

AT LAUTOKA

Civil Jurisdiction

Action No. 309 of 1981

BETWEEN: DEO RAJ f/n Shiu Charan Plaintiff

and

MOHAMMED RAFIQ f/n Mohammed
Ibrahim Defendant

Mr. A. Singh, Counsel for the Plaintiff
Mr. A. Patel, Counsel for the Defendant

JUDGMENT

The plaintiff was injured as a result of a vehicle accident involving the vehicle owned by the 1st Defendant and driven by the 2nd Defendant. The defendants having filed no defence it remains for this court to give judgment for the plaintiff against the defendants jointly and severally. Special damages amounting to a total of \$715 have been pleaded and the plaintiff is entitled to these.

On the question of general damages I accept that these may be assessed under three general headings, namely pain and suffering, loss of amenities of life, and loss of earning capacity.

The plaintiff suffered a number of minor abrasions and lacerations, the main ones being to his left forearm, his right ear and his right eyebrow. These have healed and although they have left scars they are not particularly disfiguring, and have left no permanent impairment. I would award general damages of \$750 in respect of these.

He also suffered damage to his right leg, the right patella suffering a compound fracture and the main tendon joining the muscle to the bone being completely ruptured.

The joint was full of blood. He was rendered unconscious by the accident and recovered consciousness many hours later.

His leg injuries required surgery and the patella was completely removed. The tendon was repaired under surgery. He was discharged from hospital about 7 days later with his leg in plaster. He returned to hospital about 7 times for follow-up treatment, the final review being in April 1981, about 9 months after the accident.

At one stage there was a prospect of further surgery for the ruptured tendon, but apparently recovery has been good and this is no longer necessary.

The medical evidence is that the patella has completely recovered, and although there is some disfigurement of the knee because of the absence of a patella there is apparently little impairment of knee movement and the knee functions satisfactorily. The tendon injury has recovered satisfactorily and should improve in time. Although there may be some arthritic deterioration of the joint, proper exercise could reduce this. Permanent incapacity has been put at 10%.

The plaintiff has I think rather exaggerated the effects of the injury, the amount of impairment and the pain he suffers. According to the medical evidence he should suffer no serious long term effects. I accept that his farm is on hilly ground and at the moment he has some difficulty moving about the farm, but I do not believe that he cannot work the farm. In any case I presume it is a family farm, with the family joining in and with cane gangs to help during harvesting season.

I would assess pain and suffering at \$1500, loss of amenities of life at \$750 and loss of earning capacity at \$1500.

Judgment is therefore given for the plaintiff for \$715 special damages and \$4500 ($\$750 + \$1500 + \$750 + \1500) general damages - making a total of \$5215 - and costs to be taxed if not agreed.

LAUTOKA,
3rd September, 1982.

G.O.I. Dyke
(G.O.I. Dyke);
JUDGE.