

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No.222 of 2009**

**BETWEEN** : **PREM LATA** of Kabisi, Sigatoka, Tailor.  
**FIRST PLAINTIFF**

**AND** : **KAMLESH KUMARI** of Kabisi, Sigatoka, Domestic Duties.  
**SECOND PLAINTIFF**

**AND** : **USHA KIRAN** of Kabisi, Sigatoka, Domestic Duties.  
**THIRD PLAINTIFF**

**AND** : **VISHAL JEET** of Kabisi, Sigatoka, Joiner.  
**FOURTH PLAINTIFF**

**AND** : **RITESH KUMAR** of Lomawai, Sigatoka, Driver.  
**FIRST DEFENDANT**

**AND** : **PARTIKESH KUMAR** of Lomawai, Sigatoka, Businessman.  
**SECOND DEFENDANT**

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

### **BACKGROUND**

- [1]. On 01 December 2009, the four (4) plaintiffs filed a writ of summons and statement of claim against the defendants claiming damages for personal injuries they suffered as a result of a motor vehicle accident. That accident happened on 14 December 2006. The plaintiffs were all passengers in vehicle registration EH992. EH922 was travelling along the Queens Road near Nabou in Nadi when it veered off the road and crashed into a drain along the side. They suffered injuries as a result.
- [2]. The defendants do not deny any of the above. What they deny is that the accident happened as a result of the negligence of the 1<sup>st</sup> defendant (“**Ritesh**”) who was driving and in control of the vehicle at all material times. The second defendant (“**Partikesh**”) is the owner of EH 992 and is sued vicariously.
- [3]. An Acknowledgement of Service was filed for and on behalf of both defendants on 14 January 2010. On 05 February 2010, Patel & Sharma filed a Statement of Defence for both Ritesh and Partikesh.
- [4]. The defendants also admit that the 1<sup>st</sup> defendant was charged with the offence of Careless Driving contrary to section 99(1) and 114 of the Land Transport Act 35/98 but says no more on this. At paragraph 18 of the statement of the statement of defence, the defendants plead as follows:

Further, and or in the alternative, the Defendants deny that the said collision was caused by the alleged or any negligence on the part of the 1<sup>st</sup> Defendant as alleged or at all. The Defendants further state that the crash was due to an inevitable accident in that while the 1<sup>st</sup> Defendant was driving the said vehicle on the queens Road near Nabou, the surrounding area concerned (sic) with shrubs, pine trees and debris caught on fire which made visibility very low as smoke from the fire covered the road warning suddenly (sic) and despite the 1<sup>st</sup> defendant exercising all reasonable care and skill on the part of the Defendants, the said vehicle veered off the road and fell into a drain and withstanding (sic) the exercise of all reasonable care and skill in the emergency thereby created the 1<sup>st</sup> defendant was unable to avoid the said crash.

- [5]. On the trial dates, neither of them appeared and the case proceeded on formal proof. All, except the 2<sup>nd</sup> plaintiff appeared to give evidence. On the basis of evidence led before me, I find both defendants liable jointly and severally. I now proceed to assess damages.

### **PREM LATA**

- [6]. Lata was born in January 1964. At the time of the accident, she was around 42 years of age.
- [7]. Lata was sitting just behind the driver, Ritesh, as they travelled along the Queens Road. She said Ritesh was over speeding. Lata says Ritesh was charged for careless driving and later pleaded guilty as per police records dated 30 October 2009. Lata refutes the line of defence pleaded by the defendants. She says that on that day of the accident, she did not see any smoke. Nor did she see any horse on the road. The accident happened because Ritesh was over speeding and was playing very loud music. Ritesh had lied in his police caution interview that there was a horse on the road which he had tried to avoid and which led to the accident. In his statement of defence, Ritesh had told a different story that there had been a fire which caused poor visibility. This is also a lie, says Lata. She tendered in the Police Caution Interview of the Ritesh dated 15 December 2006.
- [8]. I believe Lata's story.

### *Injuries*

- [9]. Lata sustained injuries on the legs, arm, ankles and knees. She had to have operations on the legs and had to have screws put into her legs as per Lautoka Hospital operation reports dated 26 February 2008 [right leg] and 14 March 2008 [left leg].
- [10]. She also had her right hand operated upon by the doctors. She was initially taken to Nadi Hospital and then transferred to Lautoka Hospital. She spent some 8

months in hospital. The doctors first put a plaster on her legs then cut off her hip bone to graft to her legs to make them heal. When healing did not happen as expected, the doctors then put metal screws in her legs. She could not walk for about 2 years.

