IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Civil Jurisdiction
Action No.232 of 1979

BETWEEN: SANDHYA KIRAN d/o Sudhendra Nath Plaintiff

A N D : DAVENDRA KUMAR s/o Bhaguti Prasad Defendant

G.P. Shankar, Esq., Counsel for the Plaintiff.

JUDGMENT

This running down action was instituted by a five years old female through her father and next friend. Judgment was given for the plaintiff on 19.11.78 in default of the defendant's appearance; leaving the damages to be assessed.

Medical evidence shows that the plaintiff was admitted to Lautoka Hospital on 2/7/78 when the accident occurred and she remained there until 10/7/78. She suffered facial lacerations and an injury to the left eye the condition of which deteriorated and after 6 months she had lost all sight in the left eye. It was a painful injury and she suffered a great deal of discomfort.

Following her discharge she attended the eye clinic at the hospital on six occasions.

Since the accident the plaintiff has begun to complain of deafness and pains in the left side of the head.

Her parents have a crippled son who has to be wheeled to school by his mother who remains with him. Her father, P.W. 2, says that because of the accident the plaintiff could not care for herself and he had to employ P.W. 4 as a housegirl to help in the domestic chores and to care for the plaintiff. He pays P.W. 4 $30.00 per month.

P.W. 4 says that she does domestic work and takes the plaintiff to the Kindergarden. The father of the plaintiff says that she does not have a proper sense of balance on rough ground. At times the child has had to be brought away because of pain in her eye and headaches.

The plaintiff is now 5 years of age. At the time of the accident in July, 1978 she would only be 4 years of age. At that tender age it is unlikely that she would be able to care for herself to any considerable extent. Therefore, although the mother remains at school with her crippled son that is a state of affairs which existed prior to the accident when the plaintiff was presumably too young to look after herself and is not a consequence of the accident. She is one of 5 children. It is probable that since she is only 5 years old there is at least one older brother or sister who assisted in caring for the plaintiff prior to and up to the date of the accident when she was still at such a tender age that she could not properly care for herself. I have no information on this aspect and can only rely upon the commonsense approach. Such matters do escape the notice of counsel in their efforts to gban information and I am offering no criticism of counsel in that respect. I do not attribute P.W. 4's proportion of labour in looking after the plaintiff at more than 20% bearing in mind that before P.W. 4's employment and prior to the accident the plaintiff could not possibly have been capable of caring for herself in all respects.

The total cost date of employing P.W. 4 since the accident in July, 1978 is $30 per month for 18 months = $540. I attribute 20% of this to cost of caring for the plaintiff = $108.00.

There is a claim for special food but no mention was made of it in evidence.

I allow $63.00 claimed for medical fees.

There is a claim of $270 for numerous journeys from Tavua to Lautoka, a distance of approximately 40 miles undertaken by P.W. 2 visiting the plaintiff. Evidence in the form of invoices for taxi journeys in 1978, 1979 & 1980 have been tendered totalling $310. A strange

thing about the invoices is that one for 31/8/78 is numbered 1040; one for December, 1978 is numbered 1041, for June 1979 it is 1042 and for January 1980 it is 1043. Four consecutive invoices cover a period of 16 months and all relate to journeys from Tavua to Lautoka by the same passenger. Invoice 1040 of 31/8/78 refers to a single taxi fare of $25.00 to Lautoka Hospital, but on that date the plaintiff had been discharged for 6 weeks. Invoice 1042 of 30/6/79 refers to 5 undated trips from Tavua to Lautoka of $25.00 each. These may be return trips. P.W. 2 is an average lower bracket income person. His normal mode of transport would not be a taxi. Although he may use a taxi in an emergency or case of need there is nothing in the evidence which suggests that he could not have used the 'bus on those occasions. The father says that in addition to the taxi journeys he came fifteen times to Lautoka by 'bus at a return fare of $5.00.

During the plaintiff's hospitalisation from 2/7/78 to 10/7/78 the father would make not more than 8 daily journeys. Her six attendances as an outpatient would necessitate a further 6 journeys.

In my view the figure of $5.00 quoted by P.W. 2 as the return 'bus fare is exaggerated. I allow him $2.50 per return journey for 15 journeys = $37.50 and 6 journeys for the child would be $15.00, giving a total of $42.50. I am not satisfied that taxi journeys if made were necessary.

The total special damage is therefor $(108+63+42.50)= $213.50.

Turning now to general damages I have been referred to Kemp & Kemp on Quantum of Damages. The awards mentioned there relate to English cases where earnings are on a very much higher scale than in Fiji and English assessments are likely to be higher. I award $5000 for loss of the sight of the left eye and pain suffered in connection therewith.

There is evidence of some injury to the left ear, of some loss of hearing and of headaches. Unfortunately the extent of the injury to the plaintiff's ear cannot be scientifically assessed in Fiji and it is unlikely that she will be able to go abroad to have it assessed.

Her position is not the same as of a person in a more highly developed country where facilities for diagnosis and treatment are available but assessment is deferred to allow the results of the injury to become more apparent and stabilised so as to permit an acceptable prognosis as a basis for assessment. In such cases one is not hoping that facilities may become available; they are there and ready for use when called upon. In the instant case there are no facilities; it is not suggested that they will exist in the forseeable future if I were to postpone any assessment. Consequently I think I should accept that there is a loss of balance, that the plaintiff suffers from headaches and partial deafness in the left ear. I assess the damages in those respects at $2000 to include pain and suffering.

The total general damages thus amount to $7000.00 and with the special damages the award is $7213.50.

There will be judgment for the plaintiff in the sum of $7213.50 with taxed costs.

I Order that the sum of $7000 be paid to the Public Trustee to be invested for the plaintiff's benefit and the income therefrom to be accumulated and invested until she is 18 years of age or until the order of the Court; subject to the sum of $110 per annum being paid from the income to the plaintiff's father to cover the cost of providing of extra care for the plaintiff such as provided by P.W. 4.

LAUTOKA,
30th January, 1980.

(Sgd.) J.T. WILLIAMS,
JUDGE.