IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0063 OF 2001S
(High Court Civil Action No. HBC 201 of 1993S)

BETWEEN:

JONE MAKA
ATTORNEY GENERAL OF FIJI

Appellants

AND:

EDWARD MICHAEL BROADBRIDGE

Respondent

Coram: Tompkins, JA
Henry, JA
Penlington, JA

Hearing: Friday, 23rd May 2003, Suva

Counsel: Messrs. S. Banuve and J. J. Udit for the Appellants
Mr. R. A. Smith for the Respondent

Date of Judgment: Friday, 30th May, 2003

JUDGMENT OF THE COURT

The respondent (Mr. Broadbridge) suffered serious personal injury as the result of a motor accident which occurred on 20th April 2001, when a car he was driving came into collision with an Army truck being driven by the first appellant (Mr. Maka). Mr Broadbridge was admitted to and treated at the Colonial War Memorial Hospital in Suva. In his statement of claim Mr Broadbridge alleged negligence on the part of Mr Maka causing the collision of the two vehicles. It is accepted that the second appellant is

vicariously liable for any acts or omissions of Mr Maka at the relevant time. Mr Broadbridge also alleged that he received negligent treatment while at the hospital, which he claimed aggravated the injuries he had suffered in the collision. The second appellant is also admittedly liable for any legal liability which may attach to the hospital or its employees in this regard. In their statement of defence the appellants plead contributory negligence on the part of Mr Broadbridge in respect of both the collision and the hospital treatment.

The hearing of the claim for damages occupied six days and on 7 November 2001 the trial Judge, Byrne J, delivered a written judgment in which he gave comprehensive consideration to the issues which had emerged at trial on both liability and quantum. He held that Mr Maka had been negligent causing the accident, and that negligence against the hospital had also been established. The pleas of contributory negligence were rejected. General damages were assessed in the total sum of $1,480,335.00. Interest at the rate of 5% was also awarded, calculated from 9 July 1998 down to the date of judgment; giving a total amount for which judgment was ordered of $1,720,889.43. The present appeal is from that judgment.

In summary, the appeal challenges the findings of negligence against both Mr Maka and the hospital, the failure to find contributory negligence in respect of the accident, the assessment of damages, and the award of interest. There is no appeal against the finding that Mr Broadbridge was not guilty of contributory negligence in respect of the claim as it related to his hospital treatment.

Negligence of Mr Maka

On 20 April 1991 Mr Broadbridge was driving a Honda motor car along Waimanu Road Suva. He had one passenger in the front seat, his half brother Richard Broadbridge, then aged 17 years. As the car rounded an uphill bend, it came into collision with an Army 7 tonne truck travelling downhill in the opposite direction and being driven by Mr Maka. Mr Broadbridge had no recollection of the actual collision because of the injuries he suffered. Mr Maka was subsequently convicted in the Magistrates' Court in Suva on a charge of careless driving in respect of the accident. The relevance of the conviction arises from s.9 of the Evidence Act Cap.41, which provides:

> ***"That in any civil proceedings the fact that a person has been convicted of an offence before any court in Fiji shall be admissible in evidence for the purpose of proving that he committed that offence."***

Mr Banuve for the appellants accepted, as he did at trial, that the effect of the section is to place on Mr Maka the burden of proving he was not careless or negligent.

The two eye witnesses who were able to speak to the immediate circumstances of the collision were Richard Broadbridge and Mr Maka. The respondent Mr Broadbridge was unable to give evidence of significance, other than he had been travelling at a speed of about 40 kph. In evidence Richard Broadbridge said that they approached what he described as a blind bend on the road, where neither traffic going uphill (their direction) or downhill (the direction of the truck) could see oncoming traffic. He said that as their car came towards that bend, he saw a truck coming towards them at a rather high speed on its wrong side of the road. He instinctively grabbed the steering wheel. The vehicles

collided, and the truck ended up on their side of the road close to the drain, about 15 metres from the car which had finished up close to the middle of the road. Under cross-examination Richard Broadbridge said that the truck was about 15 metres away when he first saw it. He was also referred to the police statement he had given on 12 May 1991, in which there was no reference to the truck's position on the road. A second police statement was put to him in which he referred to the truck "travelling on the opposite side", and to pulling the steering wheel of the car to the left. He said at trial that he had no recollection of having made either statement, each of which is recorded in narrative form.

