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

CIVIL APPEAL NO. ABU 102 of 2016
(High Court No. HBC 96 of 2014)

BETWEEN : **SURESH KUMAR**

Appellant

AND : **MOHAMMED ALI**
PRAVILESH CHANDRAN NAIR

Respondents

Coram : **Lecamwasam, JA**
Almeida Guneratne, JA
Jameel, JA

Counsel : **Mr D Prasad for the Appellant**
No appearance for First Respondent
Mr S Krishna for the Second Respondent

Date of Hearing : **21 February, 2019**

Date of Judgment : **8 March, 2019**

JUDGMENT

Lecamwasam, JA

[1] I agree with the reasoning and conclusion of Almeida Guneratne, JA.

Almeida Guneratne, JA

[2] This is an appeal against the Judgment dated 24 August, 2016 of the High Court of Fiji at Suva.

Background Material Facts

[3] On 18 November, 2013 the vehicle in which the Appellant was being driven lost control, went off the road and collided with an electric post. At the time of the accident the Appellant was employed as a road side grass cutter under the Second Respondent and the First Respondent was employed under the Second Respondent. The First Respondent was sued on the alleged negligent driving and the Second Respondent on the basis of employer's vicarious liability. The accident took place around 7.30 p.m. in the evening. The Appellant was not wearing a seat belt as was required under the road safety rules. The vehicle was owned by the Second Respondent.

[4] After trial the learned Judge arrived at the following material findings:-

1. The vehicle had been driven negligently.

2. The accident occurred during the course of employment.

3. The Appellant was guilty of contributory negligence in that he was not wearing a seat belt.

[5] Consequently, the learned Judge made the following awards. On the basis of the evidence led:

1. A sum of $23,000 as general damages for pain and suffering and loss of amenities of life;

2. A sum of $1,052.50 as special damages;

3. For loss of earnings/future earning a sum of $4,300

4. Interest and Costs.

The Judgment of the High Court is at pages 8 – 19 of the Copy Record, the Statement of Claim at pages 34 – 38 and the statement of Defence at pages 40 – 42 thereof).

[6] The Appellant (the original plaintiff) has tendered the main appeal under consideration which is in relation to and against the said awards of general damages, special damages and loss of earnings/future loss of earnings. The grounds of appeal urged in that regard are at pages 5 – 6 of the Copy Record the distilled essence of which I extract thus:

1. There was no substantial evidence tendered to Court by the Respondent that the Appellant was not wearing a seat belt.

2. That (therefore) there was no foundation of contributory negligence (1 and 2 being raised in the context of the award of $23,000 for general damages).

3. The reduction of $71,656.00 to $4,300.00 using a 6% permanent incapacity figure.

4. No reasoning being given in regard to the reductions of loss of earnings/future of earnings by taking percentage of permanent incapacity.

[7] The Second Respondent himself apart from challenging the grounds urged in appeal as recounted above, cross-appealed in regards to the liability component. Elaborating on the Second Respondent's written submissions (vide: pages 8 to 11 thereof) learned counsel

challenged the very liability component viz: the negligence in the First Respondent's driving contending as he did that: - the plaintiff (Appellant) had the burden to prove that the vehicle was defective which he failed to prove.

[8] `The said contention smacked of a defence in the nature of '*vis maior*'or even of 'inevitable accident', but only remotely, there being just two factors advanced in that regard viz: (i) there was some rain and the road could be said to have been slippery; and (ii) there were pot holes on the road.

[9] In any event I am unable to subscribe to Counsel's contention given the evidence which the learned Judge recounted at paragraphs [24] to [31] of his Judgment which I adopt.

[10] I took special note of the learned Judge's specific finding that the 1st Respondent had been over speeding (Para 31 of his Judgment). Accordingly, I did not find difficulty in holding that the 1st Respondent was negligent.

Did the accident occur in the Course of the Appellant's (Plaintiff's) employment?

[11] This was the last bastion the 2nd Respondent was required to overcome in denying the liability component.

[12] It is correct that the accident occurred at 7.30 pm, no doubt outside normal working hours. But, the Appellant, being a roadside grass cutter was required to report back to the storehouse and hand over the utensils used for his work at the end of the day. Is it conceivable that, he was expected to take the same in some other transport (public or otherwise)? I think not. It follows therefore, in my view, that, the employee's commitment and obligation commenced from the time he begins his work on road side grass cutting until he returns his utensils to the storekeeper for which purpose he is provided with transport by the employer. This was not an act of benevolence on the part of the employer but a part of his employer's obligation and not a situation where the employee could have exercised an option not to avail of that facility as some authoritative decisions may have

suggested. I also took note of the specific findings the trial Judge came to at paragraphs [17] and [18] of his Judgment. The 2nd Respondent had in fact 'authorised' the Appellant to travel back to Sigatoka in the vehicle (after duty).