[11]. Lata tendered a Medical Report from Suva Private Hospital. This report assesses her permanent disability at 28%. Lata says she has difficulty walking and standing up for a long time. She cannot lift weights using her right arm. She cannot flex her right arm. Her injuries give her a lot of pain during the cold season. Her legs also swell if she is on her feet for long. She cannot travel in the bus as she would not be able to walk from the home to the main road. Also she would not be able to climb up the steps of the bus.

[12]. I accept all her evidence.

#### *Loss of Earning Capacity*

[13]. Lata says that before the accident, she had worked as a tailor. She would earn an average of \$120 per week. She can no longer do that now because she cannot use her legs to operate the pedal machine manually. It is not clear to me whether she was employed at a garment factory or for a tailoring business – or – whether she was carrying on her own tailoring activity at home. While I am prepared to accept that she did work as a tailor, I find it hard to accept, without supportive documentation, that she would have earned \$120 per week on average from this activity alone, considering that she was engaged in other activities as well such as selling vegetables and helping out in her husband's farm and also in raising and selling meat fowl. Lata's lawyers submit that a sum of **\$35,000-00** under this head is reasonable citing **Deo Ram v Kanta Singh**, Civil Action No.102/2001L, date of judgment 29/04/05.

[14]. **I will allow \$150-00 per week as loss of earning capacity for all these activities** (i.e. tailoring, selling vegetables<sup>1</sup>, raising and selling meat fowl<sup>2</sup>, and assisting in the cane farm<sup>3</sup>). For the record, I will not make an award for the costs of hired labour under special damages to help in the farm as I have already accounted for this under this head.

[15]. Lata's lawyers had assessed her earning capacity at \$330 per week. I have reduced that to \$150-00 per week. At the time of the accident, she was 42 years

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<sup>1</sup> Lata says she used to grow and sell vegetables by the roadside. For this, she would earn \$150 per week on average.

<sup>2</sup> Lata says she used to raise and sell ducks and chickens and would earn about \$60 per week.

<sup>3</sup> She also said that used to help husband on the sugarcane farm. Because she can no longer assist him, her husband now hires a help to do that work that she used to do and for which he hires the labour \$120 per week.

of age. A multiplier of 10 is appropriate. Therefore an award under this head would be as follows:

$$\begin{aligned} \$150 \times 52 &= \$7,800-00 \\ \$7,8000 \times 10 &= \mathbf{\$78,000} \end{aligned}$$

- [16]. As Lata suffered 28% permanent incapacity, the award must then be reduced accordingly. Hence, 28% of the above figure would be **\$21,840.00** which is the sum I award for Lata as loss of earning capacity.

#### *Special Damages*

- [17]. Lata says she has to travel to Sigatoka Hospital every month as she is still under medical review by the doctors to see if the bones have healed completely. Attending to these medical reviews costs her about \$50 in travel as she could not travel by bus and cannot walk from her home to the highway for the bus. Lata tendered her checking card for Sigatoka Hospital orthopaedic ward. It is not clear to me how long she will be under review for – or – in fact, whether or not the reviews are still going on.
- [18]. Lata says she also had to travel to Lautoka Hospital at times for scanning and this would cost her over \$100 in travel. The frequency of these trips is not clear from her evidence. According to official Operation Reports, her last operation at Lautoka Hospital was on 14 March 2008. Lata’s lawyers submit that even if the Court were to take a starting point for the visits to Sigatoka Hospital from April 2008, Lata would have expended about \$3,600 for the travelling expenses alone but they are prepared to settle at \$2,500 for travelling expenses.
- [19]. I do not doubt that Lata was required to and did attend both hospitals for further review and monitoring and that she would have incurred some expenses. The only thing I am unclear about is the frequency of these and the lack of specific evidence thereof. A record of all her medical attendances from both hospitals would have been a good starting point. **After considering all, I am prepared to grant a nominal award of \$1,000-00 for all travels.**
- [20]. Lata also said in evidence that she had to hire a masseur which cost her \$25 per-hour and she used this masseur for about 3 months. The masseur used to attend to her “**a couple of days every week**”. For the record, Lata did show me in Court the extensive scars and deformities on both legs which are, in addition to the medical report, a testament to the extensive injuries she received. I do not doubt that Lata would have required a masseur as she claims. But it is not clear to me how often is “**a couple of days every week**” or indeed, how many hours were involved in each session. In fact, she does not even specify the months or

the year in question. **I am prepared to accept \$25 per week for three months which leads to a total of \$100 under this head.**