In his prepared statement of evidence, Mr Maka said he was travelling at about 45 kph, and as he was rounding what was for him a right hand bend he saw a car partially on his side of the road about 10 metres away, travelling at high speed. He was cross-examined as to why he had been unable to see the car earlier, and denied he was travelling too fast and had cut the corner. There was no evidence by way of a scene plan or by way of photographs which could have assisted determination of the point of impact.

The Judge carefully traversed the evidence from these three witnesses, and having done that concluded Mr Maka had cut the corner, and that was the explanation for him not having seen the approaching car before he did. Accordingly he held that the burden of proof which lay on Mr Maka had not been discharged, and that the Magistrate's Court was correct in finding him guilty of careless driving, which in the present context constituted negligence. The Judge expressly accepted the evidence of Richard Broadbridge, and in doing so referred to and took into account his statements to the police.

Mr Banuve submitted that the Judge was in error, because if there was only a 10 metre separation of the vehicles before impact, there would have been a head-on collision, rather then the partial side-on collision which eventuated. We do not accept this criticism. The evidence of Richard Broadbridge that he grabbed the steering wheel from the passenger side, and Mr Maka's evidence that he pulled to his left, could well have avoided a head-on collision even allowing for the short passage of time it would have taken for the 10 metres to be covered. Counsel also stressed the absence of reference in Richard Broadbridge's police statements to the truck having been on its incorrect side of the road, and to what was a somewhat oblique reference to the truck "travelling on the opposite side." But as we have earlier noted, the Judge was careful to take those into account, and he had the benefit of seeing and hearing the two important witnesses. Byrne J also made a credibility finding against Mr Maka, relying in part on his admission that he had previously given false evidence about his driving records in the Army.

This was pre-eminently a case where the trial Judge was in the best position to assess the conflicting versions of what happened. We cannot detect any error in his approach, or in his analysis of the evidence which fully justified his conclusion. This ground of appeal must fail.

Contributory Negligence

To contend that rejection of the allegation of contributory negligence should be reversed on appeal becomes extremely difficult in the light of the our acceptance of the finding that the collision took place on Mr Maka's incorrect side of the road. In his

submissions to this Court, Mr Banuve contended that the "more plausible" explanation for the collision was that Mr Broadbridge was encroaching onto the oncoming lane. Counsel placed particular reliance on Mr Broadbridge being unable to recollect what happened, and Richard Broadbridge's evidence that he grabbed the steering wheel. When asked to particularise the negligence relied upon, counsel identified the failure to keep a proper lookout, excessive speed, and failing to keep left. We are unable to see any basis upon which it could properly be said that it was not open to the Judge on the whole of the evidence to reject each of those contentious. This ground of appeal must also fail.

Medical Negligence

Following admission on 20 April 1999 to the CWM Hospital, the records show that Mr Broadbridge was diagnosed on the same day as having a fracture of the forearm bone and a fracture of the hip joint. He was in considerable pain, particularly from the hip injury. Standard treatment for a hip joint fracture, being the fitting of a plaster cast and being placed in traction, was administered. The hospital notes of 24 May then record "home today" but the next entry, also 24 May, refers to re-admission. Mr Broadbridge said in evidence that as he was about to leave the hospital he saw the physiotherapist who had been treating him. She wanted to give him some further physiotherapy before he went home, and when carrying this out said that she thought something was seriously wrong. A doctor was called, who obtained another x-ray of the hip following which Mr Broadbridge was re-admitted. On 28th May he was seen by an orthopaedic surgeon, Mr McCaig. The hospital notes of 29th May record "X-ray shows (posterior) dislocation of (right) hip" . The

notes also show that the patient had been referred to Mr McCaig the preceding day, 28th May.

The Judge held Mr Broadbridge had been wrongly diagnosed at the CWM Hospital, and that impaired the chances of success of the operation which was later carried out. In the concluding passage on this issue, he held that there was negligence in the treatment of the injuries sustained in the accident. In this Court, Mr Smith accepted that the only allegation of negligence upon which he could rely was a failure to diagnose the hip fracture in a timely way. The other two pleaded particulars of negligence therefore do not require our consideration.

To succeed under this head of claim, the respondent had to establish on the balance of probabilities first that there was a failure to diagnose the dislocation prior to 28th May, second that the failure was a breach of the duty of care, and third that the breach contributed to his ultimate medical condition. We turn to each of those requirements.

