

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 67 of 1980

169  
000169

Between

GAURI SHANKAR s/o Govind Nair

Plaintiff

- and -

MOHAMMED TAKI s/o Mohammed Sadiq

Defendant

Mr. Tappoo  
Mr. Gordon

Counsel for the Plaintiff  
Counsel for the Defendant

J U D G M E N T

This is a running down action in which the first defendant is sued in negligence as the driver of a motor vehicle and the second defendant as the vehicle owner and employer of the first defendant.

The writ was filed on 25/2/80 and alleges that the second defendant was convicted for careless driving. Obviously that reference to second defendant was erroneous and it should have read, in para. 6, that the first defendant was not convicted.

On 9. 9.80 the second defendant admitted liability and agreed to pay the damages as assessed by the Court.

The first defendant does not seem to have entered an appearance but the Plaintiff apparently is content to proceed against the second defendant only as owner and employer.

At the hearing of the evidence on damages it was revealed that the defendant is 40 years of age, married and is employed as a gardener. He had no farm or allotment or other source of income than his job which provided him with the meagre salary of \$20.00 per week.

The medical evidence shows that as a result of the accident the plaintiff received a lacerated scalp, fracture of the left arm and he had bruises on his buttocks, knee, right ankle and left foot. At the time of the accident, the plaintiff, according to the Statement of Claim was a pedestrian. Judging from the nature of the injuries there must have been a forceful impact.

There is no serious dispute as to special damages indicated in evidence. The plaintiff was detained in hospital for 4 days from 4/3/79 to 7/3/79

inclusive and his left arm was in plaster when he was discharged. Thereafter he attended as an out patient for 6 months and he lost 6 months employment. He had to make visits to the hospital by taxis because of the unavailability of buses.

I allow \$480.00 for loss of earnings over the 6 months period and \$12.00 for taxis plus hospital charges of \$1.80, a total of \$493.80.

With regard to general damages the surgeon P.W. 1 states that the plaintiff has a 20% disability. Such figures do not assist greatly when considering general damages. I did learn from the medical witness that there is a slight wasting of the plaintiff's left arm, and that he would have some difficulty and discomfort in trying to lift heavy objects with that arm. He had suffered pain and discomfort during the 6 months treatment and it is probable that he will continue to experience discomfort in his left arm when using it at work or in anything calling for reasonable physical effort. There is some limitation of movement of the left arm and shoulder and I am satisfied that this is an outcome of the accident.

Apart from his left arm injury the plaintiff states that he has sensations of dizziness and pain in his head. I believe him and am satisfied that it is probably due to the head injury which created the scalp wound.

It was elicited in cross-examination that the plaintiff is left-handed.

In the future, according to the medical evidence of P.W. 1 the plaintiff could be affected by osteo arthritic changes in the left arm which was broken increasing the pain and discomfort which he now suffers from time to time.

He is a humble, poorly paid labourer who probably had no extensive recreational hobbies or other such activities. Certainly loss of amenities were not presented.

I assess the plaintiff's pain and suffering in the past and the discomfort and pain which will probably continue into the future as to his head and arm and the partial loss of use at \$3,000.00.

There is the chance that he may be restricted further in the work he can do. His job involves the carrying of 4 gallon cans of water which weigh 40 lbs. He waters his employer's garden with these. One cannot easily conjecture as to whether he will have to cease work earlier in life than would otherwise have been the case. However it is a probability and by no means remote and I think I should try to place a figure upon it. I should think it would be covered by an award of \$2,000.00.

Therefore the general damages total \$5,000.00 and along with the special damages produce a figure of \$5,493.80 which I round off to \$5,500.00.

There will be judgment for the plaintiff as against the 2nd defendant for \$5,500.00 and costs to be taxed.

MAUTOKA,  
17th November, 1980

(sgd.)  
J. T. Williams  
JUDGE