IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Civil Jurisdiction

Action No. 95 of 1976

Between

JASUMATI BEN d/o Ranchodbhai Mistry — Plaintiff

and

MOIDEAN s/o Hassan — 1st Defendant

RAM PADARATH HOLDINGS LIMITED — 2nd Defendant

Mr. B.C. Patel, Counsel for the Plaintiff
Dr. M.S. Sahu Khan, Counsel for the Defendant

JUDGMENT

The plaintiff is the widow and administratrix of Amratlal f/n Naranbhai who was killed in a motor accident on 19th April 1975 and she now claims damages in respect of her husband's death. She claims under the Law Reform (Miscellaneous Provisions)(Death & Interest) Act Cap. 20 and also under the Compensation to Relatives Act Cap. 22 and she says that the persons who have suffered damage by reason of the death of her husband are, besides herself, the four infant children of herself and the deceased. The Statement of Claim alleges that the accident occurred on the Queen's Road near the Gurukul School which is at Saweni and that the defendant Moidean was driving the second defendant's motor vehicle and drove it so negligently that it collided with the vehicle driven by the deceased. The specifications of negligence were that Moidean was driving on the wrong side of the road, that he attempted to negotiate a right hand bend from the wrong side of the road, that he drove at an excessive speed, that he failed to stop or stop in time or to cut or swerve his vehicle so to avoid a collision, and that he failed to keep a proper look-out. Then it sets out particulars of the deceased's injuries. A defence was duly filed, and a counterclaim, on behalf of both defendants, the effect of which was to put the plaintiff to the proof of most of the allegations that the accident was due to the negligence of the deceased, and the specifications of deceased's negligence were that he drove his vehicle at an excessive speed, and on the wrong side of the road, that he drove the vehicle in such a manner as to hamper the control of his vehicle rendering himself unable to manoeuvre

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control, stop or swerve the vehicle to avoid causing a collision, and that he failed to keep a proper lookout. I should have been interested in seeing more ample particulars of the plea that deceased drove his vehicle in such a manner as to hamper his control of it, but no such particulars were asked for. The defendants counterclaimed for damages to their vehicle, but at the trial the counterclaim was not proceeded with.

The accident occurred late at night on a tar-sealed road in dry weather while the deceased who had taken his wife and a female cousin and his two daughters to Nadi Airport for dinner, was returning with his family to Lautoka. He actually went into Nadi with his party for a short time to the house of a friend where he drank beer, but there is no suggestion and no evidence that he was in any way under the influence of liquor. After that they went to a restaurant at Nadi Airport and had a meal and left to return at about 10 or 10.30 p.m. At or near Saweni the vehicle which deceased was driving collided with the defendant's vehicle, which had left Ba, according to the defendant, at about 9.45 p.m. Deceased was driving a light car and defendant Moidean was driving a Toyota Corolla which is a car somewhat heavier than that driven by deceased. As a result of the collision deceased's car was pushed off the road into a canefield 19'2" from the edge of the tar seal, and defendant's vehicle was in the middle of the road; apparently turned round in its tracks facing Lautoka.

A book of photographs was put in by consent. The Court was not told when they were taken and although they were taken in the presence of Sergeant Manueli, they were certainly not taken on the night of the accident. It is quite clear that they were taken in daylight. They shew the two vehicles and the road, and the case was conducted on the basis that the vehicles were in the same position as they were immediately after the accident. It seems to me curious that the defendant's vehicle should have been left in the middle of the road all night. The deceased's vehicle was shewn off the road, and it is difficult to surmise how the roof could have been damaged and buckled as shewn in the photograph if the vehicle merely ran off the road. Again, the photograph F2 shews the front of the vehicle facing the road. The post mortem report, too, shews that the deceased died of head injuries, and it is hard to imagine how those might have been caused by the collision. It would appear to me far more likely that they were caused by deceased's head striking something probably after the collision. The fact that defendant's vehicle had turned completely round would appear to argue that it was going at somewhat more than the thirty to thirty-five miles per hour which defendant says was his speed.