The evidence as to when the dislocation was diagnosed is unclear. Mr Broadbridge chose to go to New Zealand for the operation treatment advised him. He was admitted to the Wakefield Hospital at Wellington, and put under the care of Mr Brett Krause, an orthopaedic surgeon. In a letter dated 14th May 1992, Mr Krause describes his treatment of the patient. The letter contains the following passage:

> ***"Unfortunately the dislocation was not diagnosed and when he was referred to me in Wellington some two months later the hip was still dislocated. This presented a very severe situation with the opportunity of complete correction being zero."***

Mr Krause did not give evidence at trial, although this letter formed part of the material where it was agreed the Judge was entitled to take into account; The basis for the surgeon's statement that the dislocation "was not diagnosed" is not recorded. Undoubtedly the diagnosis had been made at least by 28 May 1991. The matter was not explored at trial, and the surgeon's reference to "two months later" is itself unclear. The patient was originally referred from Fiji to an Auckland consultant, Mr Farr, on 7 June 1991, and the operation by Mr Krause was subsequently carried out on 18 June 1991. Byrne J. placed weight on the fact that when the patient initially was to be discharged from the CWM Hospital, he was suffering from the dislocation. The Judge concluded that the Hospital would not have discharged the patient if it was aware he then had a dislocated hip. There is some force in that reasoning, but as against that, Mr Broadbridge in his statement of evidence said that he was initially diagnosed as having "a dislocated right hip and multiple lacerations." He made other references to the same effect. Mr Racimi Afolavi also gave evidence. He was at the time of the trial consultant surgeon at the CWM Hospital, and head of its department of surgery. He stated that the dislocation was clinically assessed on the day of admission, but did not refer to any written record of that. We find the evidence as to when the dislocation was actually diagnosed unsatisfactory for the purpose of making a definitive finding.

Even accepting that the dislocation diagnosis was not made until 28th May 1991, the next question is – was the failure to diagnose earlier negligent? To establish that required medical evidence supporting the allegation. The Judge relied on answers to questions addressed by him to Mr McCaig.

Mr McCaig was referred to the letter from Mr Krause containing the passage we have earlier cited. The transcript reads:

"Judge:	*Q:*	*Mr McCaig, look at 7.1 would you please. You've already mentioned under the heading 'History', "Unfortunately, the dislocation was not diagnosed." I ask you, in your experience, should it have been?*
Mr McCaig:	*A:*	*I would have been disappointed if I had missed that.*
Judge:	*Q:*	*Is that being euphemistic?*
Mr McCaig:	*A:*	*Yes."*

The Judge then said that this evidence convinced him that the patient was wrongly diagnosed at the CWM Hospital. In this Court Mr Smith accepted that he could not point to any other evidence to support the allegation that the failure to diagnose did not meet acceptable medical practice. Nothing to that effect was adduced in Mr McCaig's evidence in chief. With respect, we cannot accept that this brief exchange can properly support a finding of medical negligence. The context of Mr Krause's observation is unclear, yet it was the very foundation for the Judge's question. The answer that the surgeon would have been disappointed if he had missed the diagnosis does not purport to address the critical issue of standard of care. If the respondent wished to establish that reasonable medical care would have revealed the dislocation earlier, it was incumbent on him to adduce clear evidence to that effect. Of even greater importance in the present case is the absence of evidence addressing the issue of whether an earlier diagnosis would have led to any different treatment or outcome.

The Judge concluded under this head of claim

> ***"That the Second defendant was negligent in its treatment of the Plaintiff and thus aggravated or failed to treat properly the injuries which he had received in the accident."***

We are unable to see any adequate evidential foundation for that conclusion, and Mr Smith was unable to suggest where we could find it other than in the passages to which we have referred. There was no particularisation by the Judge of what was wrong in the treatment of the patient's injuries, or in which way they were aggravated.

We are therefore satisfied that there was insufficient evidence to support the allegation of medical negligence made against the CWM Hospital.

Damages

The award of damages was made under three heads: pain, suffering and loss of amenities of life $75,000; future expenses $61,560; loss of future earnings $1,343,775. There is no appeal against the award for future expenses, which relate to ongoing medical treatment and the cost of shoe and clothing requirements consequent upon the injuries. We turn to consider the two awards which are appealed.