- [21]. As she still suffers a lot of pain on the legs and finds it difficult to move around, Lata says she uses two painkillers for relief from the pain. She also used P-foil which is for the weakness. She takes the painkillers almost everyday due to continuous pain. The white painkiller has to be bought at \$1.50 per sheet whilst the pink painkiller is free at hospital. The P-foil costs \$7 per sheet which she takes almost daily for weakness. Lata's lawyers submit that she is entitled to an amount of \$300 in special damages for painkillers. Again, I do not doubt that she continues to suffer pain and that she would have to have spent money on painkillers to alleviate or manage the pain. But without receipts, I would rather reduce the award than not make an award at all. **Accordingly, I make an award of \$150-00 for costs of pain killers.**

*Pain & Suffering*

- [22]. In Court, I could see pain in Lata's eyes. According to Medical Report dated 16 October 2009:

1<sup>st</sup> Plaintiff was born on the 9<sup>th</sup> January 1964 [She would have been 42 years at the time of the accident]

She had fractures to both legs and was initially treated with external fixators. Later converted to intramedullary rods and bone grafting. Her right forearm was also fractured and treated in a POP cast

She is right handed and the injury to her right arm affects her ability to do daily activities.

She walked with a untalgic gait

There were anterior longitudinal scars over both legs.

Flexion of the right ankle was restricted compared to the left ankle.

Right elbow could only flex from 25 degrees 130 degrees. Pronation and supination were also restricted.

Radiological examination showed healed fractures for both tibias. Intermedullary rods were in place with locking bolts. Non union of the left fibula fracture was evident.

Left wrist showed marked degenerative changes of arthrosis of the wrist and carpal joints.

The permanent disability was assessed at 28% permanent disability

- [23]. Lata says that she was hospitalized for about 8 months after the accident. That, in itself is some indication of the extent of her injuries.

- [24]. She says she has a lot of pain on her legs especially during the cold and very hot weather when her leg swells. Her left hand also pains. A medical report from Dr. Taloga assesses her disability at 28 %. Dr. Talonga also gave evidence that Lata's disabilities and pain and suffering were consistent with the injuries. He said she had suffered fractures to both legs and right forearm. Over a period of 2 years,

she was under review in hospital during a 2 year period as her legs were not healing and she could not walk. Subsequently, Doctors removed bone from both sides of her hip to help graft her both legs. When this did not accelerate the healing process, the Doctors put a screw to hold her leg-bones together (mini plates and screws). These procedures were carried out on 26 February and on 14 March 2008.

[25]. Both Lata and Dr. Taloga confirm that Lata still has screws on her legs as the fracture has not fully healed.[refer to Medical Report by Suva Private Hospital]. Dr. Taloga adds that Lata's injury resulted in her having an untoward and awkward gait when walking and there are anterior longitudinal scars over both legs (I did see and confirm the scars in Court).

[26]. The flexion of the right ankle was restricted to 15% and 30% to the left ankle. Lata could not also fully flex her right elbow and had restricted right wrist motion. The radiological examination showed non union of the left fibula. Lata had to undergo surgery so that the bone from the hips could be removed for grafting on to her right and left leg. She also had surgery on her left and right legs so that "locking bolts" could be put on her legs. Lata testified that given her injuries, she is unable to carry out any of her money earning tasks which she used to do prior to the accident. Hence she is unable to earn any money.

[27]. Lata had the following difficulties when she was injured:

- She spent about 8 months in hospital over a 2 year period.
- She was bedridden for about 1 year 5 months and 5 days.
- She was only able to stand up on her own after about 2 years after the accident.
- She feels constant pain in her right elbow and wrist and both her legs.
- She has large scarring on both her legs due to injury and subsequent operations.
- She needed constant care and help during the time that she was immobile.
- Due to the injury, the 1<sup>st</sup> Plaintiff was unable to sit and squat on the floor
- She cannot walk fast or for long distances. She cannot stand for long hours.
- She had difficulty walking up steps and stairs.
- She could not do all her housework by herself and needs help of her children
- She cannot lift heavy loads with her right hand
- She cannot sleep for long on her side and has to continuously keep on changing sides.
- She will have to undergo removal of the screws once her both legs heal.