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The defendant's vehicle appears to have been damaged along the entire front of the bonnet and radiator, but apparently had its windscreen intact, while the deceased's vehicle was damaged mostly on the driving side, although its windscreen would appear to have been broken. The fact that deceased sustained no chest injuries would appear to indicate that the steering wheel was not driven on to him, and that perhaps his vehicle suffered a glancing blow on the right front. The photographs shew that both vehicles were probably moving downhill, and that defendant would have come down an incline and round a right hand bend and was about to go up an incline on the other side. That latter was the incline down which the deceased had come. It is difficult from the photographs to estimate the slope or extent of these inclines, but I would not assume the slope to be at all steep. A plan drawn by the police was also put in by consent, as was the post mortem report on the deceased Amratlal. The plan which the police witness deposed to having drawn on the night of the accident shews a brake or drag mark extending from very close behind the defendant's vehicle for a distance back along the road for 106 feet. Counsel for defendants referred to that as a drag mark and the police witness called it a tyre mark and a brake mark. The plan also shews some broken glass at a point to the left of the brake mark looking towards Nadi and also shews the width of the road at that point to be 22'9". The plan suggests that the deceased was coming downhill. Comparison of the plan and the photo-graph indicates that the plan cannot be relied upon as giving the precise positioning of the defendant's vehicle, which as the measurements indicate, was placed in such a way that if one is looking towards Nadi, the rear of the vehicle, the front of which as I have said earlier is facing towards Lautoka, is further from the right hand edge of the road than the front. The plan also shews that defendant's vehicle is 12'2" towards Nadi from the glass on the road. For the plaintiff, evidence was given by her and the deceased's cousin who was also in the deceased's car at the time of the accident, and Sergeant Manueli, the police officer who attended the accident and also by a person who endeavoured without success to serve a subpoena upon a person called Kustum Ali, while for the defendant, the driver who was the first defendant alone gave evidence. The plaintiff said that she was sitting in the front seat of the vehicle, beside her husband who was driving. The photographs shew that deceased's vehicle had bucket seats. Plaintiff testified that her husband's cousin sat at the back with the two children. They left Nadi Airport about 10.30 p.m. and travelled at about 30-35 miles per hour on their journey to Lautoka. When they approached Saweni she saw

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the lights of a vehicle approaching, and they appeared to be zigzagging and the vehicle appeared to be travelling fast. Her husband moved more to the left of the road and slowed down and was about to stop but the other vehicle came on at great speed and hit them, rendering her unconscious. She said that her husband's vehicle was partly off the tar seal, and that the other vehicle was about 15 yards away when she first saw it. Later she said that her husband's car was completely off the tar seal and had completely stopped. The other adult passenger in the deceased's vehicle, his cousin, said that she saw the approaching vehicle travelling fast in a zig zag manner, and that it seemed a very short time after she first saw the lights that the approaching car hit the deceased's car. The deceased slowed down, and pulled over on to the side of the road, and was about to stop when the other car hit them. She estimated that the other car would be 15 to 20 yards away when she first saw it, and she thought that the deceased's car was partly on and partly off the tar seal. She said that deceased's car was going downhill and was about to go uphill. Sergeant Manueli deposed to having drawn the plan produced, at the scene on the night of the accident. He said that he saw some tyre marks which he thought were from the defendant's vehicle, and they appeared to be of a vehicle travelling to Nadi and they led to defendant's vehicle, which when he saw it was facing Lautoka. Then he saw some broken glass scattered on the road. I may say that his examination in chief was rather perfunctory, and although it is unnecessary to repeat measurements shewn on an agreed plan, it is usually helpful to the Court to have the measurements explained. No attempt was made to indicate the positioning of the broken glass or of the tyre marks, and it was not until the cross-examination began that it transpired that the tyre marks were indeed brake or drag marks. The sergeant testified to the fact that traffic covers were placed on the road before the photographs were taken and that both the glass and the tyremarks were to the left of the covers looking towards Nadi. The scattered glass was quite a distance from the tyremarks. In the photograph Exhibit F3 the sergeant deposed to a tyremark shewn there as being the brakemark he saw on the night of the accident and to the position of the glass. He said in answer to the Court that the tyremark was a brakemark, and that there were no brake marks of the deceased's vehicle. This witness also told the Court that deceased's vehicle was 19'2" from the edge of the tar seal. The first defendant told the Court that he knows the road well, since he travelled on it twice every day, and he said that he was travelling that day on the left hand side of the road. He left Ba