Pain and Suffering, Loss of Amenities

The award of $75,000 is what was sought by Mr Smith at trial. Byrne J observed that he had considered a sum of $80,000, but stated that he was content to accept the respondent's submission as to the appropriate amount. We again summarise the relevant medical history, but for the purposes of this head of claim

The respondent was taken to the CWM Hospital where he was examined by the Hospital's medical staff who were on duty. X-rays were taken. He was recorded as having a closed fracture of the right ulna (forearm bone) and a fracture of the right acetabulum, that is the right hip joint. He also had some minor injuries to his face. These were sutured. The fracture of the right ulna was plated and did not cause any medical problems thereafter. He was placed in traction. In his evidence he said that he suffered great pain in the succeeding weeks while he was in traction.

On 14 May 1991 the traction was removed. The respondent was then given physiotherapy with a view to being discharged to his home. By then he was aware that his right leg was significantly shorter than his left leg. He was still in considerable pain for which he was treated with pain-killing medication. By 24 May 1991 it had been decided to discharge the respondent. On that day he had a further session with the physiotherapist. She indicated that she could still feel the projecting head of the femur and that 'there was obviously something seriously wrong.' Another x-ray was taken and the respondent was re-admitted.

On 29 May 1991 it was noted that the recent x-rays showed a posterior dislocation of the right hip with a fracture of the lip of the acetabulum. At this stage he was seen by Mr McCaig, who confirmed that the accident had forced the respondent's right femur upwards so that it fractured the back of the acetabulum and had broken out. The condition just described had been complicated by a partial sciatic nerve palsy, that is partial paralysis of the sciatic nerve to the right foot. Mr McCaig offered the respondent another operation in Fiji. Mr McCaig said that after that operation he would be keeping him in bed for some

weeks, if not months. The proposed treatment was to be the relocation of the hip joint by operation followed by traction. Mr McCaig accepted that even if the operation had been performed at that time, the prognosis was "probably not good".

Instead, the respondent opted to be sent to New Zealand. With some difficulty and discomfort the respondent was flown to New Zealand where he saw Mr Brett Krause. The treatment in New Zealand took place with the approval of the second appellant through the CWM Hospital and the Ministry of Health.

Another operation was performed on 18 June 1991. It consisted of an open reduction and a fixing of the acetabulum with a reconstruction plate. Avascular necrosis of the femoral head was thought to be inevitable. After the operation the respondent was placed in a hip spica or plaster cast from the nipple line to the feet for 3 months. On his discharge he returned to Fiji.

As anticipated, avascular necrosis of the femoral head did take place. At this stage the respondent was advised that he had two alternatives: An arthrodesis of the hip or a hip replacement. Mr Krause favoured the former because of the respondent's age. The respondent, on the other hand, felt that to maintain any chance of a normal lifestyle, and particularly his job as an aircraft maintenance engineer, (and the possibility of taking up flying as a career) elected a hip replacement. A hip replacement operation took place on 17 March 1992 in New Zealand. This operation precluded an arthrodesis in the future. Further problems in the future were said to be loosening of the hip replacement, the onset of infection, the risk of fracture of the thighbone and the possibility of bone grafts.

At the time of the trial the respondent had shortening of the right leg, a significant loss of function of the right leg and wasting of his buttocks. The hip replacement caused him some restriction in movement so that he found it difficult to get into awkward places during the course of his work. He had to have his right shoe built up and he faced in the future successive hip replacement operations. He had a permanent limp and had now developed a bad back. He was unable to stand or sit for any length of time. He continued to suffer pain. Mr Krause assessed his permanent disability as being 32% of total. The respondent is now aged 35 years. He is left with restrictions to his way of life. Sporting activities are affected. He has also lost the opportunity of fulfilling his ambition of becoming an airline pilot. Apart from the ongoing pain and discomfort, the respondent will require further medical treatment, particularly by way of a future hip replacement operation. In his judgment, Byrne J detailed the extent and nature of these problems. We accept his findings, which are fully justified of the evidence.

The primary complaint made by Mr Banuve in respect of this award is that paraplegic cases apart, it is close to the level of the highest awards for pain and suffering, namely $85,000, which have been confirmed by this Court. He provided us with a helpful analysis of awards which can be used for comparable purposes, although of course each case is very much dependent upon its own facts. The Judge made no reference to the general level of awards under this head of claim, although we accept that he undoubtedly is familiar with general trends.

We are however troubled by the amount when viewed objectively against the background of other cases. Also one particular matter of concern relates to the ability of

the respondent now to become an airline pilot – that of course is a factor properly to be taken into account here, and not only in assessing loss of future earnings. As we will discuss later, we do not think it is possible to accept, as the Judge did, that achievement of this goal was a certainty had it not been for the accident. Undue weight to this loss may well have influenced the Judge. Be that as it may, we are persuaded that the present award is in all the circumstances excessive, and should be reduced. It is not without some significance that it equates the sum at which the claim was pitched by counsel. We conclude that the award under this head of damages must be reduced to what we consider to be the maximum justifiable. We fix that at $60,000.00.

