IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action. 462 of 2002

BETWEEN : **SAROJINI DEVI**, f/n Shiu Raj of Lomaivuna, Naitasiri

1st Named Plaintiff

AND : **REENA PRASAD**, f/n Naren Prasad (an infant) by her father **NAREN PRASAD** of Lomaivuna, Naitasiri

2nd Named Plaintiff

AND : **RAHUL PRASAD**, f/n Naren Prasad (an infant) by her father **NAREN PRASAD** of Lomaivuna, Naitasiri

3rd Named Plaintiff

AND : **VIDYA WATI** f/n Nanku Prasad of Lomaivuna, Naitasiri

1st Named Defendant

AND : **RAKESH KUMAR PILLAY** f/n Konda Pal Pillay of Lomaivuna, Naitasiri

2nd Named Defendant

COUNSEL : **Mr R P Singh** for the **Plaintiffs**
Mr R Chaudry for the **Defendant**

DATE OF JUDGMENT: 27th March, 2014

JUDGMENT

1. This is a matter heard before Jitoko J. on 22nd August 2007 and Judgment was not delivered. When the matter was called before this court on 2nd March 2012 both counsel agreed to adopt the proceedings taken place before Justice Jitoko. Oral and written submissions were made by the counsel and I proceed to deliver the Judgment considering the evidence led before Jitoko J., and submissions made before me.

2. The Writ of Summons was issued on 11th November 2002 and by the Statement of Claim, Plaintiff pleaded:

   (i) On 7th December 2000, Plaintiff was a passenger in a pick-up van registration No. CH243 owned by the 2nd Defendant and the said vehicle was involved with an accident at Lomaivuna on Serea Road, Sawani and the Plaintiff was 31 years of age at that time;

   (ii) It was pleaded the said accident was caused by the negligence of the First Defendant as servant or the agent of the Second Defendant. Particulars of the negligence were stated;

   (iii) It was further pleaded the Plaintiff suffered pain, injury, loss and damage particulars of the injuries were stated in the Statement of Claim;

   (iv) Special damages were pleaded as $500 specifying medication and travelling expenses;

   (v) The Plaintiff also had pleaded that the 1st Defendant was charged for careless driving and was charged and fined $80 and the Plaintiff relied on the said case to prove negligence;

   (vi) The Plaintiff claimed:

      1. Special damages $500.00;
      2. General damages;
      3. Costs of the action.

3. **Sequence of Events**

3.1 Writ of Summons and Statement of Claim filed 11/11/2002.

3.2 Statement of Defence filed 11/12/2002.

3.3 Notice of motion filed on 27/6/2003 for an Order for Leave to amend the Statement of Claim. Leave granted on 23/7/2003.

3.4 Amended Writ of Summons and Statement of Claim filed on 13/10/2005.

3.5 Amended Statement of Defence filed on 16/11/2005.

3.6 Reply to amended Defence filed on 1st December 2005.

4. Minutes of the Pre Trial Conference was filed on 19th April 2006 and Trial was taken up on 31st October 2006 and on 22nd August 2007 matter was fixed for Judgment on Notice by Jitoko J. and the matter was pending since then.

5. When the matter was mentioned before me on 2nd March 2012, it was decided to adopt the evidence already recorded before Justice Jitoko and the counsel were directed to make their submissions on 5th April 2012.

6. To arrive at a conclusion in this matter, I have considered:
   (a) Proceedings taken place before Jitoko J.;
   (b) Submissions made by the counsel.

7. The Pre Trial Conference minutes filed on 19th April 2006, it was stated inter-alia.

7.1 It was agreed the Plaintiffs were passengers in a pick-up van bearing registration No. CH243 owned by the 1st Defendant and driven by her servant or agent, the 2nd Defendant on 7th December 2000 and the said vehicle was involved in an accident on that day at Lomaivuna.

7.2 The first named Plaintiff was 34 years of age, second named Plaintiff was 8 years and third named Plaintiff 12 years.

7.3 All the Plaintiffs suffered injuries.

7.4 The second Defendant was charged for careless driving and fined $80.00.

Issues

7.5 Whether the matters complained of were caused by the negligence of the second Defendant as a servant or an agent of the 1st Defendant?