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at 9.45 p.m. and he saw the deceased's vehicle coming with his lights on full beam. He dipped his own lights. He admitted that his vehicle was the heavier, but he said the other car came quite fast, and was on its wrong side. He denied that he went on to his wrong side or that deceased's car was nearly stopped. In his examination in chief he said nothing about the tyre or brake marks. He said he put his foot on the brake and just then there was an accident. He said that he saw the other car coming just as he was turning the bend. He said that he could not go more to his left, as after the impact his car stopped, and that it did not move forward at all. He said that his car was heavier than the deceased's car and that it turned round and faced Lautoka. Deceased's car was not in a condition to be driven after the accident. He said that he saw a previous tyremark behind his car. He saw the tyremarks apparently going to his vehicle, and he said that the impact occurred on his side of the white line. Then he said that just as he turned the corner the other car came on to his side of the road, and remained there.

The two women appeared to me to have colluded in their evidence. They both talked about the zigzagging. They both referred to their having first seen the defendant's vehicle 15 to 20 yards away. They both said that it was travelling fast. They both put their own vehicle at the very edge of the tar seal, or on the verge, and both say that deceased had either stopped or was about to stop. That does not necessarily mean that they are to be disbelieved, but it does mean that their evidence has to be carefully scrutinised. Unfortunately it is extremely difficult to check their evidence, for it can only be checked against the plans and photographs and the evidence of the defendant, and I must say that the defendant did not impress me as a truthful witness. I would accept their evidence that the defendant's vehicle was zig zagging, because I feel that the women are unlikely to have made that up, and that would probably mean that the defendant was driving fast because he was confident in his knowledge of the road, and doubtless anxious to reach home. So that I accept that defendant was driving fast, and the fact that his vehicle turned completely round after the impact is also indicative of this. I do not believe that he was driving at 30-35 miles per hour. The question of the point of impact is more difficult. It is conceivable that the accident should take place at the edge of the road and the glass be found at the place where this glass was found, but it is quite inconceivable that the impact should take place at the edge of the road and the brake marks be unbroken on the line marked by Sergeant Manueli on his plan. I accept Sergeant Manueli's evidence that he saw this tyremark as a definite

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brake mark on the night of the accident, and that it was a fresh brakemark. In my view that can be none other than the brake mark of the defendant's vehicle extending for 106 feet. It is extremely unfortunate that the sergeant did not measure the distance of the extremities of this brake mark from the edge of the tar seal, but his sketch plan shows a tyre drag mark extending for 106 feet curving from defendant's wrong side of the road to the middle. It is certainly curious that he should have drawn the brake mark up to the front wheel of the defendant's car, but I would not dismiss the sketch for that reason. While, as I have shewn before, the sergeant's drawing is not completely accurate, I think that this brakemark does represent what the sergeant saw, and moreover, I have to bear in mind that this plan was put in by consent and is thus agreed evidence. Although it is difficult to estimate distance in the photographs, I think that the photograph F5 may well accurately represent the defendant's evidence that he saw deceased's vehicle as he came round the bend and he then put on his brake, for he then travelled 106 feet but still collided sufficiently heavily with the deceased's vehicle to force it off the road and to turn his own vehicle round completely. In my view he was cutting the corner and I consider this to be the primary cause of the accident. Both the women say that deceased's vehicle was on its extreme left, near the edge of the tar seal, and that the impact took place there. It is true that the presence of the deceased's vehicle in the canefield upright upon its four wheels would lend some support to evidence that deceased was on the edge of the tar seal, and not moving fast, but then one would have expected the back of the vehicle to have been facing the road. Nor would there appear to have been any reason for the plaintiff to be unconscious. But in point of fact, the deceased's vehicle also appears to have turned completely round when it left the road, for its front is shewn in the photographs to be facing the road, and this is supported by the police plan. The photographs F1 and F2 both indicate this, and would appear to suggest that deceased may have been driving, at least, at a fair speed. Again the front right-hand stanchion of deceased's vehicle appears to have been badly buckled, and the hood generally to be out of alignment, suggesting that the vehicle may have overturned. If that were so, it would also account for the deceased's fractured skull and probably for the fact that plaintiff became unconscious. But no evidence of this kind was led. The photographs were agreed, and it was not suggested that either vehicle had been moved before the photographs were taken. Again it is clear that defendant's vehicle finished up in the middle of the road, its front facing Lautoka, its front wheels nine feet from the edge of

