the multiplicand on the basis of the net annual average future earnings. It follows that account is taken of promotion prospects.

[45] Thus, in *Ratnasingam v Low Ah Dek* [1983] 1 WLR 1235, the Privy Council held that an allowance of one-third should be made for the chance that the plaintiff, a teacher, would have been successful in a promotion examination. A similar approach was taken in *Biesheuvel v Birrell* [1999] PIQR Q40 where, after a distinguished academic career, the plaintiff had been offered a permanent post with a large accountancy firm, and had a promising future in financial or management consultancy. The court calculated potential earnings of £7,150,000 over 29 years, resulting in a multiplicand for that period of £153,000 net.

[46] Conversely, it may be necessary to take account of the likelihood that a plaintiff would not have earned his or her pre-accident earnings during a period when there was less than full employment: *Rouse v Port of London Authority* [1953] 2 Lloyd's Rep 179.

[47] Ordinarily, the multiplier will be calculated on the basis of the likely duration of the plaintiff's disability. If it is clear that the plaintiff will not work again, that will be the rest of his or her working life. The starting point is the date of the trial.

[48] In determining the appropriate multiplier, courts that apply this method have tended to significantly discount the initial figure arrived at to take account of two particular factors. The first of these is, as the award of damages takes the form of a lump sum, the fact that the plaintiff would but for the discount, be receiving immediately the earnings that would otherwise have been spread over a number of years. The plaintiff thereby benefits from the interest accruing during that time.

[49] In *Wells v Wells* [1999] 1 AC 345; [1998] 3 All ER 481, Lord Lloyd observed at AC 364; All ER 485, in the context of an example of an annual average cost of care of £10,000 on a life expectancy of 20 years:

> The purpose of the discount is to eliminate this element of over compensation. The objective is to arrive at a lump sum which by drawing down both interest and capital will provide exactly £10,000 a year for 20 years and no more. This is known as the annuity approach. It is a simple enough matter to find the answer by reference to standard tables. The higher the assumed return on capital net of tax the lower the lump sum. If one assumes a net return of 5% the discounted figure would be £124,600 instead of £200,000. If one assumes a net return of 3% the figure would be £148,800. The same point can be put the other way around. £200,000 invested at 5% will produce £10,000 a year for 20 years. But there would still be £200,000 left at the end.

[50] According to Allen, Hartshorne and Martin, the authors of *Damages in Tort*, Sweet & Maxwell, 2000, the practical effect of this approach, together with the further discounting designed to take account of the vicissitudes of life, led in practice to a maximum multiplier of 18, even on a working life expectancy of more than 40 years.

[51] Lord Lloyd went on, in *Wells v Wells*, to describe how the courts had over the years dealt with the problem that money does not retain its value by assuming that future inflation could be accommodated by the plaintiff investing the lump sum in a mixed basket of gilt edged securities and equities. For a number of years, a discount rate of 4.5% was adopted on that basis.

[52] The position in England had changed dramatically with the introduction of index-linked (that is, inflation proof) bonds. In *Robertson v Lestrange* [1985] 1 All ER 950, Webster J rejected the contention that the appropriate discount rate was the rate of interest representing the yield currently available from such securities after deduction of the income tax payable on the investment. The practical consequence would have been a very significant increase in the multiplier. His Lordship did not consider that the existence of such securities was sufficient reason to depart from the conventional practice. On three occasions, in 1996, the Court of Appeal followed that approach, thereby reducing significantly the sums awarded. See *Wells v Wells; Thomas v Brighton Health Authority; Page v Sheerness Steel Co Plc* [1997] 1 WLR 652; [1997] 1 All ER 673.

[53] However, in *Wells v Wells* the House of Lords allowed appeals in each of these cases, and overturned the approach that had been taken by the Court of Appeal. Their Lordships held that the award of damages for future losses and expenses should be fixed by assuming that the plaintiff would invest his or her damages in index-linked government securities. Having decided to assume investment in those securities, their Lordships had to decide on the appropriate discount rate. They proposed on the basis of the then current figures, a guideline rate of return of 3% net until such time as the Lord Chancellor specified a new rate under s 1 of the Damages Act 1996 (UK).