[13] Accordingly, for the aforesaid reasons, I reject the 2nd Appellant's cross-appeal.

Determination on the Awards of Damages
General Damages- Award of $23,000.00 (which I would refer to as Segment I)

[14] The factors placed before the learned Judge by the Appellant in claiming general damages may be summarized as follows. That:-

1. The appellant was getting paid $106 per week.
2. He was 35 years of age at the time of the accident.
3. He had to undergo surgery for a fracture of his left leg.
4. After being discharged from hospital after one week, he was re-admitted for the removal of the plate and discharged from hospital after one week.
5. He was unable to work because of the injury and was in pain.
6. He could not work well as his foot would become swollen.
7. He was paid half salary and had received financial support until 2014.
8. Dr Mark Rokobuli (Orthopaedic Surgeon) who made the assessment for permanent disability classed the plaintiff's (Appellant's) injury as an open fracture.
9. As at 2016, the Doctor's assessment was 6% permanent incapacity and the impairment was with regard to the plaintiff's calf muscle size.
10. The Doctor also stated that his left leg had healed and his alignment was good and his knee, hip and ankle had full range of motion.

11. In order to recover his left limb, the plaintiff (appellant) had been given medical advice to vigorously exercise in order to gain strength and recover fully. The plaintiff was using crutches on his own.

[15] It is on the basis of the aforesaid evidence that, the Appellant claimed $60,000.00 for pain and suffering and loss of amenities in life. (General Damages).

The Legal Foundation on which general damages are built

[16] The intial premise is that, general damages are those damages which the law presumes to have resulted from the defendant's tort. However, such a presumption would stand rebutted on a trial Judge's evaluation and assessment of the evidence. (See: the views expressed by this Court in **Vimla Wati v. The Permanent Secretary of Health and The AG of Fiji** (ABU 0002 of 2014, Judgment dated 27 May, 2016).

The factors a trial Judge is required to consider in making such evaulationand assessment

[17] Those factors were laid down by Lord Diplock in his speech in **Wright v British Rail Board** [1983] 2 All ER 698. The said factors may be discerned thus:

1. Any judgment for tort damages, not being a continuing tort, shall be for one lump sum to compensate for all loss sustained by the plaintiff in consequence of the defendant's tortous act whether such loss be economic or non-economic, and whether it has been sustained during the period prior to the judgment or is expected to be sustained thereafter.

2. For non-economic and loss – the figure must be basically a conventional figure derived from experience and from awards in comparable cases.

[18] For the purpose of the ensuing analysis I shall break up the general damages into the following sub heads and then look at how the learned Judge evaluated and assessed the same.

(A) Pain and Suffering

(B) Loss f Amenities of Life

[19] The learned Judge took both (A) and (B) together. He arrived at the following findings:

> *"[42] The plaintiff sustained fracture of left Tibia and Fibula as a result of the accident and he was taken to the Nadi Hospital and then later was transferred to Lautoka Hospital and admitted immediately. He was treated under observation for two weeks at Lautoka Hospital and then discharged. He had somewhat contributed to the injury by failing to wear the seat belt. I therefore, taking all into my account, would grant a sum of $23,000.00 to the plaintiff as general damages for pain and suffering and loss of amenities of life."*

Submissions of Appellant's Counsel

[20] Learned Counsel pointed out that the reason why the learned Judge had brought down the claim from $60,000 to $23,000 is on account of the Appellant failing to wear the seat belt and therefore guilty of contributory negligence. Counsel submitted that, while some blameworthiness had to be apportioned to the Apellant for that reason, however, the learned Judge failed to make any assessment in regard to the percentage of negligence that was to be ascribed to him (the Appellant). He further submitted that the cases cited to the learned Judge had been disregarded.

[21] Be that as it may, to have reduced the claim from $60,000 to $23,000 would in effect be apportioning 60% of negligence to the Appellant.

Was such apportionment justified in the circumstances of the case?

[22] The matter highlighted by learned Counsel for the Appellant in that regard may be summarised as follows:-

(i) The truck had three seat belts in the front and one belt was not functioning .