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the tar seal on that side of the road where deceased's vehicle lay, and 9'8" from the edge of the tar seal on the opposite side. If the place of impact had been nearer the edge of the tar seal, I would have expected the brake marks to have led up to it, whereas the sergeant's evidence was that the brake marks led up almost to the place where the concentration of glass was found 12'2" in front of the defendant's car and towards Lautoka. They stopped about the middle of the road, and the concentration of glass was slightly to the left of the middle of the road looking towards Nadi. Although the mark on the road in the photograph F3 was suggested to the sergeant and accepted by him to be the tyre mark he saw, I cannot see how that can possibly be, for the mark shewn in that photograph does not square at all with the sergeant's plan, and I accept his plan as his impression, albeit somewhat rough and ready, of what he saw. Defendant stated that it was his right mudguard which sustained the first shock of collision. There is no evidence as to what the glass was - whether it was deceased's headlamp or defendan 's headlamp or some other glass - but whatever it was, in that position and with the vehicles finishing up in the positions shewn in the photographs, I think that the point of impact would not have been very far from that glass concentration. The sergeant's evidence that the tyre marks were to the left of the covers on the road is hard to reconcile with his plan, and I prefer the plan drawn on the night of the accident to his oral evidence given almost three years later, particularly as he did not have his notebook and had not seen it for a year. Defendant has said that deceased was travelling on his wrong side of the road. I am not prepared to accept that, but I believe that deceased was in the middle of the road. I accept that he was endeavouring to turn out of defendant's path, and I would think that he was hit as he was moving to his left. I think that deceased probably held his position in the middle of the road until too late, and I think for this reason that he must bear part of the responsibility for the accident. In my view the brake mark and the final position of defendant's vehicle indicates that after cutting the corner defendant's vehicle may have got out of control until he finally hit deceased's vehicle and turned completely round. If the deceased's vehicle had merely run into the canefield, and been found with its back to the road, that might support plaintiff's contention that the point of impact was near the edge of the tar seal. But then the deceased would not have been killed and the two women made unconscious. It is for the plaintiff to prove her case, and the case which has been made out does not support the view that the impact took place near the edge of the tar seal, but rather suggests that deceased was travelling in the middle of the road, and on this basis I assess his proportion of the

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blame as 25%, the defendant's proportion of the blame being fixed at 75%.

I pass to the subject of damages. As Lord Diplock said in Mallet v McMonagle (1969) 2 AER 178, 189 "the purpose of an award of damages under the Fatal Accidents Acts" (which correspond with our Compensation to Relatives Act) "is to provide the widow and other dependants of the deceased with a capital sum which with prudent management will be sufficient to supply them with material benefits of the same standard and duration as would have been provided for them out of the earnings of the deceased had he had not been killed by the tortious act of the defendant, credit being given for the value of any material benefits which will accrue to them (otherwise than as the fruits of insurance) as a result of his death."