[54] It has been noted that *Wells v Wells* is likely to have significant implications for multipliers, and therefore for the size of awards generally. That did not deter their Lordships from restating the basis upon which lump sum awards for personal injuries should be calculated. Their reasoning was as follows. A prudent investment for an ordinary investor, which would include a substantial proportion of equities, was not necessarily a prudent investment for an injured plaintiff. A person in that position would need to draw on income and a portion of capital each year, and would require a safer investment, but at a significantly lower rate of return. A higher multiplier was needed to reflect that fact.

[55] In addition to the discounting designed to take account of the immediate award of the lump sum, courts also take into account the vicissitudes of life. These include the risk that the plaintiff might not live to earn his or her income over the anticipated working life, or might have his or her employment terminated through illness or redundancy. Equally, of course, the possibilities for good should also be taken into account: *Mallett v McMonagle* [1970] AC 166 at 177; [1969] 2 All ER 178 at 191 per Lord Diplock.

[56] It can be seen from these cases that the adoption of a conventional multiplicand/ multiplier approach does not always result in an award of damages that is lower than the figure that would be arrived at by adopting a different approach. It all depends upon how the multiplier is assessed.

[57] In *Blamire v South Cumbria Health Authority* [1993] PIQR Q1, a powerfully constituted Court of Appeal (Balcombe, Steyn and Hoffmann LJJ) considered the principles applicable to a claim for a back injury that prevented the female plaintiff from continuing her career as a nurse. The appeal was in respect of loss of earnings, loss of earning capacity and loss of pension benefits.

The trial judge awarded £25,000 for these heads of damages, and the plaintiff submitted that this sum was far too low. It was submitted that his Lordship ought to have approached the case by applying the conventional multiplicand/multiplier formula. In particular, it was argued that he ought to have accepted a multiplicand of the order of £7800 and a multiplier of between thirteen and fifteen. Counsel for the plaintiff submitted that had the trial judge approached the matter in that way, he would have arrived at a prima facie loss of between £100,000 and £118,000. That figure would then have been discounted to some degree in the ordinary way.

[58] Steyn LJ rejected that submission. He said that the trial judge had not been obliged to approach the issue of quantum by adopting the conventional assessment by multiplicand/multiplier. After noting that the trial judge was most experienced in this field, and considering his judgment as a whole, Steyn LJ said:

> … there can be no doubt at all that the issue whether a multiplicand/multiplier approach was appropriate was in the forefront of his mind. It is clear, in my judgment, that the judge took the view that the conventional measure was inappropriate. He had ample material to take that view. First, there was uncertainty as to what the plaintiff would have earned over the course of her working life if she had not been injured. It is not necessary to mention all the difficulties which confronted the plaintiff. One was the possibility that she might have more children. Another was the fact that she clearly would have liked to have done part-time work rather than full-time work … The second aspect was the uncertainty as to the likely future pattern of her earnings, and here the uncertainties were very great. Bearing in mind that the burden rested throughout on the plaintiff, it is in my judgment clear that on the material before him the judge was entitled to conclude that the multiplicand/multiplier measure was not the correct one to adopt in this case.

[59] His Lordship went on to say:

> It seems to me that the judge carefully assessed the prospects and the risks for the plaintiff. He had well in mind that it was his duty to look at the matter globally and to ask himself what was the present value of risk of future financial loss. He had in mind that there was no perfect arithmetical way of calculating compensation in such a case. Inevitably one is driven to the broad brush approach. The law is concerned with practical affairs and, as Lord Reid said in *British Transport Commission v Gourley* [1956] AC 185 at 212; [1955] 3 All ER 796 at 808, very often one is driven to making a very rough estimate of the damages.

[60] Hoffmann LJ agreed with Steyn LJ. Balcombe LJ delivered a short concurring judgment.

[61] So far as we can tell, the approach taken by Steyn LJ in *Blamire* is still good law in England. A similar approach had earlier been adopted by the Privy Council in *Paul v Rendell* (1981) 34 ALR 569, and again in *Lai Wee Lian v Singapore Bus Service (1978) Ltd* [1984] 1 AC 729. There is no challenge to the courts' ability to approach loss of earning capacity in a manner that dispenses with the conventional multiplicand/multiplier approach. Loss of future earning capacity can be calculated on a broader basis, having regard to the evidence led in the particular case, without being constrained by the traditional requirements of the conventional multiplicand/multiplier approach.