7.6 Whether the injuries by the Plaintiff's were minor?

7.7 Whether the injuries, loss and damages complained of were contributed by the Plaintiffs?

7.8 Whether the 2nd Defendant exercised all reasonable care and skill while driving?

7.9 Whether the Plaintiffs were fare paying passengers or whether it was a joy ride and family trip?

7.10 Whether the doctrines of *re ipsa facta and volenti non-fit injurier* apply in this case?

7.11 Whether the Plaintiff's are entitled to any damages and if so, the quantum thereof?

8. The following witnesses had given evidence before the Hon. Jitoko J on behalf of the Plaintiffs:

For the Plaintiffs

(a) Sarojini Devi – the Plaintiff
(b) Kelemedi Uluitoga – Medical Doctor

For the Defendants

(c) Rakesh Kumar Pillai – 2nd Defendant

9. **Analysis of the Evidence**

9.1 The 1st named Plaintiff in her evidence had stated that she is the mother of 2nd and 3rd named Plaintiffs and at the time of giving evidence they were at the age of 9 years and 13 years respectively. She also had stated on 7th December 2000 when she was travelling in the vehicle with the 2nd and 3rd Plaintiffs met with an accident and the

said vehicle was owned by the 1st Defendant and driven by the second Defendant, son of the first Defendant. The second Defendant over speeded the vehicle and the vehicle was overturned and as a result of the accident her left hand and left side of the body was injured. She was taken to Vunidawa Hospital and thereafter she was transferred to CWM Hospital. She was treated there for 2 months and 3 weeks. Still she is having disability and left lower arm is badly affected and cannot use the hand for day to day work. She had tendered the medical report dated 23rd February 2001 issued by Dr Sireli Vakadravuyaca Consultant Plastic Surgeon at CWM Hospital. PW1 stated that she was admitted to the hospital on 7/12/2000 and was discharged on 18/1/2001. The said PW1 states surgeries were done and she had to follow the clinics. At the time of discharge from the hospital, she has no flexor function of her left hand and decreased sensation. Assessment of her disability was not done at this stage. The permanent assessment of the disability was done on 8th October 2002. The Medical Report on the Plaintiff issued by CWM Hospital after final clinic in which the permanent disability was assessed at 35%. The Medical Report was tendered to the court marked as PW2. She further stated she had paid $70.00 as the fare for the trip from Nauluwai to Suva for herself and 2nd and 3rd Plaintiffs. 2nd Plaintiff was injured in her nose *(she was seated on the lap of the 1st Plaintiff)* and was 4 years old at the time of the accident. Her medical report dated 23rd April 2001 was issued by Dr Chrester Kumar Registrar (Plastic) at CWM Hospital. As stated in the medical report she had suffered multiple injuries to her forehead and upper limbs and fracture of 3rd Metacarpal bones. It was stated in the medical report that she was discharged from the hospital on 29th December 2000 and on the review done on 17th January 2001 it was confirmed the wounds were healed adequately. The said medical report dated 23rd April 2001 was marked in evidence as PW3. A further medical report dated 11th July 2003 issued by Dr Atul Ingle Consultant Plastic Surgeon was tendered by the witness marked as PW4 and in addition to the injuries in the earlier report after change of dressing done on 17/12/2000, operation was performed on 12/12/2000 and 3 glass pieces were removed from her nose. She had followed up in the clinic on 29/1/2003 and all her wounds being healed as at that date. The 3rd named Plaintiff was seated beside her the witness stated that the 3rd named Plaintiff suffered injuries in the head, back and shoulders and he still suffer due to injuries caused by the accident and cannot concentrate on his studies at the school. The witness tendered the Medical Report issued by Dr. Sireli Vakadravuyaca of CWM Hospital marked as PW5. The said report stated the 3rd Plaintiff did not suffer any body injury. He had wounds on his right elbow, laceration on right parietal region of the scalp and attended to follow up clinics. The witness too stated the Plaintiffs were not paid any compensation. Under cross examination, the witness had stated the vehicle was hired by her husband to take

Dalo to Suva to sell and vehicle hire was $70.00. She had not accepted the suggestion by the counsel that hire was free of charge. She had stated she was left handed.

Evidence of Dr. Kelemedi Uluitoga

9.2 The witness stated he was at CWM hospital from 1997 to 2004. He explained the medical reports marked as PW1, PW2, PW3, PW4 and PW5 and confirmed the reports and the injuries suffered by the Plaintiffs when the witness was cross examined he stated he was not aware the 1st Plaintiff is left handed. PW1, PW2, PW3, PW4 and PW5 were tendered through him and same was undisputed, no evidence called by the Defence to challenge the medical reports.