In this case plaintiff has probably suffered considerably by her husband's death. She found it impossible to carry on his business, and had to close it down completely. From the fact that part of the rent paid by his business is attributed to drawings, I conclude that, as is not unusual, deceased and his family lived above one of the shops, and when the businesses were closed down plaintiff moved into one of the buildings which deceased had bought. In assessing her dependency allowance will have to be made for tax, for there is no doubt that the sum to which the widow will become entitled here will be quite high. see Gourley v British Railway Commission (1955) 3 AER 796.

Deceased was 33 years of age at the time of his death, if his death certificate is to be relied upon, and his wife's age at that time is given as 27. There were four children, two daughters Meena Ben born 12th October 1966 and Pratibala born 9th May 1968, and two sons Dikesh Kumar born 9th March 1970 and Sailesh Kumar born 19th October 1972. Deceased was a dealer in footwear and sports goods. He conducted two shops in Lautoka, and apparently had a flourishing business. He had begun to provide for the future and had not very long before his death bought two properties in the city of Lautoka. One was purchased in 1973 and one in 1974. Also he had four insurance policies - three on his own life and one on his wife's life, the latest of which was taken out in 1974 for $25,000, and on these he paid premiums totalling $1,235.88. Plaintiff produced the deceased's profit and loss accounts for 1972, 1973, 1974 and for the three months or so of 1975 up to the date of her husband's death. Unfortunately she was not able to explain any figures in these accounts - indeed she seemed to be completely unaware of what went on in her husband's business and took no part in it except now and again to look after the shop for short periods when there was no one else available. The profit and loss accounts are not very helpful for they combine deceased's business figures with his property ventures, and

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although his turnover was substantial, it is difficult to ascertain with any degree of accuracy what deceased's position was, as regards his business. The plaintiff also produced income tax assessments for 1973, 1974 and 1975, again entirely unexplained and I found these even less helpful than the profit and loss accounts. In an endeavour to find out what he made out of his business I have taken from the accounts those items which appear to appertain to the business, and treated car expenses and electric light which are clearly referable to both deceased's business and private capacities as being incurred as to two-thirds for business purposes and one-third for private purposes. So regarding these accounts I find that the net profit for deceased's footwear and sports goods business for 1972 was $7,473.82, for 1973 it was $11,464.74 and for 1974 it was $15,474.47. I have endeavoured to extend the actual figures up to 19th April 1975 for the full year, and estimate that if deceased had lived and carried on as he had begun in that year, he would have earned a net profit of $14,793.61 in respect of his business. This, if my figures are correct would average out over four years at $10,301.66. Mr. B.C. Patel for counsel for the plaintiff suggested that deceased's income should be regarded as $8000 to $10,000 net per annum. I think that I should take notice of the present world recession or depression which shews no sign of lifting, and of the fact that world conditions are likely to be affected very materially by the oil situation which will probably have an increasing effect upon private business. Deceased's income in the future might therefore reasonably be expected to decline rather than to increase. For that reason, I am disposed to compromise between the two figures suggested by Mr. Patel, and to fix deceased's probable income over the future at $9,000 a year. Out of that, even taking into account his allowances, he would probably pay something like $2,000 by way of taxation, leaving him something of the order of $7,000 a year to spend on himself and his family. I have very little information as to deceased's relations with his family, but I assume that he was a good husband and father, concerned to provide adequately for his wife and children. It is clear that within the last two years he bought two properties which, when their mortgages were paid off, would have brought in rents which would go towards his family's support. However I think that that time would not have arrived for some time to come.