Loss of future earnings

The respondent joined Air Fiji as an apprentice in 1987, and then Air Pacific in 1994. He is now a licensed aircraft maintenance engineer. His only prospect of an increase in his present salary is to obtain ratings on more aircraft. He is hopeful of achieving that in the near future.

At the time of the accident he was building his hours towards obtaining a commercial pilot's licence, and by the time of the accident had accumulated almost 90 hours towards that aim. He believed he would have obtained his licence after a further 2 ½ years. In his evidence the respondent referred to his love of flying and his interest in aeronautical engineering. To support his claim that he would have achieved his ambition, he called a number of witnesses.

Professor Petrie is attached to the Faculty of Medicine and Health science at Auckland University, and for some time has been a consultant to Air New Zealand, assessing pilots who have been interviewed for employment. Following his examination of the respondent, he concluded that the respondent would have had an excellent chance of completing his training and being employed by a commercial airline. He listed his intelligence, interest and ability in flying, stability, and personality as being the four factors leading to this conclusion.

Mr Tizzard, Air Safety Controller for the Civil Aviation Authority, assessed the respondent and concluded he was an above average commercial pilot licence applicant.

Captain Hiralal, Vice President of the Fiji Airlines Pilots Association produced a schedule of the probable career path and earnings of a pilot entering service with Air Pacific in 1996 at age 27 years. The schedule shows the pilot becoming captain of a Boeing 767 aircraft in the year 2006 at the age of 37 years, and remaining with that status until retirement at age 60 years.

Mr Christofferson, a licensed aeronautical engineer, deposed to his knowledge of the respondent, his ability as an engineer and his diligence.

The Judge found the evidence given by these witnesses, coupled with that of the respondent "comprehensive and compelling." He concluded:

> ***"Whilst I realize that there is normally uncertainty as to the estimation of future earnings, in this case I find no such uncertainty. I am satisfied on***

> ***the evidence that but for his accident the Plaintiff would have achieved his ambition to be a Pilot in Air Pacific and, that in the normal course of events, he would have at least earned the income predicted by Captain Hiralal by the age of 60. I therefore accept this amount as the Plaintiff's loss of future earnings.***

Mr Bruce Sutton, an experienced chartered accountant, prepared a schedule calculating the difference in each year between the projected earnings referred to in Captain Hiralal's schedule, and what were the actual or foreshadowed earnings of the respondent as an engineer over the period 1996 to 2029 when the respondent would attain 60 years of age. The schedule allows for the subtraction of tax, and the resulting figures for each year are given a present value by discounting at a rate of 2%.

The resulting total difference was $1,423,775. Byrne J accepted that figure as constituting the proved loss of future earnings, and then deducted the sum of $80,000. This figure was his present value calculation of the total amount of premium which an Air Pacific pilot would pay over the relevant period under the existing arrangements for insurance cover. This was seen as a necessary deduction to be made from the loss of earnings calculation, being an expense the respondent would have incurred over the years of employment as a pilot. The insurance would be available in the event of loss of licence, although the precise terms of the cover were not detailed.

Mr Banuve submitted that the Judge was in error in adopting a discounted present value method for assessing loss of further earnings. He contended for what appears to be the conventional approach in Fiji, namely calculating a multiplicand, that is a net annual loss based on an average of take home pay, and then applying a multiplier to that. The multiplier chosen will take account of matters such as age, pre-accident state of health and

the need to recognise the result will be a lump sum payment immediately available for investment.

We are unaware of any rule of law in Fiji which requires a Court to assess loss of future earnings in a personal injury claim on a specific basis, such as that used in the multiplicand/multiplier approach. The simple position is that compensation should as nearly as possible put the injured person in the same position he or she would have been, had the wrong not been sustained. This principle applies to probable financial loss in future years. As always, assessment of such loss will be a matter of evidence, and will also require judgment calls because the future with its inherent uncertainties is under consideration. Here, the respondent has chosen to present evidence on the basis we have outlined. It happens to be one which was usually applied by the New Zealand courts prior to the advent of the no-fault accident compensation legislation. No challenge was made at trial to the right of the respondent to have this assessment made on the basis of Mr Sutton's evidence. In their submissions, the appellants simply contended for a multiplicand/multiplier approach, without specifying other alternative figures which it was said should have been used. We see no error in the basis upon which the assessment was made.