[62] The position in Australia appears to be broadly similar. As in England, the fundamental principle of compensation is that the damages to be recovered are in money terms neither more nor less than the plaintiff's actual loss. See generally *Todorovic v Waller* (1981) 150 CLR 402 at 427; 37 ALR 481 (*Todorovic v Waller*) per Stephen J, a passage cited with express approval by

Lord Lloyd in *Wells v Wells*. Plaintiffs should be awarded that sum as will restore them to the position that they would have been in had there not been negligent infliction of harm. As Kitto J noted in *Thatcher v Charles* (1961) 104 CLR 57 at 63; [1961] ALR 586, it is obviously impossible for money to restore a person who has been seriously injured to the position that he or she was in prior to that injury. Therefore, the compensatory principle must be qualified by a phrase such as "so far as money can do so" see generally H Luntz, *Assessment of Damages for Personal Injury and Death*, 4th ed, Butterworths, 2002, at [1.1.5].

[63] From a series of cases in the nineteenth century in England, there developed the concept that damages for personal injury should be "fair, but not perfect": *Lee Transport Co Ltd v Watson* (1940) 64 CLR 1 at 13–14 per Dixon J. In the context of pecuniary loss, all this means is that since we cannot predict the future with certainty, nor know what would have occurred had the plaintiff not been injured, scientific accuracy is impossible. Therefore, it is futile to attempt to award "perfect compensation". Damages are not intended to insure against every possible eventuality, nor to compensate for every loss that the plaintiff could possibly have sustained. Reasonable allowance must be made for contingencies.

[64] Where, however, the plaintiff clearly establishes the loss, it is "fair" to both parties to award the full amount of such loss: *Thurston v Todd* [1965] NSWR 1158 at 1163 per Asprey J.

[65] In *Todorovic v Waller* Gibbs CJ and Wilson J, put forward four fundamental principles as being so well established that it was unnecessary to cite authority to support them. The first was the compensatory principle, to which we referred above. The second was that "damages for one cause of action must be recovered once and forever, and … must be awarded as a lump sum; the court cannot order a defendant to make periodic payments to the plaintiff". Third, the court has no concern with the manner in which the plaintiff uses the sum awarded to him. Finally, the burden lies on the plaintiff to prove the injury or loss for which he or she seeks damages.

[66] It is the first two of these principles that give rise to particular difficulty when it comes to assessing future contingencies. In any personal injury action involving loss extending beyond the date of the trial it is necessary to consider what would have occurred had it not been for the injury, and what will now happen. Thus, allowance typically has to be made, often after hearing conflicting expert evidence, for the possibility that brain damage will result in epilepsy, that osteoarthritis will develop as a result of an injured joint, or that a particular surgical procedure will become necessary. Similarly, the prohibition against awarding annuities requires a guess to be made as to how long a seriously injured plaintiff will live.

[67] Australian courts distinguish between facts that are theoretically capable of being established with certainty, and possibilities that can never be known for certain. A fact within the former class will, if proved on the balance of probabilities, be accepted as certain. Possibilities must be assessed according to an estimate of their probability.

[68] In *Malec v J C Hutton Pty Ltd* (1990) 169 CLR 638; 92 ALR 545 (*Malec*), the plaintiff, who had a degenerative back condition, had developed brucellosis, an animal-borne disease, as a result of his employment. The brucellosis had induced a state of depression. The Full Court of the Supreme Court of Queensland declined to allow damages for this depression because of the likelihood that the plaintiff's deteriorating back condition would have produced

a similar neurosis even if he had not contracted the brucellosis. By majority, the High Court reversed this decision, Deane, Gaudron and McHugh JJ saying at CLR 642–3; ALR 548–9:

> When liability has been established and a common law court has to assess damages, its approach to events that allegedly would have occurred, but cannot now occur, or that allegedly might occur, is different from its approach to events which allegedly have occurred. A common law court determines on the balance of probabilities whether an event has occurred. If the probability of the event having occurred is greater than it not having occurred, the occurrence of the event is treated as certain; if the probability of it having occurred is less than it not having occurred, it is treated as not having occurred. Hence, in respect of events which have or have not occurred, damages are assessed on an all or nothing approach. But in the case of an event which it is alleged would or would not have occurred, or might or might not yet occur, the approach of the court is different. The future may be predicted and the hypothetical may be conjectured. But questions as to the future or hypothetical effect of physical injury or degeneration are not commonly susceptible of scientific demonstration or proof. If the law is to take account of future or hypothetical events in assessing damages, it can only do so in terms of the degree of probability of those events occurring. The probability may be very high — 99.9 per cent — or very low — 0.1 per cent. But unless the chance is so low as to be regarded as speculative — say less than 1 per cent — or so high as to be practically certain — say over 99 per cent — the court will take that chance into account in assessing the damages. Where proof is necessarily unattainable, it would be unfair to treat as certain a prediction which has a 51 per cent probability of occurring, but to ignore altogether a prediction which has a 49 per cent probability of occurring. Thus, the court assesses the degree of probability that an event would have occurred, or might occur, and adjusts its award of damages to reflect the degree of probability. The adjustment may increase or decrease the amount of damages otherwise to be awarded.

[69] Once the court accepts that the plaintiff has suffered a loss for which the defendant is liable, it will not allow difficulties in assessing the value of the loss to deprive the plaintiff of an award of damages. A plaintiff who has been deprived of earning capacity, whether in whole or in part, has lost the chance of exploiting that capacity to the full. Professor Luntz, in the text to which we earlier referred, observes that in most instances, the chance of so exploiting the capacity is high and this is reflected in the approach taken by the courts, which is usually to assume that it would have been exploited to the full, at least to the normal retirement age. That 100% probability is then discounted by the chances of its not being exploited due to the normal contingencies of life. *Malec* provides a useful illustration of just this approach.

[70] In other cases, where there is greater uncertainty as to whether the plaintiff would have gained a benefit had the injury not been sustained, it is necessary to evaluate the chance as best the court can. Courts typically allow damages for the possibility that the plaintiff will develop a particular condition in the future, which will require medical treatment, nursing or loss of income. In addition, courts are required to have regard to the benefits that might have been gained through additional qualifications, or promotions that are now no longer available.

[71] Some examples cited by Professor Luntz include *Hall v Wheeler* [1962] QWN 40 (loss of chance to win ballroom championship and set up as a dancing teacher); *Leis v Gardner* [1965] Qd R 181 (loss of chance of winning rewards as a professional cyclist); *Wade v Allsopp* (1976) 10 ALR 353 (loss of chance of attaining relatively high financial status following tertiary education); *Hayman v Forbes* (1975) 13 SASR 225 (loss of chance of qualifying as a veterinary surgeon and earning a professional income); and *Norris v Blake (by his*

tutor Porter) (No 2) (1997) 41 NSWLR 49; 25 MVR 101 (*Norris v Blake (No 2)*) (chance of successful career as film star with provision even to be made for less than 1% prospect). In addition, Professor Luntz cites various unreported cases in which plaintiffs have recovered damages on contingent possibilities of sporting success. These include prospects of attaining world championship status, chances that might be regarded as somewhat speculative.

[72] A plaintiff is entitled to damages for the difference between the earning capacity as it would have been had there been no injury, and the earning capacity as it now is. The difficulty in assessing the net loss is accentuated by reason of the uncertainty, speculation and conjecture that surrounds these issues. The simplest case to deal with is that of a mature person, in a steady job, with little or no prospect of advancement, whose earning capacity is totally destroyed. Even in such a case, a court must attempt to predict the number of years for which the plaintiff might have gone on working.

[73] In *Wynn v New South Wales Insurance Ministerial Corp* (1995) 184 CLR 485; 133 ALR 154 (*Wynn*), the High Court noted that a court could not simply multiply the annual rate at which the plaintiff would have earned at the date of the trial (less tax and necessary expenses which were formerly, but are no longer, incurred in producing the earnings) by the predicted years of working life. The sums that the plaintiff would have earned in the future have to be discounted because the money will be received immediately and can be invested, and so earn interest, theoretically until the time when it would ordinarily have been received. Moreover, the receipt of the money is now certain, whereas previously it was subject to various contingencies. Therefore, a further deduction will be in order unless the "vicissitudes" are counterbalanced by the chances of increased earnings.