I think it is now necessary to go back and make the estimates of which Viscount Simon speaks in Nance v British Columbia Electric Railway Company (1951) A.C. 601. At page 615 he says " . . . it is necessary first to estimate what was the deceased man's expectation of life if he had not been killed when he was: (let this be x years) and next what sums during those x years he would probably have applied to the support

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of his wife. In fixing x regard must be had not only to his age and bodily health but to the possibility of a premature determination of his life by a latter accident. In estimating future provision for his wife, the amounts he usually applied in this way before his death are obviously relevant, and often the best evidence available, though not conclusive, since if he had survived, his means might have expanded or shrunk, and his liberality might have grown or wilted." I have said that deceased was 33 years of age. There is no evidence as to his health, although counsel agreed to put in a letter which shewed that he was allowed to take out a very large insurance policy in 1974, which would suggest that he must have passed a medical examination, and was therefore in good health. The only other evidence was in his post mortem certificate which shewed that he had a very thin skull bone, from which perhaps it might be surmised that deceased was more likely to suffer death or serious injury from a blow on the head than other people. Also I think one must take into consideration that the mortality rate among youngish men of about 40 to 50 in the Indian business community is much higher than might be expected. In all this leads me to attribute to the deceased a likely life expectation of 15 to 22 years. His wife, the plaintiff might reasonably be expected to live somewhat longer. Next I have to try to estimate the sums during those 15 to 22 years which deceased would probably have applied to the support of his wife and children. There is in evidence the fact that he gave his wife $100 to $150 a month for housekeeping money, and also paid for food and clothing for his wife and children. Plaintiff said that deceased paid $200 to $300 a month for groceries. I am not altogether happy about the failure of the plaintiff to give any particulars. All her evidence about figures was extremely vague, and I think that she could and should have offered more definite evidence about deceased's expenditure, and for this reason, although my first inclination was to accept the plaintiff's higher figures I think I must compromise and accept a mean. I will therefore assume that deceased gave his wife $125 a month for housekeeping and that the family's grocery bills were of the order of $250 a month. The plaintiff gave the Court no information as to how she spent her housekeeping money. I would have expected the deceased to have paid the children's school fees, but seeing he paid for the groceries, it may be that she paid for school fees from her housekeeping money. It is extremely difficult to extract from the figures furnished by the plaintiff what deceased might have spent on his family, for his drawings are in each of the years for which figures are available, inflated by amounts spent on a car, or on purchase of land. I have to bear in mind too that as the children become older, the amounts spent on

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their education would be likely to increase. I have adopted the figure of $9000a year as deceased's probable earnings over the years of his life expectancy, of which he would probably have $7,000 left to spend after paying tax, and I think that, having in mind the reservations I have mentioned about plaintiff's evidence, if I fix the amount spent by deceased on his family as the mean of the figures given in evidence by the plaintiff, I shall not be far wrong. That figure then will be $4,500. To that must be added an allowance for taxation so that the final figure will be $5000 which would probably amount to something like $500/per annum. I adopt that figure rather than a higher one because in this family deceased held the purse strings, so far as the evidence discloses, and he appears to have spent quite a large amount of the sums shewn as drawings in his accounts on things he was interested in. In 1972 and again in 1973 deceased would appear to have bought a new car. In 1972 he seems to have bought land in Drasa Avenue, in 1974 he bought land in Yawini Street. In so fixing this sum I have to make the allowances referred to by Viscount Simon in his judgment mentioned above.

Of these various factors I think that I must mention that which Viscount Simon describes as "the additional amount he (the husband) would probably have saved during the 26 years if he had so long endured, and what part, if any, of these additional savings his family would have been likely to inherit." As I have said, deceased had bought two properties, one in Drasa Avenue, and one in Yawini Street. The former is shewn in the 1972 balance sheet as an asset valued at $13,349.07, but there was no evidence as how much deceased paid for this property, and that sum would appear rather low for any land in Drasa Avenue. Then the Yawini Street property would, I suspect have cost $52,592 in 1974, of which some money was provided by the ANZ Bank and a mortgage given to Ramswamy Reddy on which was owing $28,528, which may have included some interest. In 1975 deceased probably spent an additional $800 on that property. Plaintiff now lives on this property but overall she receives rents of $240 a month. This sum she certainly would not have had so long as her husband lived, but if his death had occurred 17 to 22 years later she may have had more. I think that I have also to assess, if I can, plaintiff's prospects of remarriage. I would regard her as a personable young woman. She is now 30 years of age, and she told the Court that she intends to go to Canada where she has relatives. I would regard her as having definitely a reasonable prospect of remarriage. She is, as the Court of Appeal pointed out in Ram Charan v Public Trustee of Fiji Civil Appeals 41 and 43 of 1973 a young widow provided with a considerable lump sum award of damages, albeit with four children.