(ii) The Appellant was seated in the middle and from the driver's evidence it was a reasonable inference to draw that, the non-functional seat belt was the one worn by the Appellant (though not conclusive).

(iii) The dash board was pushed to the front and (the Appellant's) leg was trapped, (the evidence thus showing that after the impact the dash board was pushed backwards where the passengers were sitting and not towards the windscreen – why the Appellant's leg was trapped.

Assessment of the aforesaid evidence in the light of the law relating to contributory negligence

[23] In making an assessment I felt obliged to address my mind to the following aspects, viz;

(i) What was the nexus between the accident and the non-wearing of the seat belt?

(ii) What was the connection of the injury to the non-wearing of the seat belt?

[24] To my mind, the essence of the matter is one of causation. As Lord Atkin put it:

> *"... if the (Claimant) were negligent but his neglicene was not a cause operating to produce the damage there would be no defence. I find it impossible to divorce any theory of contributory negligence from the concept of causation."*
> (**Caswell v. Powell Duffryn Associated Collieries Ltd** [1940] AC 152 at 165 , HL.

[25] Even assuming that, the Appellant was negligent in not wearing the seat belt (which the learned Judge had determined as a question of fact and therefore which I am reluctant to interfere with), nevertheless, the accident took place due to the defective condition of the vehicle coupled with the negligent driving by the 1st Respondent (also determined as questions of fact by the learned Judge). The cause of the accident was not the non-wearing of the seat belt.

[26] Of course, the non-wearing of the seat belt may very well have had a bearing on the nature of the injuries sustained by the Appellant. He fractured his leg whereas the 1st Respondent

and the other passenger did not suffer injuries. This was an indicator that the non-wearing of the seat belt had a direct bearing on the injury suffered by the Appellant.

[27] But, could it be said that the non-wearing of the seat belt was contributory negligenceon the Apellant's part? In any event to have reduced the $60,000.00 claimed to $23,000.00?

The test, in the apportionment of contributory negligence

[28] The test is that, *"... the injured party did not in his own interest take reasonable care of himself and contributed, by this want of care, to his own injury."* (**Nance v British Columbia Electric Ry Co. Ltd**. [1951] AC 601 at 611.

[29] I would without hesitation adopt that as the correct test. Applying that test to the instant case, could it be said that, the Appellant had not taken in his own interest reasonable care to have worn a seat belt? It is not as if he had been asked by the 1st Respondent to wear the seat belt and the Appellant had refused. On the conrary, at least there is some evidence to suggest that the belt given to him was dysfunctional. It is but a '**Hobsons**' choice that he had had. Although somewhat harsh on the Appellant, it would appear that he would have had to exercise discretion on the side of extra caution and given up his transport facility. But then again could he have done that? Given that it was in the night and also given the fact that, he had to return the utensils/equipment he had used back to the strorehouse?

[30] In the overall, at first blush I was inclined to reverse in toto the trial Judge's finding in awarding $23,000 only in as much as this Court is as free to infer contributory negligence or not (**Hicks v British Transport Commission** [1958] 2 All ER 39, CA.

[31] However, I felt that three factors militated against that initial impression.

(i) for whatever reason the Appellant voluntarily assumed the risk of travelling without wearing a seat belt;

(ii) The concession made by Appellant's counsel that, some apportionment of (contributory) negligence had to be ascribed to the Appellant;

(iii) Past precedents in similar situations for example,

[a] car passenger who does not wear a seat belt (**Froom v. Butcher** [1976] QB 286, CA. With this case may be compared or constrasted the case of **Mackay v Borthwick** [1982] SLT 265 (Scotland) where it was held that a woman with a hiatus hernia who did not wear a seat belt on a short journey was not contributorily negligent.

[b] A moped driver fails to fasten the seat belt securely. (**Capps v Miller** [1989] 2 All ER 333, CA.

[c] A passenger who knows that the car's foot brake does not work. (**Gregory v Kelly** [1978] RTR 426. NB. In the instant case the Appellant knew that the seat belt he had been given was not functional.)

[32] At this point I wish to comment on Appellant Counsel's complaint that, the learned Judge had ignored the case law precedents cited to him. That grievance is somewhat misconceived and/or not quite correct. Although, a judgment of the High Court, the learned Judge did refer to **Lata v Kumar** (*vide*: paragraph [39] of his Judgment) and **Govind Sami v Karl F. O & Seru Serevi** on comparable precedents. The reason why the learned Judge did not dwell further on comparable precedents is seen by the fact that, he hinged his decision on 'the contributory negligence' of the Appellant. (*vide*: paragraph [42] of his judgment).