[74] *Wynn* provides a useful example of one approach that can be taken to future economic loss. The facts were these. The plaintiff was injured in a motorcar accident in 1986. At the time, she was aged 30, in good health, and employed in a managerial position. She continued to work after the collision, but the accident seriously aggravated an injury that she had sustained in 1972. Her position progressively deteriorated until her work became too demanding. In 1988, she ceased full time employment. Thereafter, she was employed on a casual basis for a short time, and then part time in a family business. She married in 1990. Her evidence was that she had aspired to being promoted to a senior position in her career with her employer. There was nothing to suggest that her reduced participation in the workforce had resulted in any change to her expenditure on childcare.

[75] The High Court determined that the possibility of an event occurring that would either positively or adversely affect the earning capacity of an individual must be taken into account in an assessment of future loss, provided that the possibility was "real". On the facts of the case, since there was a real possibility of promotion, maternity leave and a reduced ability to work by reason of the injury suffered in 1972, allowance had to be made for each of those matters in the calculation of future economic loss. The appropriate discount for maternity leave and the possible effects of the condition brought about by the 1972 accident, balanced against the prospect of further advancement, was 12.5 per cent.

[76] In *Norris v Blake (No 2)*, the New South Wales Court of Appeal dealt with the principles that apply in assessing damages for economic loss where what is at issue is the loss of a chance that the plaintiff would have had, if uninjured, to

earn a high income. The trial judge accepted the evidence of an accountant that it was possible to adopt what was described as "weighted average approach" in order to arrive at a more just estimation of the loss than would result from "the traditional intuitive method". The Court of Appeal regarded the table produced by the accountant setting out this approach as containing nothing more than predictions, informed only by his knowledge of the plaintiff and the film industry generally as to the prospects of a promising young actor who, although not a newcomer, had not achieved significant financial success by the time he was injured. The court went on to observe that a "weighted average technique" might be appropriate in a case where the possibilities were limited, such as occurs where the question is whether the plaintiff would suffer a later complication from his or her injury. However, the technique suffered from a lack of available information where the possibilities were indeterminate.

[77] Clarke JA (with whom Handley and Sheller JJA agreed) said at NSWLR 72–3; MVR 122:

> In my opinion, the most that can be said is that the trial judge could reasonably believe on the evidence that the plaintiff might succeed if he chose to follow an acting career in the United States and, depending on the level of that success, he might over his remaining working life earn substantial sums of money. This chance he lost as the result of the defendant's negligence. In assessing the value of that lost chance there must be brought into account his intention to attempt such a career and the rewards that such a career had produced for other actors. Against those factors, must be weighed the strong possibility that he would not succeed to the highest level of earning or even to a bracket beyond what might be described as successful, or at all. To my mind, it is impossible to quantify the loss of this chance by using percentages and applying them to arbitrary levels of earning spread over twenty years or more. Indeed, even if the chance of becoming highly successful was X it does not follow that there is the same chance of maintaining that level for twenty years. With respect, the result in this case demonstrates the fallacy of the approach in terms of its unreasonableness. In terms of probability, it is more likely than not that the plaintiff would achieve moderate success. Yet the damages are calculated by reference to an annual amount which far exceeds what this success would produce.
>
> The proper approach is to assess what it was most likely he would earn during the rest of his working life and adjust this for contingencies including the possibility that he might have done far better …
>
> These considerations lead me to conclude that the trial judge's use of the weighted average case was fundamentally erroneous. There is simply insufficient data on which to rationally base conclusions.

[78] Professor Luntz suggests that courts in New South Wales regularly deduct a minimum of 15% for contingencies, almost always varying this only in an upward direction where their estimation of the vicissitudes likely to affect the plaintiff is greater than normal. This particular practice was specifically recognised by the High Court in *Wynn* at CLR 498; ALR 161–2. None the less, Australian courts accept that any deduction for vicissitudes should be based upon the particular facts of the case, and not some "rule of thumb", automatically applied.