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I have to try to fix a figure taking into account both the annual loss of benefit and the future loss of capital sums. It should be a sum which would be gradually drawn upon over a number of years but which until exhausted would yield interest (though in annually decreasing amounts). In order to fix this figure it has been usual to have recourse to a multiplier. Counsel for plaintiff suggested a multiplier of 18. I regard that as inordinately high. Shrimati's case in 1977 dealt with a multiplier of 15. That was apparently agreed by counsel and I would have thought it unusually high for a man of 43. Moreover I cannot see that in that case the Court of Appeal was referred to its judgment in Ramcharan v The Public Trustee of Fiji where a multiplier of 14 was applied, setting aside a multiplier of 17 fixed by the then Chief Justice. In Taylor v O'Connor (1970) 1 AER 365, both Viscount Dilhorne and Lord Pearson regarded instability in money values as no reason for increasing the multiplier. I think that in fixing the sum to be awarded, the Court must have regard also to the fact that the capital sum awarded can be invested in Fiji at fixed deposit at 7% - although that figure is movable and may come down. I consider that the proper multiplier to be used here should be 14, and if I multiply the dependency which I have fixed at $5,000 that gives me $70,000. From the result would normally be deducted the value of the estate which the plaintiff received by acceleration of her husband's death, which amounted at the date of his death to $37,065.05. I have given consideration to the question as to whether the whole of this capital should be deducted, as one would expect that some at least of the capital was money of which plaintiff would in the ordinary course of events have received the benefit. I do not think that any allowance should be made, and that the whole of the capital should be deducted. The capital in deceased's account at the date of his death corresponds nearly enough with the net value allowing for encumbrances of the two properties from which the plaintiff derives an income of $240 a month. I regard these two properties as income producing assets in respect of which normally the deduction is made in full: see Bishop v Cunard White Star Company Limited (1950) pages 240, 248. The result, then, will be that plaintiff would get $32,935.95. There was a further $1,000 given to her by the deceased in 1973, but I do not propose that any deduction should be made in respect of that sum. I think that the proper sum and that to which plaintiff is entitled here is $33,000. I was given no information about the incidence of estate duty, so that no allowance is made for that.

Dr. Sahu Khan reminded me that interest rates in Fiji are of the order of 10%, and I have already referred to the fact that the normal interest rate for fixed deposits is 7% which is also as I understand,

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the rate paid by the Public Trustee. However the rate for ordinary Savings Bank deposits is only 3%. I would think that any calculation on the basis of a reducing sum would need to have regard to the plaintiff's rents of $2,880 a year by which she has benefitted through her husband's death.

There are two further matters. The figure of $200 was accepted as funeral expenses, and these must be added to the plaintiff's damages. Then there is the award under the Law Reform (Miscellaneous Provisions) Act Cap. 20 for loss of expectation of life. This would appear to a purely conventional figure which in England is fixed at £750 or so, and so a figure of $1,500 would seem to be in order. This, however, will have to be deducted from the sum of damages awarded under the Compensation to Relatives Act cap. 22. The amount to which the plaintiff will be entitled will be 75% of $33,000 which is $24,750 plus $200 funeral expenses less 75% of $1500 which is $1125, so that the final figure will be $23,825, which will be divided as follows:

The widow	$14,825
The elder daughter	1,500
The younger daughter	2,000
The elder son	2,500
The younger son	3,000

The plaintiff will be entitled to her costs of the action, and the defendant's counterclaim which was not proceeded with, will be dismissed with costs.

LAUTOKA,
16th June, 1978.

(sgd.) K.A. Stuart
JUDGE