[33] Consequently, the question of general damages awarded by the Judge in the sum of $23,000.00 and not $60,000.00 as claimed needs to be scrutinised from that perspective.

[34] In that regard, on the basis of what I have articulated in the preceding paragraphs of this Judgment I agre with the Appellant's counsel that the learned Judge failed to give reasons as to why he reduced the sum of $60,000.00 claimed to $23,000.00

How then was the learned Judge required to apportion the requisite percentage of blameworthiness? Does the Law Reform (Contributory Negligence and Tortfeasors) Act (Cap. 30) throw light on the matter

[35] Section 3 of the Act states thus :

> *"3. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any person or persons, a claim in respect of that damage shall not be defeated by reaons of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."*

[36] The said section is on all fours with the Law Reform (Contributory Negligence) Act of 1945 of the United Kingdom.

[37] No doubt, the primary object of the UK Act as in the Fijian Act is to provide that, where the defence of contributory negligence was previously available, (where the last opportunity rule had been decisive), the Courts may now, instead of exonerating the defendant from liability, reduce the damages awarded against him to the extent to which the claimant (plaintiff) was contributorily negligent.

Analysis of the relevant provisions in the Act

[38] 'Damage as the result partly of his own fault' in Section 3, in my view, would leave the Courts free to continue to treat 'contributory negligence' as a matter of causation.

[39] Next, I gave my mind to the definition of 'fault' as contained in Section 2 viz*: 'fault means negligence, ... or other act or ommission ... ...which gives rise to liability.'*

[40] And, what was that liability on the part of the Appellant? Not wearing that seat belt. But, as I have already said earlier, the Appellant not wearing the seat belt had no nexus with the accident that took place. But, he was nonetheless responsible for the degree of injury he suffered (ending-up with a fractured leg), when he had gone on the journey, without the seat belt, succumbing to the risk that he left himself exposed to.

How then were damages to be apportioned?

[41] The Act directs the Courts to reduce the award of damages as they think 'just and equitable' having regard to the claimant's share of responsibility for the damage. Lord Reid, interpreting the parallel provision in the UK Act, in **Stapley v Gypsum Mines Ltd**. [1953] AC 663 summed up the basic guidelines for apportionment thus:

> *"A court must deal broadly with the problem of apportionment, and, in considering what is just and equitable, must have regard to the blaimworthiness of each party, but the Claimant's share in the responsibility for the damage cannot, I think, be assesed without considering the relative importance of the acts in causing the damage apart from his claimworthiness.'* (at p.682).

[42] Although the High Court of Australia in **Pennington v Norris** [1956] 96 CLR 10 appears to have rejected the standard suggested by Lord Reid as introducing a moral term by his reference to the expression 'blameworthiness,' I most respectfully adopt it in as much as it embraces precisely what took place in the instant case.

[43] In the light of those basic guideliens summed up by Lord Reid I was fortunate to come across the following decisions that provided me with comparable situations some of which I have earlier adverted to.

[44] In **Froom v Butcher** [1976] QB 286, CA, a similar case to the instant one, where there had been a failure to wear a seat belt, Lord Denning suggested the norm of a 25% reduction if wearing the seat belt would have prevented the injury and a 15% reduction where it would simply have reduced the severity of the injuries. In **Gregory v Kelly** [1978] RTR 426, where the Claimant not wearing his seat belt knew that the car also had a faulty foot-brake, a reduction of 40% was made. In **O'Connell v Jackson** [1972] 1 QB 270, CA a 15% reduction was made where a motorcylist had not been wearing his crash helmet. In **Capps v Miller** [1989] 2 All ER 333, CA, a 10% reduction was ordered where the Claimant was wearing his helmet but had not fastened it securely.

Final Judgment and Apportionment of General Damages

[45] The accident resulted in the Appellant's ending up with a fractured leg. In **Edward Narayan v William Amputch & Rothmans Pall Mall (Fiji) Ltd**. HBC 51 of 1993, the Court awarded $60,000.00 for pain and suffering and loss of ameninities of life to a plaintiff who sustained a fractured leg. This was the amount claimed by the Appellant. I have also looked at the survey of decisions furnished by the Appellant in his written submissions.