[79] As is the case in England, the conventional method by which future pecuniary loss is converted to a present lump sum requires the estimation first of the amount of the loss at a particular point in time. This is usually the date of trial. The amount of the loss is called the "multiplicand". It may be an annual figure (ie the net loss of earnings after deduction of savings, or lost expectation of benefit, estimated at the date of the trial at a rate that covers a whole year), or,

Professor Luntz suggests, more usually in Australia, a weekly figure. Then it is necessary to estimate the time over which the losses are likely to occur, for example from the date of the trial to the date on which the plaintiff would normally have retired from work. It is incorrect simply to multiply the amount of the loss at the relevant date by the time over which the losses are expected to occur. Each loss must be discounted by reason of the earlier and certain receipt of the money to replace the losses. The calculation of the lump sum to allow for the effects of investment at the assumed rate of interest may be performed laboriously as a matter of arithmetic. However, resort is now typically had to tables that perform this task. It is possible to allow for contingencies affecting the likelihood of the loss by an adjustment of the multiplier. After such adjustment, the multiplier is sometimes called the "net multiplier".

[80] Australian courts, when they apply the conventional method, generally express multiplicands in terms of a weekly rather than annual loss. Tables that accord with this approach are readily available. For example, they are published as an appendix to Professor Luntz's text. Actuaries and accountants generally have available their own tables. The practice seems to be to turn to an appropriate table and then discount from the present value of the future loss any allowance for contingencies.

[81] It should be noted that the status of the tables varies from state to state. For example, the Supreme Court Act 1995 (Qld) requires that the present value of future loss be discounted "in accordance with actuarial tables". The Wrongs Act 1936 (SA) refers to an "actuarial multiplier", but as Professor Luntz correctly notes, the tables in question are, in truth, arithmetic rather than actuarial.

[82] The use of tables should not obscure the need to ensure that the figures adopted fit the facts, and that proper allowance is made for contingencies. There is always the danger that arithmetic calculations will create a false impression of certainty. In *Malec*, Brennan and Dawson JJ, in a minority judgment, expressed a preference for the avoidance of precise discount percentages when dealing with hypothetical situations. However, as Professor Luntz observes, such remarks should not detract from the usefulness of using tables when the weekly sums or sums representing the loss can be determined from the evidence with a reasonable degree of certainty. Indeed, even in a case involving great uncertainty, where it would be misleading to fix on a particular level of earnings and then use a multiplier appropriate to a certain number of years, better guidance will be obtained by using an arithmetical procedure on a series of average losses than simply selecting a lump sum intuitively.

[83] There is nothing to suggest that the approach adopted by the Court of Appeal in the present case is any different to that which would be applied by an Australian court. The figure ultimately arrived at was not reached intuitively, but rather on the basis of Mr Sutton's evidence, which Byrne J regarded as cogent and compelling.

[84] The adoption by the Court of Appeal of what it described as a present value method, based upon the evidence as a whole, rather than the use of a more narrowly circumscribed multiplicand/multiplier method, is consistent with developments in the common law in both England and Australia. Such an approach can be justified in cases involving "great uncertainty", such as *Norris v Blake (No 2)*. The present case plainly involved a measure of just such uncertainty. The adoption by the Court of Appeal of a 30% discount figure to account for contingencies was certainly much higher than that which would

normally be applied. However, it was justified on the basis that there were so many imponderables associated with Mr Broadbridge's situation. The figure of 30% was plainly intended to encompass both the ordinary vicissitudes of life, and the chance that Mr Broadbridge would not achieve his goals. That figure is no more arbitrary than the figure of 12.5% arrived at by the High Court in *Wynn*.

[85] In addition, it was reasonable to discount by 2% per annum to reflect the net present value of the lump sum as compared with periodic earnings over many years. Mr Sutton arrived at that figure after giving careful consideration to current investment opportunities in Fiji and, in particular, the low rates of return currently available on interest bearing accounts. In this area, local knowledge of that type is of particular significance.

[86] We should add that the approach taken by the Court of Appeal also seems to us to be entirely consistent with that adopted in both Canada and the United States.

