

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**Civil Action HBC 055 of 2009**

**BETWEEN** : **NILESH WILLIAM** father's name James Edward of Yalalevu, Ba,  
 Steel Fixer.

**PLAINTIFF**

**AND** : **FOUR R ELECTRICAL & GENERAL CONTRACTORS LIMITED** a limited liability company having its registered office at  
 Kings Road, Yalalevu, Ba.

**1<sup>ST</sup> DEFENDANT**

**AND** : **ABDUL NADEEM** father's name Abdul Salim of Varoko, Ba, Driver.

**2<sup>ND</sup> DEFENDANT**

## **R U L I N G**

### **INTRODUCTION**

- [1]. This is a claim for compensation for personal injuries resulting from a motor vehicle accident. The case proceeded on formal proof because the 1<sup>st</sup> defendant (“**4R**”) has never bothered to file any defence, let alone, appear in Court. Default judgement was entered against 4R on 21 July 2009 and a Notice of Assessment of Damages was filed on the same day and served.
- [2]. As for the 2<sup>nd</sup> defendant, Abdul Nadeem, he did file a defence on 08 June 2009 through his then solicitors, M.K. Sahu Khan. The file records will show that Nadeem only appeared in court once on 09 September 2009. That was the returnable date of the plaintiff's (“**William**”) Summons for Directions. Orders on Summons for Directions were granted on that occasion. Nadeem, however, has never complied with any of the Orders made. On Mr. Chaudhary's oral application in Court, I did strike out Nadeem's defence on account of, firstly, his failure to comply with the Orders on Summons for Directions, secondly, for his having not appeared in Court on any call over date, and thirdly, on having assessed his filed defence as lacking any veracity and/or *bona fides* (see further paragraph [15] below).

### **EVIDENCE**

#### *William's Education & Employment History*

- [3]. William was born on 11 July 1978. He tendered a copy of his birth certificate which is marked **P EX1**. William said he was educated up to class 8 only. That was in 1993. In 1994, William started cutting cane. He also did some

construction work. In 2003, he started work as a steel fixer for Four R Electrical & General Contractors Limited (“4R”). 4R is a company duly incorporated and registered under Fiji’s Company Act engaged in the business of construction.

- [4]. William’s job required him to tie iron rods together at construction sites using wire. He also operated the steel bending machine. He worked 45 hours normal per week and was paid \$3.50 per hour. 4R also paid William’s superannuation contributions to the Fiji National Provident Fund at \$12.50.

*Rate of Pay*

- [5]. I note from the pay slips tendered in court and marked **P EX2** that William was paid weekly. Sometimes, he received \$193 per week. In other weeks, he was paid \$143. A Ms Virisila Ratu, Labour inspector also gave evidence. She carried out the initial investigations based on the Workmens Compensation Act. From her investigations, she confirmed that William was paid \$3.50 per hour in wages. Ms Ratu says that William has not been paid any compensation pursuant to the Act. I take \$143 as William’s nett pay per week.

*How the Accident Happened?*

- [6]. William and Nadeem were both under the employ of 4R at all material times in February 2008. Nadeem was a driver. On 18 February 2008, Nadeem was driving a 4R truck transporting some 4R workers, including William. They were returning home to Ba from a 4R-worksite in Nadi. At Lovu Flats just outside Lautoka, Nadeem lost control of the truck. William said Nadeem was driving at an “excessive speed”. In the process, his truck hit an electric post on the side of the highway and thereafter, was hit by a bus travelling behind it. William said the truck was overloaded and carrying a total of 36 workers in its tray. He said he was sitting right at the rear end of the tray furthest from the driver. The jolting impact of the collision with the lamppost caused him to be thrown out of the tray of the truck onto the side of the highway. He was fortunate to not have landed on the path of the bus. William sustained severe injuries. He was rushed to Lautoka Hospital where he was admitted. The next day, on 19 February 2008, William was airlifted to Suva Colonial War Memorial Hospital.

*Period of Hospitalisation*

- [7]. In addition to the brief overnight stay at Lautoka Hospital on 18-19 February 2008, William was admitted for a further one week at the Colonial War Memorial Hospital in Suva from 19 to 26 February 2008. He was referred back to

Lautoka Hospital on 26 February 2008 where he spent another week in admission. Thereafter he was discharged but was continually reviewed as an outpatient and given follow up dates.