[28]. Counsel refers me to the following case law to assist me in assessing damages for pain and suffering. Below I reproduce in full counsel's analysis of the various cases:

- **Ashish Mudliar v Rajesh Rama & Ors** [Civil High Court Action No. 3 of 2012, *date of decision 4 April 2014*. In the above matter, The Plaintiff was a 36 year old pedestrian and walking in between two buses to cross the road when the bus number CR 460 moved forward and the Plaintiff was crushed in between the two buses on 06th August 2011. The Plaintiff suffered serious injuries as Plaintiff's right communicated midshaft termour fracture on the bone was broken to more than one piece and an operation was done to insert a steel rod and the rod was removed after two months. The Plaintiff continued visiting the hospitals for regular check ups. There was no assessment of the Plaintiffs disability conducted or presented to court. The Court awarded the Plaintiff a sum of **\$60,000** as damages for pain and suffering.
- **Sarojini Devi & Ors v Vidya Wati & Ors** [Civil Action. 462 of 2002]. The Plaintiff was a passenger in a pick-up van registration No. CH243 driven by the 1<sup>st</sup> Defendant and owned by the 2nd Defendant. The said vehicle was involved with an accident at Lomaivuna on Serea Road, Sawani and the Plaintiff who was 31 years of age at that time suffered injuries to her left hand and left side of the body. She was taken to Vunidawa Hospital and thereafter she was transferred to CWM Hospital. She was treated there for 2 months and 3 weeks. At the time of the trial, Plaintiff was having disability and left lower arm was badly affected and could not use the hand for day to day work. The Medical Report on the Plaintiff issued by CWM Hospital after final clinic in which the permanent disability was assessed at 35%. The 1<sup>st</sup> named Plaintiff was granted 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.
- **Nasese Bus Company Limited & Anr vs Muni Chand** [Fiji Court of Appeal Civil Appeal No. ABU 40 of 2011. In this case, the 18 year old child was injured in an accident at the bus stand when she was struck by a bus driven by the 2<sup>nd</sup> Respondent and owned by the 1<sup>st</sup> Respondent. The child suffered from a crushed injury fracture of left leg with a degloving injury to right thigh and was assessed to have a permanent disability of 14%. After a trial in the High Court, the Judge ordered \$65,000-00 as damages for pain and suffering and for the future loss of amenities. The Court of Appeal in considering the appeal against the award of damages for pain and suffering increased the award to **\$90,000-00** due to progressive arthritis with appropriate deductions for contributory negligence.
- **Chand v Padarath Bros & Sons Ltd** [High Court Civil Action No. HBC 134 of 1995. A 33 years old taxi driver and farmer had suffered open comminuted fracture of distal right femur extending to knee joint, comminuted fracture proximal "tibia" and fibula (right) and open fracture of shaft of mid "tibia" as a result of motor vehicle accident. His right lower limb was shortened by 6cm and the range of motion of the right knee was limited. His incapacity was assessed as 25% disability for his injuries and he was awarded **\$65,000** as general damages.

- **Korovou v Naidu** [High Court Civil Action No. HBC 289 of 2005. In the above case, the 2<sup>nd</sup> Plaintiff who was an airhostess was the front seat passenger when the vehicle they were travelling in met with an accident with a vehicle driven by the Defendant. After the accident 2<sup>nd</sup> Plaintiff lost 3 front teeth in lower jaw and she was also hospitalized for 3 days and her teeth were wired and was fed only liquids. The Learned Judge considered that “These indicate severe pain of mind and she being an air hostess at that time would have cause caused even more anxiety due to this injury as her pleasant appearance is vital for her occupation. Considering that the fracture wires were removed only on 12th October, 2004, nearly after one month from the accident and was feeding only through the liquid food.” The past pain and loss of amenities of life was assessed at **\$10,000**. Considering the total disability percentage of 10% and other circumstances such as her occupation and age and other factors like she has to wear the dentures most of the time in her life and almost all the time when she is in her occupation, due to the nature of the occupation, I assess the future loss of amenities of life at **\$ 3,000**. The 1<sup>st</sup> Plaintiff, a 32 year old aircraft engineer in the matter suffered more serious injuries in that his hip got dislocated and fractured and metal nuts and bolts were inserted to the hip. The right leg resulted in being shorter than the left one. He also stated that he underwent 3 surgeries, one in his hip and two in the elbow. He stated that he felt lot of pain after the accident. After the injury he had used a wheel chair for 1 ½ months, and has used a walking- frame for nearly 2 months and after that a walking stick was used for walking till recovery of the lost strength to his muscles in the leg. He has also attended physiotherapy exercises to regain the muscle strength for a considerable time. He was assessed to have a permanent disability of 24%. The Court considered that due to the severe pain of mind and loss of amenities of life the 1st named Plaintiff was confined to the hospital bed for 79 days and 3 surgeries that were carried out and awarded **\$50,000** as the past pain and loss of amenities of life. The Court further ordered award **\$35,000** as his future loss for pain and loss of amenities of life.
- **Deo v Kumar** [Civil Action No: HBC 037 of 2008. In this instant case, a 10 year old child was hit by a bus at the Labasa Bus stand and sustained extensive laceration of right leg and there was no bony involvement. She was treated with repeated debridement and wash and skin grafting under anesthesia and spent about 1 month in hospital. She suffered from no dorsiflexion of her ankle, which meant that the plaintiff could not bend her ankle in a dorsal direction and had a large permanent scar on her right leg. Her impairment was determined at 19 %. The Court in deciding a sum of \$40,000 for the pain and suffering decided that plaintiff's incapacity was mainly of a cosmetic concern and restriction of her ankle movement and took in concern the plaintiff's age, the way she sustained injuries and the permanent scar on her right leg.