9.3 The 2nd Defendant was called as a witness by the Defence Counsel. He stated that 1st Defendant is his mother, she owned the vehicle and he drove the vehicle on 7th December 2000 *(agreed facts).* On the said date he was taking his brother in law, Dharam Raj to the Suva Market. Brother in law and his sons boarded the vehicle at Nauluwai. The Plaintiffs also got into the vehicle with the brother in law and the 1st Plaintiff's father and brother in law's father are brothers. Brother in law paid $20 only for the fuel and he generally pays for the trip after the sale. The Plaintiff's were in the front seat. 1st Plaintiff was wearing the seat belt and no seat belts for the children *(2nd and 3rd Plaintiffs).*

It was raining and vehicle slipped and tumbled to the side of the road and the witness too was injured in the writs and was in the hospital for 2 months. There was a charge against witness (2nd Defendant) and he pleaded guilty and stated he was not at fault. The Plaintiffs were injured and the witness did not demand any fare from the Plaintiffs. Replying to cross examination the 2nd Defendant stated he travelled from Nauluwai on 7th December 2000, the Plaintiffs got into the vehicle from Nauluwai from their home. The witness told the Plaintiffs would have hired the vehicle and arrangements would have done by his brother in law and he don't know brother in law too paid money for the hire. The Plaintiffs travelled in front and the brother in law was at the back. Witness admitted that the Plaintiffs suffered injuries. Under re examination, the 2nd Defendant stated that the hire charge for the trip from Nauluwai to Suva was in the region of $60 to $70.

Conclusions

9.4 It is important to note that the 2nd Defendant's brother in law Dharam Raj had not given evidence although he arranged the trip for the Plaintiffs. The Defendant too admitted in his evidence that he was unaware that the Plaintiffs paid the fare or not. Further it was the evidence led before the court that the Plaintiffs were picked up by the second Defendant at their residence and they were seated in the front seat and Dharam Raj was in the back.

9.5 The 1st named Plaintiff stated she paid $70.00 for the trip and the 2nd Defendant stated in his evidence that the fare from Nauluwai to Suva was $60 to $70. There was no evidence contrary to that effect Dharam Raj did not collect the fare and didn't give evidence in the proceedings. Further the 2nd Defendant admitted that on 7th of December 2000 Plaintiffs travelled in the vehicle No. CH243 which met with an accident, and suffered injuries. Accordingly, I conclude that the Plaintiffs travelled in the said vehicle on 7th December 2000 on a fare of $70.00 as passengers and met with an accident.

9.6 The medical reports tendered by the witness marked PW1 to PW5 were confirmed by Dr Kelemedi Uluitoga who gave evidence in the proceedings and was unchallenged. I conclude that the Plaintiffs suffered injuries as detailed in PW1 to PW5 and the Plaintiffs had proved on balance of probabilities their injuries caused due to the accident which was admitted by the 2nd Defendant in his evidence.

9.7 The Plaintiff in her evidence stated the vehicle was driven by the 2nd Defendant at a high speed. The Defendant stated the vehicle was driven at 40km per hour. He further stated that:

> "*Q. Condition of the road?*
> *A. Ramp and vehicle slipped and tumbled to the side of the road".*

The 1st Plaintiff stated under cross examination:

> "*Q. Were you thrown out of the vehicle at the time of the accident?*
> *A. No, not the children too.*
> *Q. What was the final position of the vehicle?*
> *A. Upside down."*

The 2nd Defendant failed to explain in his evidence how the vehicle had overturned. It was a rainy day and if the vehicle was driven with due care, the accident would not have occurred. Considering all evidence placed before me, I conclude that the vehicle was driven by the 2nd Defendant without due care at a high speed, which resulted the accident.

9.8 In the Trial Case No. 01/01 filed in the Magistrates Court Nausori, the 2nd Defendant was charged for careless driving contrary to Section 99(1) and 114 of the Land Transport Act 1998 and the particulars of the offence was stated:

> *"Rakesh Kumar Pillay s/o Konda Pillay, on the 7th day of December 1000 at Lomaivuna, Naitasiri in the Central Division, drove a light vehicle registration No. CH243 on Sawani/Serea Road without due care and attention."*

On perusal of the proceedings of 29th June 2001, it was found the accused had pleaded guilty to the charges and was fined $80.00. The 2nd Defendant in his evidence stated that he was not at fault although he pleaded guilty. There was no basis for this statement as such the plea of guilty support my conclusion stated in paragraph 12.7. In this regard I also with to cite the statement made by Lawton LJ in the case of ***Ward v. Tesco Stores Ltd*** 1976 1 All ER 215 at page 22:

> *"some explanation should be forth coming from the Defendants to show that the accident did not arise from any want of care on their part; and in absence of any explanation the judge may give judgment for the Plaintiff. Such burden of proof as there is on Defendants in such circumstances is evidential, not probative."*

In the present case the Defendant has not provided any explanation that he had taken reasonable care to ensure the safety of the 1st, 2nd and 3rd Plaintiffs. As such the 2nd Defendant had breached his duty of care towards the Plaintiffs and his carelessness and negligence was established in this case.