### *Injuries Suffered*

[8]. William was unconscious immediately after the accident and only regained consciousness at the CWMH a day later. He could not speak properly and was having severe pain. He was given pain killers and injections. The diagnosis was that of **severe head injury, parietal bone fracture and suspected basal skull fracture** secondary to being involved in a motor vehicle accident. He was referred to Suva in order to have a CT scan carried out for proper diagnosis - and also for neurological counsel. William said he has never returned to work after the accident. He continues to suffer severe body pain, headache, ear-ache, shoulder pain, and cannot raise his hand. He also cannot stay in the sun for long. The doctor who attended to William at Lautoka Hospital, Dr. Taoi, has since passed on. Dr. Taoi did write a medical report concerning William dated 16 April 2008 before he died. A Dr. Arun Murari did tender Dr. Taoi's report from records. Another report dated 28 April 2008 was written by a Dr. Maloni Bulanauca concerning the diagnosis, treatment and care of William whilst he was at the CWMH in Suva. Dr. Bulanauca's report states inter alia as follows:

The assessments upon workup at this facility are:

- Severe Head Injury without any surgical corrective lesion
- Probable Diffusional Axonal Injury
- Facial Nerve Palsy (possible neuropraxia)

The external cause of injury to the above findings is that of the motor vehicle collision as earlier mentioned.

Treatment includes:

- Intensive unit care (advanced life support)
- Neuro-observation (conservative surgical care)
- ENT observation (conservative care)
- Intravenous Ampicilin, Chloramphenicol and Ranitine
- Intravenous fluids
- Physiotherapy and Nutritional Maintenance therapy
- Basic Nursing Care

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ENT follow-up .....

- Recovering right facial nerve injury
- Right ear – profound loss in the low frequency range with no response in the high frequency range
- Left ear – severe loss in the low frequencies and profound in the high frequency range
- Further auditory assessment +/- hearing aid purchase thereafter.

### *Outpatient & Home Care*

- [9]. As stated, William continued to be reviewed regularly as an outpatient after he was discharged from Lautoka Hospital. He said he was still on bandage and could not walk properly, nor could he raise his hand properly, when he was released from Lautoka Hospital. He felt severe **pain in the jaw and teeth and body**.
- [10]. William rested at home for four months after his discharge from Lautoka Hospital. His mother took care of him during this time. As he could not raise his hands and could not walk properly, his mother had to bath him and take him to the toilet.

### *Brief Employment After Accident*

- [11]. William said he worked briefly as security after the accident but was told to leave after 7 months because of his inability to see clearly at night. He has not worked since.

### *Special Damages Claim*

- [12]. William claims special damages in the sum of \$950-00 (nine hundred and fifty dollars).

### *General Damages Claim*

- [13]. William also claims general damages for pain and suffering, loss of amenities of life and loss of earning capacity.

### *Future Medical Care, Interest & Costs*

- [14]. In addition to the above, William also claims costs of future medical care as well as interest and costs.

## **OBSERVATIONS**

- [15]. Further to my comments in paragraph [2] above, Nadeem's statement of defence, which has been struck out, was, but a bare one. It either admitted to, or could "neither admit nor deny" or just outrightly denied the allegations in the statement of claim. Nadeem's defence specifically admitted to paragraphs 5 to 7 of the statement of claim which (paragraphs 5 to 7) I reproduce below.

5. **THAT** at all material times the Plaintiff was a passenger on the said Truck during and in the course of his employment with the First Defendant.
6. **THAT** at all material times the Plaintiff was a passenger on the said Truck during and in the course of his employment with the First Defendant.
7. **THAT** the Plaintiff was employed by the First Defendant at a worksite in Denarau and it was the normal practice for the First Defendant to provide its workers with transport to and from Ba daily.

[16]. As to the allegation that Nadeem was negligent and careless in his control of the 4R vehicle which resulted in the collision, Nadeem pleaded as follows at paragraph 6 of the defence.

**6. AS TO PARAGRAPH 8 OF THE STATEMENT OF CLAIM**, the second defendant admits driving the said truck but denies driving negligently, carelessly and recklessly and further denies particulars of negligence.

[17]. The defence that Nadeem had filed, and which is now struck out, in my view, lacked merit when considered against his concessions. All he denied was the allegation that he drove the said vehicle negligently. Nowhere in the defence did he ever deny that he was driving during and in the course of employment at all material times. 4R, of course, has not filed a statement of defence, to deny vicarious liability.

### **ASSESSMENT**

[18]. After considering all the evidence, I would assess damages as follows:

#### *Pain & Suffering & Loss of Amenities of Life*

[19]. Pain and suffering and loss of amenities of life are often assessed together. The latter is often also referred to as loss of enjoyment of life. I have set out evidence of the pain and suffering that William endured. However, there is no evidence before me as to how the injuries have deprived him of the ability to participate in normal activities and thus to enjoy life to the full. Mr. Chaudhary submits that \$60,000 be awarded under this head to be made as follows:

- (i) \$25,000 for past pain and suffering and loss of amenities life.
- (ii) \$35,000 for future pain and suffering and loss of amenities of life.

