

000016

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 794 of 1982

BETWEEN : JOKATAMA VUKIDUADUA Plaintiff

A N D : EMPEROR GOLD MINING CO. LIMITED Defendant

Mr. Kapadia Counsel for the Plaintiff

Mr. R Krishna Counsel for the Defendant

J U D G M E N T

There is no dispute as to liability in this case. The plaintiff received injuries in the course of his employment by the defendant company, and the sole issue now is the quantum of damages to be paid by the defendant. Special damages are agreed at \$3000 so there remains the question of general damages.

The injuries to the plaintiff are a fractured vertebra and a damaged spinal cord and the result is that he is an irreversible paraplegic paralysed from the waist down, with no control over his scrotum and bowels and with his sexual function greatly reduced, the pleasurable side being absent. The conclusion of the medical evidence given before the court seems to be that his life expectancy has not been decreased provided a certain amount of care is exercised.

The plaintiff was aged about 22 years 4 months at the date of the accident. He was in hospital for about 2 years and five months before he was released, and it seems that at one stage he was in a very poor way indeed, and likely to die. However the fact that he was in that state seems to be a reflection on the medical treatment he was receiving, for after a visit to him by Dr. Deo Dutt Sharma in December, 1982 there was a marked improvement in his condition, he was discharged into the care of his parents on 1/8/83 and now is well on the way to full recovery - that is as full a recovery as is possible for someone who will always remain a paraplegic.

Plaintiff's counsel has been rather concerned to show his client off in as bad a light as possible, as a man unable to sit upright for long periods, or ever capable of finding a job - indeed of finding any job he is capable of doing and as being in constant need of care and attention by trained nurses. It is difficult to take his arguments too seriously in this day and age when paraplegics are encouraged to be as self reliant as possible, where they are found in many different types of occupation, when there is even an event, known as the Paraplegics Olympic Games attracting participants from all over the world. The plaintiff is perhaps in the early stages of recovery after release from an unfortunate history of hospital treatment, but there is no reason to take too pessimistic view of his future. A certain amount of alterations to the house's facilities may be necessary or desirable, a certain amount of care may be required. But there is no reason to believe that the sort of care he may require necessitates the presence of trained nurses. The medical evidence certainly didn't suggest that trained nurses were essential to his well being. The sort of care needed can be given by family members and these have already received some instruction and guidelines from a qualified teacher.

It is also possible that, though he will never be able to resume his old job, his employer could employ him as a telephone operator, a job he could do as well as anyone else, at no reduction in pay from what he was receiving.

What the Court is concerned with, therefore, is the assessment of damages under the heading of -

- (a) general damages for pain and suffering and loss of amenities of life;
- (b) cost of future nursing care and attention in which will be considered future care by parents and relatives;
and
- (c) loss of prospective earnings.

With regard to (a) I note that in the case of Sajendra Prakash v. Ahmed Gaffar C.A. No. 84 of 1978 which involved a child who suffered paralysis from the navel down - that is a somewhat more

serious case than the present one - a sum of \$21,500 was allowed under this head. In that case I note that loss of expectation of life was considered to be an important factor - whereas in this case it is almost negligible. The arguments therein used for differentiating UK awards from those applicable in Fiji are equally appropriate here. Allowing for depreciation since 1981 I would allow a sum of \$25,000 under head (a).

In respect of future nursing, care and attention the claim submitted of \$83,200 is unrealistic. As I have said the amount of care and attention required is likely to diminish considerably, and certainly need not involve trained nurses. He is not receiving care by trained nurses at present, and there is no evidence to suggest that he will require such care in the future. The plaintiff will doubtless become more and more independent as time goes by. I do not think that future prospects of marriage are as remote as has been suggested and the possibility of a wife, or a family member giving the plaintiff any assistance he might require in the future is quite likely. If assistance has to be hired it is likely to be of a fairly unskilled nature and almost certainly not all the time. For head (b) therefore I would allow a sum of \$20,000 which invested wisely should prove quite adequate to hire whatever services are necessary and recompense family members for their services.

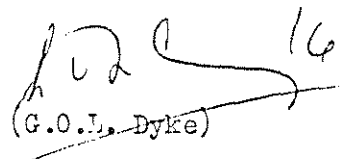
With regard to head (c), loss of prospective earnings, the plaintiff was at the time of the accident earning at the rate of about \$37.40 per week. He was employed as a labourer electrician and was only taken on permanently since 25/2/80. Before that he merely worked as a casual labourer for 2 years. How high he would have gone as an electrician it is impossible to say now. He has not worked long enough to give any clear indication. His father is an electrical foreman with the defendant company and it is possible his son could have achieved the same rank. On the other hand he might not have done so.

On the other hand the chances are that the plaintiff will be re-employed by the defendant in a clerical job, or as a telephone operator, where his handicap will not affect his ability to do the work. If this came about he would not suffer any loss of wages from his present position, though he obviously could not progress to the

rank of foreman. The most that I could therefore use as a basis to assess his loss of future earnings is \$40 per week. Using a multiplier of 16 which is really the maximum that could be applied in the circumstances in Fiji this would give a figure of $\$40 \times 52 \times 16 = \$33,280$.

The total award would therefore be - \$3,000 (agreed special damages) plus \$25,000 (pain and suffering etc.) plus \$33,280 (loss of future earning) plus \$20,000 (future care and attention) = \$81,280. Plaintiff to have costs to be taxed if not agreed.

13th January, 1984
LAUTOKA.


(G.O.L. Dyke)

Judge