

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

CIVIL APPEAL NO. ABU0047 OF 2003S
(High Court Civil Action No. HBC0207of 2002S)

BETWEEN:

ROHIT VIKASH
TACIRUA TRANSPORT COMPANY LIMITED

Appellants

AND:

SURUJ MATI PRAKASH

Respondent

In Chambers: Smellie, JA

Hearing: Monday 10th November 2003, Suva

Counsel: Ms R. S. Devan for the Appellants
Mr D. Singh for the Respondent

Date of Judgment: Monday 10th November 2003

JUDGMENT OF SMELLIE – JA

Introduction

This is an application for the removal of a condition imposed in the High Court when a stay was granted pending the hearing of an appeal. The appeal is against the quantum of damages awarded.

The High Court awarded damages of \$216,523.00. The condition imposed when the stay was granted was that the appellant pay the respondent \$150,000.00 within 21 days.

The Appellant's Possession

The appellant is ready to pay \$50,000.00 within 7 days to enable the respondent to obtain a prosthesis to replace an arm she lost in the accident. Otherwise, however, an order is sought setting aside the balance of the condition (i.e. \$100,000.00). The Respondent of course submits she need the full sum now.

Conclusion:

As I pointed out to counsel when they attended upon me in chambers some \$8,586.00 of incidental losses are most unlikely to be disturbed on appeal. The appellants should have that sum now. Otherwise, however, the balance of the award consists of :

General Damages	\$85,000.00
Interest on General Damages	\$ 5,216.00
Future Medical Care	\$117, 720.00
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Total	\$207,936.00
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In all the circumstances including the probability that the \$8,586.00 of incidental cost will not be disturbed. I consider that the respondent should have something approaching 45 to 50 percent of the total award. I consider the figure of a \$150,000.00 is too high.

I am therefore prepared to order that condition imposed when the stay was granted in the High Court should be varied as follows:

1. \$50,000.00 to be paid to the respondent within the seven days of this judgment being delivered.

2. A further \$50,000.00 to be paid to the respondent within 21 days of this judgment being delivered.
3. The appellant to prosecute its appeal diligently and accept the first available fixture for the hearing of the same.
4. Leave to the respondent to apply to vary the above if condition 3 is not strictly complied with.

Costs

The respondent having retained two – thirds of the quantum stipulated as a condition for stay is entitled to costs of \$500.00 plus disbursement fixed by the Registrar.



Robert Smellie J.A.

Smellie, JA

Solicitors:

Messrs. G P Lala and Associates, Suva for the Appellants
Messrs. R. I. Kapadia and Company, Suva for the Respondent