[46] In the instant case, the trial Judge reduced the claim of $60,000.00 to $23,000.00 for contributory negligence, that is, a reduction of 58%. Given the facts as recounted earlier in this judgment and the precedents cited above, I cannot see how such a reduction could be said to have been just and equitable frpom the Appellant's perspective. Accordingly, I hold a reduction of 12.5% being the mean between 15% (vide: **Froom v Butcher** (supra) situation) and 10% (vide: the **Capps v Miller** (supra) illustration) would have met the ends of justice. That will work out to a sum of $53,100.00

[47] Accordingly, I allow the Appeal and proceed to make an award of $53,100.00 as general damages for pain and suffering and loss of amenities of life and set aside the award of $23,000.00 made by the learned trial Judge.

Claim for Special Damages

[48] The Appellant claimed as Special Damages:

1. Medical and Transport expenses $2,500.00
2. Medical Reports from CWM Hospital $52.50 (vide: Statement of Claim at p.34)

[49] The learned Judge reduced the total sum of $2,552.50 so claimed to $1,052.50. The reason given by the learned Judge is that the Appellant did not produce any receipts. The Appellant has not appealed against the said award of $1,052.50

Award for loss of earning and future earnings as part of General Damages

(Segment II on General Damages)

[50] The following material facts in that context may be summarised as follows:

1. The Appellant was earning $106.00 per week at the time of the accident in 2013. After the accident was not able to return to work but was paid wages until 2014.

2. He was 35 years of age at the time of the accident and therefore generally speaking had 20 years of working life remaining.

3. The doctor who gave evdience said that the Appellant's leg had healed and had fully recovered from the fracture.

4. The impairment was with regard to the calf muscle.

5. The doctor fixed the Appellant's permanent incapacity at 6%.

The Trial Judge's Calculation

[51] On the basis of the aforesaid facts the learned Judge took the loss of earnings at $106.00 x 52 weeks and employing a multiplier of 13% arrived at the figure of $71,656.00. Thereafter, taking the 6% as the permanent incapacity the Appellant suffered, the learned Judge awarded 6% of $71,656.00 thus rounding up the award for loss of earnings capacity in the sum of 6% of 71,656) = 4,300.

The basis on which the aforesaid computation was assailed

[52] Learned Counsel submitted that, while even a lesser % than 13% would have been acceptable but the use of a permanent incapacity figure (in this case 6%) to reduce future loss of earnings was a misdirection and /or error on the part of the judge.

Applicable legal Principles

[53] In personal injury cases involving loss of future earnings or loss of future earning capacity, a plaintiff is required to adduce evidence of amounts. The evidence that is required from a plaintiff is reflected in the method that is usually used by courts to assess a claim for

future loss of earnigs. The object of the court's calculation is to arrive at an amount which a plaintiff has been prevented by the injury from earning in the future. The method of calculation is conveniently described in general terms in McCregor on Damages (17th Edition 2003) at paragraphs 35-051:

> *"The amount is calculated by taking the figure of the claimant's present annual earnings less the amount, if any, which he can now earn annually, and multiplying ths by a figure which, while based upon the number of years during which the loss of earning power will last, is discounted to allow for the fact that a lump sum is being given now instead of periodical paymenbts over the years. This latter figure has long been called the multiplier, the former figure has come to be referred to as the multiplicand. Further adjustments, however, may or may not have to be made to multiplicand or multiplier on account of a variety of factors, namely, the probability of future increases or decreases in the annual earnings, the so-called contingencies of life, and the incidence of inflation and taxation.*"

[54] The approach that should be adopted in Fiji in the calculation of future loss of earnings was discussed at length by the Supreme Court in **Attorney General of Fiji v Broadbridge** (unreported civil appeal no. CBV 5 of 2003 delivered on 8 April 2005). In paragraph 61 the Supreme Court stated:

> *"There is no challenge to the Court's ability to approach loss of earning capacity in a manner that dispenses with the conventional multiplicand / and multiplier approach. Loss of future earning capacity can be calcutated on a broader basis, having regard to the evidence led in the particular case without being constrained by the traditional requirements of the convectional multiplicand / multiplier approach."*

[55] And in paragraphs 90 and 91 the Court concluded:

> *"It follows from the discussion detailed above that there is no principle, or rule of the common law, that requires any judge, in Fiji who must assess futue economic loss resulting from personal injury, to adopt a multiplicand / multiplier approach, whether for the purpose of calculating the value of the lost chance of future increased earnings, or for the purpose of calculating the present value, in lump sum terms, of those future earnings. In a case of some uncertainty, such as the present, it may be appropriate for the Court to calculate the value of the lost earning*

capacity upon a different basis, though never forgetting to discount for vicissitudes where appropriate and for the value of a certain lump sum.

