

AT LAUTOKA

Civil Jurisdiction

Action No. 105 of 1979

BETWEEN: MAHENDRA NAIDU s/o Adiappa Plaintiff
A N D : RAVINDRA PATEL s/o Motibhai Patel Defendants

Mr. G.P. Shankar Counsel for the Plaintiff
Mr. H. Tappoo Counsel for the Defendants

JUDGMENT

The plaintiff claims damages for injuries received in a motor accident caused by the negligence of the first defendant who, as servant or agent of the second defendant, was driving the latter's car.

Liability is admitted by both defendants on 11/7/77. The plaintiff's car was extensively damaged and he received fractures of the right ribs and pelvis.

He was detained at Lautoka hospital until 20.7.77. The surgeon, P.W.1, stated that the plaintiff suffered severe pain for several days and until 17.7.77 received injections of pain killing drugs. P.W.1 stated that the plaintiff was an out-patient until 9.11.77 and that he would perhaps have pain in the pelvic region on marked exertion such as running, climbing, etc. The complainant confirmed that statement.

The plaintiff was away from his work as a bank officer for 6 weeks and he claims loss of wages for that period amounting to \$599.35. His ascertained damages also include \$50.00 for ointment and drugs; \$39.00 hospital fee; \$35 travelling. The claim for ascertained damages is clearly misconceived even if not dishonest. The bank had paid his wages whilst he was off sick. There was no medical evidence that drugs had been prescribed after plaintiff left the hospital and I do not accept that he required any; I do not believe that he spent any significant sum on ointment. He says it was \$6.00.

No receipt or evidence has been tendered to show that hospital fees amounted to \$50.00 and I do not accept that figure. I am unable to guess what it would be and I do not allow it. As Lord Goddard and the F.C.A. have pointed out claimants are expected to call evidence

supporting their claims and not simply to say this is what I have paid or suffered in losses then expect to be awarded those sums.

Complainant lives in Waiyavi St. which is quite close to Lautoka hospital. When asked in cross-examination how he came to spend \$35.00 in travelling he said that because his wife was working he went to his mother's home in Nadi and had to borrow his brother's car to travel to Lautoka. He paid for the petrol which came to \$15.00. However, the plaintiff had brought an action in the magistrate's court for loss of his car and loss of its use and had received an agreed figure for damages in those respects. He cannot claim again in this court for that loss of use of his car although it is now expressed in a different manner.

I disallow the claim for special damages.

It is most probable that he has suffered some loss of amenity such as the ability to play soccer/to jog without pain in the pelvic region. There is no loss of earning capacity in his employment as a bank officer and in fact he has just recently been promoted. There is no suggestion of any limp having developed or any kind of disfigurement.

For pain and suffering and loss of anonyity I award a sum of \$1,250.00.

On the question of costs it is to be noted that the plaintiff has brought two actions for damage received in this motor accident. One action for damage to property was brought in the magistrate's court and this particular action for personal injury in the Supreme Court. One action could have been brought in the magistrate's court or in the Supreme Court. In fact one claim made in the Supreme Court for travelling expenses arises out of the loss of the plaintiff's car; it arises for damage to property and not from personal injury. That kind of damage was claimed in the magistrate's court but was, in effect, repeated in the Supreme Court. The defendant has been caused to face two actions and to incur two sets of costs when one action would have

sufficed. Even if I deprived the plaintiff of his costs it would still leave the defendant with his own second lot of costs to pay which was quite unnecessary - Huddock v Blackwood 1898.1.Ch.64.

There will be judgment for the plaintiff for \$1,250.00. The plaintiff will pay his own costs and will pay \$80.00 towards the defendant's costs in this action.

LAUTOKA

(J.T. Williams)

22 February, 1980

JUDGE