10. **<u>Submissions</u>**

10.1 The Defendant's counsel submitted that the claim was not concisely pleaded and it's contrary to Order 6 Rule 2(1) (a) of the High Court Rules 1988 which states:

"2(1) Before a writ is issued it must be indorsed –

(a) with a Statement of Claim or, if the Statement of Claim is not indorsed on the Writ, with a concise statement of the nature of the claim made or the relief or remedy required in the action begun thereby;

(b) ……..."

On perusal of the writ filed on 11th November 2002, I find the Statement of Claim was indorsed and precisely disclose cause of action against the Defendants. The Defendants fails.

10.2 The Defendants also submitted that 1st Defendant is not liable for the acts and or omissions of the 2nd Defendant. In this regard I agree with the Plaintiffs submissions. I find in the Statement of Claim it was pleaded in paragraph 1:

"On 7th December 2000 the Plaintiff was a passenger in a pickup van with registration No. CH243 owned by the 1st Defendant and driven by her servant or agent, the 2nd Defendant when it was involved in an accident at Lomaivuna on the Serea Road, Sawani……."

Further in paragraph 2 of the Statement of Claim it was pleaded:

"2. The matters complained of were caused by the negligence of the 2nd Defendant as servant or agent of the 1st Defendant"

The amended Statement of Claim too contains the above averments and I conclude that the vicarious liability was pleaded.

10.3 The submissions by the Defendants stated there was no qualification as to loss in the pleadings and stated the claim for special damages was not particularized. The Plaintiffs had claimed $500 for medical and travelling expenses and for the general damages the Plaintiff's led evidence in support of their claim. As such there is no basis for this submission and the Defendants fails.

10.4 The Defendants also referred to a statement made by the 1st Plaintiff on 15th December 2000 and stated that she requested to give the keys to another driver and the Second Defendant refused. However, the Defendants have not produced this

document as evidence. By merely the document is in the agreed bundle of documents, this court cannot consider the said statement as evidence unless such statement was produced through a witness. It is my contention even the said statement has evidential value it proves 1st Defendant had employed her son who had a new driving license and both Defendants are at fault for negligence.

10.5 The Defendants submitted that the Plaintiff was relying on the Magistrates Court case to prove the negligence. The Defendant's counsel submitted that 2nd Defendant at the caution interview on 23rd January 2001 stated that the van hit a pothole went zigzag and overturned. However, the 2nd Defendant gave evidence and this statement was never led neither said contention was placed before this court. The evidence led before this court established the 2nd Defendant drove the vehicle negligently at a high speed on a rainy day without paying due care to the lives of the passengers. The second Defendant being a new driver and by employing him as a driver by the 1st Defendant, the Defendants have failed in their duty of care and they were negligent. There is no evidence that the 2nd Defendant drove the vehicle without the permission of the mother who is the 1st Defendant. My final conclusion is that the Plaintiffs have proved in balance of probabilities as concluded in this Judgment. The negligence of 2nd Defendant and the 1st Defendant is vicariously liable for the negligence of the 2nd Defendant which caused pain, injury, loss and damages to the Plaintiffs.

11. **The Law and Analysis of Damages**

11.1 The Plaintiffs claimed as special damages of $500.00 and general damages by their Statement of Claim.

11.2 The Plaintiffs have claimed $500.00 as special damages for the medical care, and transport. The Plaintiffs were unable to provide any receipts with regard to special damages. The court cannot award damages on guessed figures and as a rule, a Court must not consider special damages in absence of supporting documents and court cannot take judicial notice on the payments.

11.3 However, by applying Principles of reasonableness, courts had considered special damages in the absence of receipts. The 1st named Plaintiff stated in her evidence certain medicine during her stay had to be purchased since CWM Hospital did not have those medicines. I accept her evidence. Considering the length of stay at the hospital *(7th December 2000 to 18th January 2001)* and attending the clinics have incurred expenses, medicine and travelling in this instance. The special damages

claimed was $500.00 is reasonable and not inflated or exorbitant claim and as such I award special damages of $500.00.