Turning next to the calculation, we note that there was and has been no challenge of substance to the figures used by Mr Sutton for the purposes of his theoretical calculation. Neither was there any cross-examination of his adoption of a 2% discount factor when assessing present value. His evidence and the supporting documentation stands uncontradicted. There is however one major factor where we are satisfied the Judge

was in error. He has adopted the theoretical figures reached by Mr Sutton, allowed for the future expenses regarding insurance premiums as affecting the amount of net future earnings, but then made no allowance whatsoever for what are described in general terms as contingencies.

The Judge has proceeded on the basis that there was certainty that the respondent would have earned at least the predicted income through to the year 2029. No account is taken for the possibility that he may not have obtained his commercial pilot's license, he may not have achieved the status of captain of a Boeing 737 by this year 2003, he may not have been promoted to captain of a 767 aircraft by 2006, and may not have continued to hold that status through to 2029. Possible redundancy in what is a somewhat fragile industry cannot be ignored, nor can survival itself for such a period be taken for granted. At the time of the accident the respondent was 23 years of age, he had obtained his private pilot's licence but was still to advance his intended career beyond that. We have carefully considered the evidence of the witnesses said to support the Judges conclusion, but on any favourable assessment of it, it cannot establish the kind of certainty now in question. It is true that when assessing future contingencies in such a calculation as that carried out by Mr Sutton, it is proper to keep in mind that not all contingencies in life are unfavourable. Here those which are favourable to the assessment must be limited – such as the possibility of advancement to 747 aircraft, or the possibility of salary increases. But against that there are the very uncertainties of life itself, other from a loss of earnings which may be covered by insurance. What the respondent receives now is a lump sum, which theoretically represents what he would have earned until age 60 as a commercial pilot. It is against principle not to make an allowance for the contingencies of life. As we all know,

life does not necessarily run according to the normal course of events, and the future from now to 2029 simply cannot be predicted on the balance of probabilities, let alone as a certainty.

The reasons for judgment do not traverse this important factor. In our view, having regard to the age of the respondent, the stage he had reached in his career as at 1991, and the projections upon which the assessment of further loss of earnings has been made, there must be a substantial discount of the theoretical figure. Based on our experience and applying an objective common sense approach we consider the discount has to be of the order of 30%.

Included in the schedule prepared by Mr Sutton and accepted by the Judge are assessments from the year 1996 down to the date of trial. Those losses must be classed as special damages, because they were actually suffered as at trial date. As such, they had to be separately pleaded and proved. In this Court, Mr Smith acknowledged that there was a difficulty in this regard. He did not seek an amendment to the pleading. The amount wrongly included in the schedule calculation of loss totals $124,282, which must be deducted from the schedule total. After allowing also for the $80,000 representing the cost of future insurance premium, the resulting figure is $1,219,493. From this there must be the further deduction for contingencies of 30%, or $365,848. The loss of future earnings therefore becomes $853,645.

Interest

Counsel are agreed that interest is not payable on the loss of future earnings, or on the future medical and other expenses. Counsel are also agreed that the appropriate rate

should be 4% rather than the 5% used by the Judge. For the reasons expressed by Byrne J, interest runs from 9 July 1998 down to the date of judgment, 7 November 2001.

Conclusion

The appeal against the finding of negligence against the appellants in respect of the motor collision is dismissed, as is the appeal against the finding that the respondent was not guilty of contributory negligence in that regard.

The appeal is allowed in respect of the finding of negligence on the part of the Colonial War Memorial Hospital and that claim is dismissed.

The appeal against the award of damages is allowed, and the award of $1,720,889.43 is set aside. There will be judgment for the respondent in the sum of $975,205.00 made up as follows:

Pain, suffering and loss of amenities	$60,000.00
Future medical and other expenses	$61,560.00
Loss of future earnings	$853,645.00
	$975,205.00

The respondent is also awarded interest at the rate of 4% or on the sum of $60,000.00, to be calculated from 9 July 1998 down to 7 November 2001.

Costs

The appeal was successful on some significant issues, but failed on other significant issues. Having looked at the matter overall, we have decided to make no order as to costs, the ends of justice being met if, as regards the appeal, they lie where they fall. The order for costs in the High Court remains.

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Tompkins, JA

FIJI COURT OF APPEAL

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Henry, JA

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Penlington, JA

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