We emphasise that nothing we have said should be taken as casting doubt upon the utility of the multiplicand / multiplier as a method by which to assess future economic loss in personal injury cases in this country. When properly applied it operates as a perfectly satisfactory method of carrying out what is always a most difficult task. It is, however only a method by which the cardinal principlal _ _ _ is to be fulfiled. Our point is smplly that, as the common law stands, it is only one of a number of methods that can be used to assess such loss."

[56] I have earlier referred to the evidence upon which an assessment was to be made as to what amount of compensation will restore the Appellant to the position that he would have been in had it not been for the harm caused by the negligence of the 1st Respondent.

[57] Even if one were to assume the use of the multiplier / multiplicand was flawed and the use of the permanent incapacity figure of 6% was wrong, on a consideration of the aforementioned principles as reflected in the judicial precedents cited, in the result, it cannot be said that the trial judge arrived at an erroneous conclusion in the award he made. Accordindgly, I reject grounds of appeal No. 3 and No. 4

[58] Before I part with this Judgment I wish to add that, I took time to go through some other precedents as well viz:

(i) **Sun Insurance Company Limited v Three Others** (ABU 0035 of 2013 – decided on 30 September, 2016) a judgment by me with Justices Prematilaka and Wati agreeing.

(ii) **Vimla Wati v Two Others** (ABU 0002 of 2014 – decided on 27 May, 2016) – a Judgment penned by me with Calanchini, P and Mutunayagam, JA agreeing.

(iii) **Daunivalu v Dalip Chand & Others Ltd**. [2017] FJCA 147 – decided on 30 November, 2017 – another judgment handed down by me with their Lordships Basnayake and Prematilaka JJAs agreeing.

(iv) Finally, I wish to acknowledge in all humility the assistance I received from and guidance, from a draft judgment listed for delivery on 9th March, 2019 (vide: **Amendra Anand Milan's** case per Calanchini, P, Suresh Chandra RJA and Lecamwasam, JA).

(v) I also made reference to Jones v Dun Rel [1959] ACA 8 which I find to be of no assistance to me in the instant case.

That old Adage

[59] We stand on the shoulders of our ancestors and what we express have been earlier expressed for as the well known philosopher John Dewey said, there is no immaculate conception of ideas (and views, if I may add).

[60] I modify that to read as *Í stand on the shoulders of my peers.*

[61] Accordingly, for the aforesaid reasons I feel fortified in my approach in distancing myself from the application of the conventional / traditional multiplier / multiplicand method in regard to the General Damages (Segment II) on *Loss of Future Earnings,* the reason why I thought I should not take that component in computing the percentage of contributory neglience on the part of the Appellant in not wearing that "seat belt", in regard to that segment of General Damages awarded by the learned High Court Judge.

In the matter of Awarding Interest

[62] The Appellant did not raise any ground of appeal on this aspect and accordingly I shall refrain from making any pronouncement on that.

Conclusion

[63] In the result, I allow grounds of appeal no. 1 and no. 2 and reject grounds of appeal no. 3 and 4.

Jameel, JA

[64] I agree with the reasons given and the conclusions of Dr. Guneratne, J.

Orders of Court

1. *The Appeal is partly allowed.*
2. *The award of general damages in regard to pain and suffering and loss of amenities of life are increased from $23,000.00 to $$53,100.00*
3. *The award of general damages for loss of earnings in the sum of $4,300.00 is affirmed.*
4. *The award of special damages in the sum of $1,052.50 is affirmed.*
5. *The aggregate sum of $54,152.50 to be paid jointly and severally by the 1st and 2nd Respondents together with interest in terms of Section 3 of the Law Reform (Miscellanaeous Provisions) (Death and Interest) Act.*
6. *The Respondents shall pay jointly and severally as costs of this Appeal a sum of $5,000.00 to the Appellant. This sum shall be in addition to the sum of $2,500.00 ordered by the High Court.*

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Hon. Justice Susantha Lecamwasam
JUSTICE OF APPEAL

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Hon. Justice Almeida Guneratne
JUSTICE OF APPEAL

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Hon. Justice Farzana Jameel
JUSTICE OF APPEAL