- **Atish Sharma v Hardwood Sales & Marketing (Fiji) Ltd** [Civil Action No. HBC 137 of 2008. In this instant case, in the course of the Plaintiff's employment the plaintiff was using an Electric Bench saw to rip a piece of batten length wise when the said batten shot back hitting his left thumb later which was amputated. The Plaintiff was found to have had a permanent disability of 35%. The Court ordered a sum of \$20,000.00 as General Damages for pain, suffering and loss of amenities of life of the Plaintiff.
- **Shankar v Fortech Construction Ltd** [High Court Civil Action No. 486 of 2003. The plaintiff suffered bodily injuries while crossing at a 'pedestrian crossing' near Lakeba Street, Samabula on Ratu Mara Road when she was hit by a vehicle driven by the 2<sup>nd</sup> Defendant. Upon examination, she was found to have the following injuries: Closed midshaft fracture of right Humerus, Multiple superficial abrasions, Avulsion right big toe nail. She was found to have 13% whole person impairment. She was 58 years old and in good health at the time of the accident. She had been a tailoress since 1959 and she sewed uniforms for school children and other people from nearby village in Tavua. On an average she earned \$120.00 per week.

The Court determined that because of her injuries she would be unable to move her right arm anymore and would endure more pain lifting her hand. The court granted her the sum of \$20,400.00 for the loss of income from the date of the accident to the date of the completion of the trial.

As for future loss of income, Court considered the multiplier of 6 to be appropriate in the circumstances of the case. After having already assessed the plaintiff's loss of earning up to the year 2004 i.e. up to age 62 years. The Court found that she would not have earned the same amount of \$120 per week because of her age. Therefore using the multiplier of 6, assessed her earnings at \$60 per week which came to \$18720.00 (\$60 x 52 weeks x 6 years). The Court also ordered \$25,000 as damages for the pain and suffering.
- **Narayan v Narayan** [2009] FJHC 193 [High Court Civil Action No. HBC 22 of 2003L. The Plaintiff was injured when the vehicle he was a passenger in ran off the road and tumbled. He was hospitalized for 2 weeks. He said he received injuries to his forehead, left hand and left leg. The doctors removed bone from his left leg and inserted a plate in his left hand. The medical report of his medical examination on the day after the accident recorded that the Plaintiff suffered fractures to his left patella and left distal radius, he was unable to stand, and the doctor's comments on the seriousness of injuries being "moderate leading to severe disability". The final medical report of 8 January 2007 stated that the treatment that was administered to the Plaintiff was "Pain relief, POP cast, Patellectomy of left patella and ORIF left distal radius." His then prognosis was "scars on the left knee and left wrist, diminished ROM of the left wrist, scarring of the left upper eye lid with a 20% disability." The Court awarded the Plaintiff a sum of \$80,000 for the pain and suffering and loss of amenities.