[20]. I have compared the award under this head given in cases such as **Maka v Broadbridge [2003] FJCA 31; ABU0063.2001S (30 May 2003); Singh v Rentokil Laboratories Ltd [1993] FJCA 26; Abu0073u.91s (20 August 1993); Dre v Ministry of Health [2009] FJHC 129; HBC020.2007 (24 June 2009)**. I have also considered that William was unconscious for an entire day and regained consciousness only at the Suva Private Hospital. In **Hicks v Chief Constable South Yorkshire Police [1992] 2 All ER 65**, the House of Lords said as follows:

In this case the deceased died the same day, hence no claim for pain and suffering arises as no damage is given for pain and suffering when unconsciousness and death followed the injury within a very short time (*Hicks v Chief Constable South Yorkshire Police* [1992] 2 All ER 65).

[21]. I follow **Hicks** and accordingly, I make no award for pain and suffering during the period when William was unconscious. The injuries suffered by the plaintiff in this case is far less serious than those suffered by claimants in the above cases<sup>1</sup>. I am of the view that the sum of \$45,000 is fair for past pain and suffering and loss of amenities of life and also for future pain.

### *Loss of Earning Capacity*

[22]. As for this head of damage, Mr. Chaudhary submits that an award of \$106,470-00 be awarded and which is to be made up as follows: multiplier of 13 x \$157-50 x 52 = \$106,470-00.

[23]. Courts hardly use a multiplier above 16. Although William was of a relatively young age at the time of the injuries, in this case, I consider 09 as appropriate considering that his was a casual unskilled form of employment with no secure tenure. As stated above, I consider William's weekly pay as \$143. Hence my calculation under this head is:

$$\text{Multiplier of } 09 \times \$143 \times 52 = \$66,924$$

### *Future Medical Costs & Care*

[33]. Notably, the medical reports record that William suffered tremendous loss of hearing and states that further auditory assessment is required and he may require the purchase of a hearing aid. No proper figures have been given to me as to the costs involved. William's evidence is also that his mother did take care of him for quite some time after he was discharged from hospital but there is no clear evidence as to whether this is continuing to this day or will continue in future. However, I am prepared to make a nominal award of \$8,000 -00 (eight thousand dollars) under this head to cover future medical costs and consultation fees and the purchase of a hearing aid as well as related incidentals such as travel/transport – as well as for the future purchase of pain killers.

### *Special Damages*

[34]. William claims \$905-00 in special damages which I accept.

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<sup>1</sup> In **Narayan v Narayan** [2009] FJHC 193; HBC 22.2003L (8 September 2009), Mr. Justice Inoke reviewed various cases in Fiji which make good background reading. In **Maka v Broadbridge** [2003] FJCA 31; ABU0063.2001S (30 May 2003) the trial Judge awarded \$75,000 and the Court of Appeal reduced it to \$60,000. The plaintiff's injury in that case was a **fracture of the forearm bone** and a **fracture of the hip joint** sustained in a car accident in April 1991. The plaintiff was in severe **pain** according to the evidence. The injuries were exacerbated by the failure of doctors to properly diagnose the extent of the plaintiff's injuries. At the time of the trial he 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. The highest of such awards around that time for similar cases was \$85,000. In **Singh v Rentokil Laboratories Ltd** [1993] FJCA 26; ABU0073u.91s (20 August 1993), the award the Court of Appeal gave an award of \$60,000 for injuries which included a more severe pelvis injury and other injuries suffered in a car accident in July 1988. The trial Judge's award of \$25,000 for **pain** and **suffering** a loss of amenities was too low.

**AWARD**

[24]. In the final, I make the following award.

<b>Pain &amp; Suffering</b>	<b>\$45,000</b>
6% interest from date of accident to date of judgement (i.e. from 18 February 2008 to 23 May 2014)	(i.e. \$2,700 x 6 = \$27,000 – but rounded off to <b>\$16,200</b> )
<b>Loss of Earnings</b>	<b>\$66,924-00</b>
<b>Special Damages</b>	\$ 950-00
<b>Future Medical Costs &amp; Care</b>	\$8,000-00
3% interest on special damages	(i.e. \$28.50 x 6 = \$171-00)
<b>T O T A L</b>	<b>\$137, 245-00</b>
<b>Plus Costs</b>	<b>\$1,500-00</b>

[25]. Judgment entered accordingly against the defendants jointly and severally in the above sum of \$137,245-00 (one hundred and thirty seven thousand, two hundred and forty five dollars) plus costs which I summarily assess at \$1,500-00 (one thousand and five hundred dollars).



A handwritten signature in black ink, appearing to read "Anare Tuilevuka", written over a horizontal dotted line.

Anare Tuilevuka  
**JUDGE**  
 23 May 2014.