[87] In *Andrews v Grand & Toy Alberta Ltd* [1978] 2 SCR 229 (*Andrews*), the Supreme Court of Canada reformulated the principles upon which damages for personal injuries were to be assessed in that country. The court called for, among other things, the full compensation of all probable future pecuniary losses, the mathematical calculation of future economic losses based upon the expertise of actuaries, and the itemisation of the lump sum award to explain its manner of calculation. It noted that there were two ways of calculating the plaintiff's loss of earning capacity. The first attempts to calculate what the plaintiff would in fact have earned but for the accident. The second seeks to assess the capacity of the plaintiff to earn but for the accident whether or not he would have chosen to exercise that capacity. Under this second method, a person's earning capacity is regarded as a capital asset. Under this approach the court's task is to value that asset and determine the degree to which it has been damaged.

[88] Commentators have concluded that it is actually the first approach that predominates in Canada today. Under that approach, the first step in making the loss of earnings calculation is to determine the future earnings that the plaintiff would have made, and to deduct from those earnings the amount that the plaintiff is still capable of earning. The next step is to determine the length of time that the plaintiff would have earned income. Finally, consideration is given to the contingencies that might have affected the earning capacity of the plaintiff, both negative and positive. Rule of thumb deductions of around 20% that were common at the time *Andrews* was decided have now been replaced by a more realistic evaluation of contingencies in individual cases. The lump sum is calculated on the basis of an exhausting fund of capital and interest, discounted to current value.

[89] The position in the United States regarding loss of future earning capacity is broadly the same as that in Canada. According to the *American Law Institute's Second Restatement of the Law of Torts*, Div 13, Ch 47, Topic 3, §924ff, the extent of future harm to the earning capacity of an injured person is measured by the difference, viewed as at the time of trial, between the value of the plaintiff's services as they will be in view of the harm, and as they would have been had there been no harm. This difference is the figure derived from reducing to present value the anticipated losses of earnings during the expected working period that the plaintiff would have had during the remainder of his working life, but for the defendant's act.

[90] It follows from the discussion detailed above that there is no principle, or rule of the common law, that requires any judge, in Fiji, who must assess future economic loss resulting from personal injury, to adopt a multiplicand/multiplier approach, whether for the purpose of calculating the value of the lost chance of future increased earnings, or for the purpose of calculating the present value, in lump sum terms, of those earnings. In a case of some uncertainty, such as the present, it may be appropriate for the court to calculate the value of the lost earning capacity upon a different basis, though never forgetting to discount for vicissitudes where appropriate, and for the value of a certain lump sum.

[91] We emphasise that nothing that we have said should be taken as casting doubt upon the utility of the multiplicand/multiplier as a method by which to assess future economic loss in personal injury cases in this country. When properly applied, it operates as a perfectly satisfactory method of carrying out what is always a most difficult task. It is, however, only a method by which the cardinal principle, of which Stephen J spoke in *Todorovic v Waller*, is to be fulfilled. Our point is simply that, as the common law stands, it is only one of a number of methods that can be used to assess such loss.

[92] We should make it clear that Mr Broadbridge's case should not be regarded as setting any particular benchmark for the amount to be awarded for future economic loss. We were told that the damages fixed by the Court of Appeal in this case were significantly greater, for future economic loss, than any amount previously awarded in this country. If that is so, it is the product of a combination of factors. These include the evidence led at trial, without objection, regarding this issue, the fact that no challenge was made to the use of a discounted present value method, and above all else, Mr Broadbridge's own particular circumstances. It was Lance Corporal Maka's singular misfortune that Mr Broadbridge was training to be a pilot, one of the highest paid occupations in Fiji, and vastly better remunerated than an aircraft maintenance engineer. Moreover, on the evidence, had he qualified as a commercial pilot, as was likely to have occurred, his chances of continuing in that position through to retirement were extremely good. On any view, the loss that he sustained was substantial. He is entitled to be fully compensated for that loss.

[93] Although we consider that special leave to appeal is warranted, having regard to the importance of the issues that the Attorney-General has raised, the appeal should be dismissed.

Orders

(1) Special leave be granted.
(2) The appeal be dismissed.
(3) The Appellant pay the Respondent's costs of and incidental to the appeal.

Application allowed. Appeal dismissed.