- **Ashok Chand v Permanent Secretary of Health & Attorney General** [2012] FJHC 1456 [High Court Civil Action No: HBC 18 OF 2011. The Plaintiff in the course of his duties, was injured when he fell from a ladder as he was not provided any safety equipment. The plaintiff was x-rayed and found to have a wedge compression fracture of T12. He was later assessed to have had a permanent incapacity of 5%. The Court awarded a sum of \$7,500.00 for the pain.
- **Chand v Nauchi** [1997] FJHC 212[High Court Civil Action No. 302 of 1995]. The Plaintiff, a 32 year old housewife suffered injuries when the vehicle, she was travelling in was involved in an accident. She suffered from Comminuted fracture of distal femur with intra articular extension, Left corneal laceration and Multiple body lacerations. She suffered from facial disfigurement as well. The Plaintiff's fractures had healed although she walked with a gait and screws remained in her leg. She suffered from residual incapacity of 22% which was mostly due to a reduction of sight in her left eye and was granted a sum of \$25,000 as damages for pain and suffering and loss of amenities.
- **Prakash v Khan** [2009] FJHC 160. The Plaintiff suffered a fractured pelvis and superficial abrasion over his right shoulder due to negligent driving. The treatment was bed rest, analgesics and physiotherapy. He was in hospital for two days. He attended 4 follow ups after discharge. The doctor's final report of 10 July 2006 was that the Plaintiff still felt pain and discomfort over the left inguinal area when lifting heavy objects and in cold weather. He enjoyed normal activity and daily living. His gait is normal. He has free movement of back, hip joints, knees and ankle joints and normal sensory and motor function in his lower limbs. His right shoulder is without pain and the Plaintiff has full range of motion. The fracture of his pelvis was well united. He was assessed to have 0% permanent disability. The Court found that the pain suffered by the Plaintiff in this case is not in the extreme. His employment opportunities have not been significantly affected, if at all. Neither is his future enjoyment of life. His injuries have fully healed and he has fully recovered apart from some pain that he may continue to suffer during cold weather. Having regard to these findings and the cases cited above, I think the sum of \$30,000 is fair compensation for pain and suffering and loss of amenities.

[29]. I am of the view that of **\$70,000-00** for pain and suffering and loss of amenities. I agree that is a fair figure. Accordingly I award \$70,000 for pain and suffering and loss of amenities for Lata.

**USHA KIRAN**

[30]. Kiran was sitting behind Prem Lata in the vehicle at the time of the accident.

### *Injuries*

- [31]. Kiran was taken to Nadi Hospital and, after 1 week of admission there, was taken to Lautoka Hospital. She spent about 4 weeks at Lautoka Hospital. Her left wrist was deformed and as a result, Kiran could not flex it (left wrist).
- [32]. At first, the doctors had put plaster over Kiran's leg. But as her leg did not heal, the doctors then put a metal screw in.
- [33]. Kiran tendered her Medical Report from the Suva Private Hospital. Because of her injuries, Kiran cannot lift heavy weights or walk long distances. She cannot walk on uneven surfaces as well. She used a walking stick for about one year after the accident. She has difficulty sitting in one position or squatting and doing housework. Her leg swells if she walks and stands for prolonged periods of time. She still feels pain especially during cold weather. She uses balms and panadol for relief.

### *Loss of Earning Capacity*

- [34]. Prior to the accident, Kiran engaged in vegetable farming. She would sell the vegetables by the roadside. She says she also sold Indian sweets. For both activities, Kiran says she earned about \$170 per week on average.
- [35]. Kiran says she also used to work as a farm hand for which work she would earn \$80 per week on average.
- [36]. Kiran was a housewife but used to work as a casual farm hand after the death of her husband and earned about \$80 per week. She used to plant vegetables and sell it near the roadside earning about \$80 per week. She also used to make and sell Indian sweets making an average of \$90 per week. She can no longer do any of the above work nor earn any money as she does not have complete use of her wrist and constantly feels weakness and pain. She continues to have screws in her ankle which cause her pain and swelling. Kiran's earning capacity has been reduced to nil as a result of the disabilities that she now suffers. The Plaintiff's lawyers submit that a sum of **\$25,000-00** under this head is reasonable.
- [37]. **I will allow \$150-00 per week as loss of earning capacity for all these activities to make it consistent with the award under this head for Lata.**
- [38]. At the time of the accident, Kiran was 49 years of age. A multiplier of 07 is appropriate. Therefore an award under this head would be as follows:

$$\begin{aligned} \$150 \times 52 &= \$7,800-00 \\ \$7,800 \times 7 &= \$54,600 \end{aligned}$$

[39]. As Kiran suffered 08% permanent incapacity, the award is then reduced accordingly, hence, 08% of the above figure would be **\$4,320.00** which is the award I make for Kiran for loss of earning capacity.

### *Special Damages*

[40]. Kiran says she was in hospital for about 4 weeks. She was initially taken to Nadi Hospital and was there for 1 week and spent the remaining time at Lautoka Hospital as the doctors had to operate on her leg. She had leg plaster for about 4 months and then the doctors put a screw in her right leg as the leg wasn't healing. During this time, she had to stay at her sisters place in Nadi and travelled to Lautoka Hospital. She claims \$600-00 in travelling costs.

[41]. Kiran submits that she is entitled to \$2,200-00 for her medicinal costs which covers costs for purchasing balm, vicks and panadol for pain management.