12. **General Damages**

12.1 The 1st Plaintiff was examined and two medical reports were tendered to the court marked PW1 and PW2. The PW1 was dated 23rd February 2001 which states:

1. Admitted to CWM Hospital on 7/12/2000 and discharged on 18/1/2001 and the said report was issued by Dr Sireli Vakadravuyaca and he had described the injuries suffered by the Plaintiff:

> *"She sustained injury to her left forearm. She was admitted and taken for wound exploration in theatre. In theatre it was found that she had complete loss of her flexor compartment of muscles; radial artery, ulna artery and nerves from mid forearm down to the wrist. Her forearm bones were exposed however, there was no fractures. Wound was then debrided and washed and put in a back slab for support."*

Further it was stated that:

> *"She is currently being followed up in the clinic. She has not flexor functions of her hand and decreased sensation."*

12.2 Further medical report dated 8th October 2002 was issued by Dr K.S. Uluitoga *(who gave evidence in the proceedings)* and he noted:

> *"On her final clinic we noted the following:*
>
> *1. Skin graft was pliable with junctional scar contracture. There is a decree ulnar deviation and a thirty degree flexion of deformity at the wrist.*
>
> *2. Loss of flexion of all digits at all joints.*
>
> *3. The phalanx and dorsal aspect of the left hand is anesthetic."*

Dr. Uluitoga had assessed the permanent disability at thirty five (35%) percent.

12.3 Dr Uluitoga had given evidence on PW1 and PW2 *(medical reports)*. Dr Uluitoga had assessed the permanent disability of the 1st Plaintiff at 35%. The said evidence was undisputed and I accept the injuries as stated in the medical report and the permanent assessment of disability as 35%. I also find although skin graft was done no conclusion was made with regard to disfigurement.

12.4 The 1st Plaintiff stated in her evidence she is left handed and it was undisputed and the court accepts her evidence. I accept the 1st Plaintiff's pain and suffering considering the injuries suffered excruciating pain and with permanent disability of 35% and she will suffer pain in future as per medical report marked PW1 and PW2. Being left handed she will have difficulties in attending to her domestic duties including looking after her young children and loss of amenities in life. Dr Uluitoga stated she will suffer future pain and lost 30% degree flexion of deformity at the wrist. Considering the evidence led before Jitoko J. specifically medical evidence, it is my conclusion her left hand is unfit and not working properly and her domestic duties are severely affected. The 1st named Plaintiff was hospitalised from 7th December 2000 to 18th January 2001 i.e. one month and 11 days she had suffered pain and continue to suffer. She could not attend to her domestic duties as usual since she is left handed. Obviously, she had to get help from others for her domestic duties. I take all these matters into consideration for the purpose of awarding general damages. Awarding of general damages is guided by the pain, sufferings, past and future, loss of amenities and loss of earning capacity. Although in this case the 1st named Plaintiff is unemployed, she had and has to attend all domestic duties including looking after the children, and taking care of the house work for the family. As she was left handed and left hand cannot be used properly as before the accident she had to get assistance from other person to perform her duties as a mother which will cause expenses. The issue of assessing damages for non procuring loss was discussed in T.L. Mediana [1900] AC by Earl of Halsbury LC as follows:

> *"You very often cannot even lay down any principle upon which you can give damages: nevertheless it is remitted to the jury, or those who stand in place of the jury, to consider what compensation in money shall be given for what is a wrongful act. Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation establish what is the exact amount of money which would represent such a thing as the pain and suffering which a person had undergone by reason of an accident. In truth, I think it would be very arguable to say that a person would be entitled to no*

damages for such things. What manly mind cares about pain and suffering that is past? But nevertheless the law recognizes that as a topic upon which damages may be given?"

In assessing damages in an action of this nature the following passage of Lord Denning M.R. in ***Lim Poh Choo v. Camden and Inslington Area Health Authority*** [1979] 1 Q.B. 196 at 215 is of great assistance:

"In considering damages in personal injury case, it is often said "The defendants are wrongdoers. So make them up in full. They do not deserve any consideration." That is a tendentious way of putting the case. The accident like this one, may have been due to a pardonable error such as may befall anyone of us. I stress this so as to remove the misappropriation so often repeated that the plaintiff is entitled to be fully compensated for all the loss and detriment she has suffered. That is not the law. She is only entitled to what is, in all the circumstances, a fair compensation fair both to her and the defendants. The defendants are not wrong doers. They are simply the people who have to foot the bill. They are, as the lawyers say, only vicariously liable. In this case, it is in the long run the tax payers who have to pay. It is worth recording the wise words of Parke B over a century ago:

> **"Scarcely any sum could compensate a laboring man for the loss of a limb, yet you don't in such a case give him enough to maintain him for life…. You are not to consider the value of his existence as if you were bargaining with an annuity office…. I therefore, advise you to take a reasonable view of the case and give what you consider a fair compensation." See *Armstrong v. South Eastern Railway Co* (1847) 11 Jurist 758, 760, quoted in *Rowley v. London and North Western Railway Co.* (1873) L.R. 8 Ex. 221, 230.**"

12.5 My assessment of damages in this case was reached on the evidence and submissions made by counsel and principles of reasonableness. I also cite the Kemp & Kemp (Vol 1, P2 – 007-2010):

"the court must take into account, in making its assessment in the case of any particular plaintiff, the pain which he actually suffered and will

suffer and the suffering which he has undergone and will undergo. Pain and suffering are not measurable by any absolute standard and it is not easy, if indeed possible other than in the most general way, to compare the degree of pain and suffering experienced by difference people, however, the individual circumstances of particular plaintiffs clearly have a significant effect upon the assessment of damages."

12.6 In the cases cited by the Plaintiff's counsel in the submissions, the award of damages are in the range of $60,000-$70,000. Considering the evidence placed before me, submissions, legal principles and considering the recent cases I award the 1st named Plaintiff a sum of $80,000, as general damages for past, present and future pain, sufferings, loss of amenities in life and psychological trauma suffered by her.

12.7 The 1st Plaintiff's evidence was that the 2nd and 3rd Defendants suffered injuries due to the negligence of the Defendants. The 2nd named Plaintiff at the time of the accident was 4 years and the 3rd named Plaintiff was 8 years of age. The medical reports with regard to 2nd named Plaintiff were produced in evidence as PW3 and PW4 and the said reports were undisputed and I accept the evidence with regard to injuries suffered. The injuries suffered were described in the Medical Report which stated:

"x-ray revealed a closed fracture of the third metacarpal bone on the right hand with foreign bodies in the left and right distal forearm. Patient was admitted to the ward with diagnosis of mild head injuries, multiple abrasions of head and forearm and close fracture of the right third metacarpal bone."

According to PW4, operation was performed on the 2nd named Plaintiff on 12/12/2000 and foreign bodies were removed. She was in the hospital from 7th December 2000 to 29th December 2000 (22 days) and it is evident she suffered pain during the said period. However, PW3 and PW4 stated that she is well at the date of the reports issued. However, being a child she had suffered injuries and underwent an operation. I take into account the pain and sufferings and psychological trauma suffered at the hospital during her stay. I make award of $10,000.00 for her suffering of pain, and emotional psychological trauma undergone due to the negligence of the Defendants.

12.8 The 3rd named Plaintiff's medical report dated 18th April 2001 by Dr Sireli Vakadravuyaca was produced in evidence marked PW5. The said medical report too was undisputed. He had suffered no born injury compared to the other two Plaintiffs;

the 3rd named Plaintiff had suffered minor injuries. There is no record to state he was admitted to the hospital. However, he had suffered pain and his studies at the school was affected due to the accident and had undergone emotional psychological trauma. I award $7,500.00 for suffering of pain and mental trauma which had affected his studies.

13. Accordingly, I award General Damages:

(1) $80,000.00 to the 1st named Plaintiff;
(2) $10,000.00 to the 2nd named Plaintiff;
(3) $7,500.00 to the 3rd named Plaintiff; and
(4) Special damages of $500.00
Totaling to $97,500.00.

14. I summarily assess costs at $4,000.00.

15. **Interest**

There was no interest claimed by the Plaintiffs in their Statement of Claim, as such I am not making any order with regard to the interest up to the date of Judgment. However, I order on the total sum of $97,500.00 the Defendants should pay interest at the rate of 6% per annum until full payment is made.

16. Accordingly, I make the following **Orders**:

(1) The 1st and 2nd Defendants to pay the Plaintiffs either jointly or severally a sum of $97,500.00 together with interest at the rate of 6% per annum until payment is made in full.

(2) To pay summarily assessed costs of $4,000.00 to the Plaintiff.

(3) All sums of money ordered in paragraphs 1 and 2 to be paid within 30 days.

Delivered at **Suva** this **27th Day of March, 2014**.

……..
C. KOTIGALAGE
JUDGE