[42]. I am prepared to award her the following in special damages:

- (i). for travelling expenses, I am prepared to award \$500-00 only to Kiran (considering that unlike Lata who had to travel from Sigatoka to Lautoka, Kiran lived in Nadi with her sister).
- (ii). like Lata, I am prepared to award only \$100 for masseur costs as well as \$150 for pain killers.

### *Pain & Suffering*

[43]. According to Medical Report dated 16 October 2009:

- 3<sup>rd</sup> Plaintiff was born on the 2<sup>nd</sup> April 1957 [She would have been 49 years at the time of the accident]
- She had fractures to her left wrist and right ankle.
- Right ankle required surgery whilst wrist was treated in a cast
- No abnormal gait and both ankle movements were comparable
- Her left wrist was radially deviated with a prominent lower end of the ulna.
- Radiological examination showed united fracture of the medial malleolus of the right ankle. The fixation screw was in place.
- Left wrist showed malunited fracture of the distal radius and non union of the ulna styloid process. The radius is shortened with depression of the articular surface and loss of the radial inclination.
- The left wrist fracture is malunited causing pain, weakness of the hand and limited motion.
- The permanent disability was assessed at 8% permanent disability.

[44]. The fact that Kiran spent 4 weeks in hospital speaks for itself. As stated above, she was initially taken to Nadi Hospital and was there for 1 week and spent the remaining time at Lautoka Hospital as the doctors had to operate on her leg. She had leg plaster (plaster of paris) for about 4 months. The doctors later put a screw (fixation screw) in her right leg as the leg was not healing. The screw is still

in place [refer to Medical Report by Suva Private Hospital]. Dr. Taloga says that Kiran's injury resulted in her left wrist being "**radially deviated with a prominent lower end of the ulna**". The left wrist further showed a malunited fracture of the distal radius with non union of the ulna styloid process." The "radius of the left wrist is shortened with depression of the articular surface and loss of the radial inclination".

[45]. Kiran experiences a lot of pain on her right leg especially during the cold and very hot weather when her leg swells. She experiences pain also on her left hand.

[46]. Notably, Dr. Taloga assesses Kiran's disability at **8 %**.

[47]. According to the Doctor's report, the left wrist fracture was malunited causing pain, weakness of the hand and limited motion".

[48]. Kiran had testified that given her injuries, she is unable to carry out any of her money earning tasks which she used to do prior to the accident. Hence she is unable to earn any money. According to the Doctor, Kiran's injuries and disabilities are consistent with her injuries except for swelling of the right leg as her ankle had healed. Kiran had the following difficulty when she was injured:

- She spent about 4 weeks in hospital after the accident.
- She had plaster of paris over her ankle for 4 months and later had an operation to put a "fixation screw" as the ankle was not healing.
- She had limited mobility during the 4 month plaster period.
- She was continues to have the fixation screw on her ankle.
- Her left wrist is deformed and she has limited range of motion on her left wrist.
- She cannot lift up heavy stuff or have full movement of her left wrist.
- She feels constant pain and weakness in her left wrist and has swelling on her right leg if she stands for too long or walks fast or for long or on uneven surfaces.
- She has scars on her right ankle and left wrist
- She needed constant care and help during the time that she was immobile from her sister.
- She could not do all her housework or all the household chores which she used to do prior to the accident.

[49]. **In light of all the awards in the cases cited to me by counsel, I am of the view that an award of \$40,000 would be appropriate in this case.**

### **VISHAL JEET**

[50]. Jeet was sitting in the last seat of the vehicle. He sustained a deep cut over the eye and still gets intense headaches especially in cold or hot and the scalp area is numb. Because he now no longer can stay out in the sun for too long, Jeet says he has stopped playing soccer and also cannot help out in the family farm. He also cannot do heavy work and had to leave his previous work as a joiner.

### *Injuries Suffered*

- [51]. According to Medical Report dated 16<sup>th</sup> October 2009:
- 4<sup>th</sup> Plaintiff had a large wound over his left forehead and was admitted for 2 weeks in Nadi Hospital
  - He complained of numbness over the left side of the forehead extending backwards to the scalp area.
  - A loss of sensation to the left side of the forehead and the immediate area of the scalp was mostly to injuries to the supratrochlear and supraorbital nerves.
  - The permanent disability was assessed at 1% permanent disability.

### *Loss of Earning Capacity*

- [52]. He says he takes sick leave 2-3 days a month whenever he gets bad headaches and does not get paid when he does. He currently gets paid \$2.50 an hour but used to get paid \$3 an hour as a joiner. He gets paid an average of \$120 per week. His left eyesight gets blurry sometimes but he has never had it checked. He has difficulty in concentrating when he gets the headaches. He uses balms and vicks to control the pain.
- [53]. Jeet had just left school at the time of the accident and had been working as a joiner at Pacific Green. He earned \$3 an hour. He has had to leave work because of his injuries which make him unable to handle the hard work and being in the hot sun. He now works as a bus checker for Pacific Transport earning \$2.50 an hour.
- [54]. Due to the injuries, Jeet experiences constant headaches. He can no longer engage in hard labour work. He says his income has reduced by \$0.50 per hour.
- [55]. Jeet says he has not been able to further his joinery career due to the injury. His earning capacity has been reduced as a result of the disabilities that he now suffers. His lawyers submit that a sum of \$15,000-00 for loss of earning capacity under this head is reasonable.
- [56]. I am not inclined to grant any award to Jeet under this head. He is engaging in alternative employment and earns about the same as he was before.

### *Special Damages*

- [57]. Jeet was in hospital for about 2 weeks. He had to travel from his home to the hospital and claims that he is entitled to a sum of \$160 as his travelling costs. **I am prepared to award him \$80 for these costs.**
- [58]. Jeet suffers from numbness over his scalp area due to the injury and gets headaches during cold and very hot weather. To deal with the headaches, he constantly takes panadol and used balm to help with the pain. He has to buy the

balms and the panadol. Jeet submits that he is entitled to an amount of \$100-00 for his medicinal costs. **I am prepared to award him \$60-00 for these costs.**

*Pain & Suffering*

[59]. Jeet exhibited his medical report from Dr. Taloga which assessed his disability at 1 % as a result of a loss of sensation to the left side of the forehead and immediate area of the scalp. Jeet suffered a big cut over his left eye. [refer to Medical Report by Suva Private Hospital]. Jeet testified that he gets frequent sick leaves from his employment due to constant headaches resulting in a loss of income. According to the Doctor, Jeet would not normally have any headaches or lapses of concentration from the injury suffered but according to the medical report, Jeet has decreased sensation to the left frontal and anterior half of the parietal.

[60]. Jeet had the following difficulty when he was injured:

- He spent about 2 weeks in hospital after the accident.
- He has numbness over his left forehead and scalp.
- He suffers from headaches and is unable to stay in the sun for too long.
- He also can't sleep at night due to constant headaches and has to use medicine to sleep.
- He has a permanent scar over his left eye.
- He cannot play soccer for long in the sun and low concentration levels due to the headache.

[61]. Counsel submits that Jeet is entitled to a minimum of **\$30,000** for the pain and suffering. Considering the nature of injuries suffered, the fact that he was in hospital for some two weeks, and also the cases cited above, I agree that \$30,000 is a fair sum. I make an award of \$30,000 accordingly for pain and suffering.

**COMMON SPECIAL DAMAGES**

[62]. In addition to the above, I also make the following award for special damages commonly incurred by the plaintiffs and which award is to be split into three equal parts for the benefit of each plaintiff. At paragraph 14 of the Statement of Claim a sum of **\$1,036.50** is claimed as common special damages under this head for all Plaintiffs being \$22.50 for the Police Report, \$1000 for 4 Medical Examination Reports from Suva Private Hospital and \$14 for the LTA report.

## INTEREST

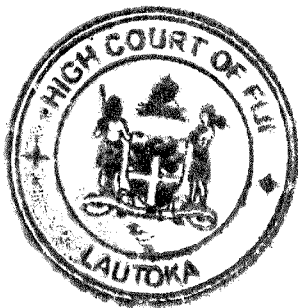
[63]. I also award interest at the rate of 6% from the date of the accident (14/12/06) to the date of judgment (21/10/14) on general damages. Interest on special damages) at 3).

## COSTS

[64]. Costs in the sum of \$850-00 each.

## SUMMARY OF AWARDS

	Loss of Earning Capacity	Special Damages (plus shared common damages)	Pain & Suffering	Costs
Prem Lata	21,840-00	\$1,250-00 (345-50 SCD)	\$70,000-00	\$850-00
Kamlesh Kumari	N/A	N/A	N/A	N/A
Usha Kiran	\$4,320-00	\$600-00 (345-50 SCD)	\$40,000-00	\$850-00
Vishal Jeet	Nil	\$140-00 (345-50 SCD)	\$30,000-00	\$850-00



.....  
Anare Tuilevuka

**JUDGE**

Lautoka

21 October 2014