

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

Civil Action No. 66 of 2009

BETWEEN : **SEKHARAN** a.k.a **SEGRAN NAIR**

Plaintiff

AND : **RONALD RAVIKASH PRASAD**

1st Defendant

AND : **RAVNEEL RAVIKASH**

2nd Defendant

R U L I N G

INTRODUCTION

1. There is a default judgement in this case against the first defendant. This is my assessment of damages against the first defendant. Notice of Assessment of Damages was advertised in the Fiji Sun issue of 22 March 2012. The plaintiff, Shekaran, brings this action in his capacity as Administrator of the estate of his deceased son Punit Pratil Nair (“**Nair**”) and also in his personal capacity. In court, Shekaran did produce the original Letters of Administration Number 47337 which was granted to him by the High Court of Fiji over Nair’s estate (**exhibit 1**). He seeks general and special damages as well as compensation under the Compensation to Relatives Act (Cap 29) and under the Law Reform (Miscellaneous Provisions)(Death & Interest) Act (Cap 27). The statement of claim was filed on 09 April 2009. It alleges that on 17 March 2007, the first defendant, Ronald Avikash Prasad, was driving Motor Vehicle registration number DN 542 along the Kings Road towards Ba when, at Teidamu just outside Lautoka, he lost control of the vehicle, causing it to veer off the road and hit an electric post. Nair was a passenger in the car. He sustained severe injuries and died instantly as a result of the accident. At all material times, DN 542 was owned by Ravneel Ravikash, the second defendant. A copy of the sentence passed by the Lautoka Magistrates Court in Traffic Case 778 of 2007 was produced in Court (**exhibit 2**) which confirms that the first defendant was charged and convicted of one

count of Occasioning Death By Dangerous Driving contrary to section 97(2) and section 114 of the Land Transport Act 1998.

ABOUT NAIR

2. Nair was 22 years of age at the time he died. A copy of his Death Certificate was produced in Court (**exhibit 4**). He was born on 17 July 1985 and was an only child and sole breadwinner. His original birth certificate was produced in Court (**exhibit 3**). This is the evidence of his father (the plaintiff). His father had just retired and his mother was confined to domestic duties. Nair was an air condition fitter and technician. He had been working at Koolman Refrigeration in Lautoka for some two years or so and was earning a net pay of \$150 per week. Nair was highly qualified in his trade. His father produced in Court twenty trade certificates in various aspects of Refrigeration which Nair obtained from the then TPAF (now part of Fiji National University). These certificates were all marked **exhibit 8** as a bundle. Nair spent his earnings on groceries for the family. A small part of his earnings he spent on himself personally. It is submitted by the plaintiff's lawyers that Nair had a good prospect of advancement.

DAMAGES CLAIMED

3. The plaintiff claims the following as pleaded in the statement of claim:
- | | | |
|-------|-----------------|---|
| (i) | Special Damages | \$12,500 – 00 made up as follows: <ul style="list-style-type: none">• \$7,000 (funeral expenses)• \$1,000 (transportation)• \$2,000 (food & misc)• \$2,500 (legal costs) |
| (ii) | General Damages | Under Compensation to Relatives Act (Cap 29) and Law Reform (Misc Provs)(Death & Interest) (Cap 27) |
| (iii) | Interest @ 10% | from date of accident to date of judgment under Cap 27 |
| (iv) | Costs | |

SPECIAL DAMAGES

4. Special damages are monetary losses actually suffered up to the date of judgment and must be specifically pleaded and strictly proven.

Funeral Expenses

5. Section 11 of the Law Reform (Miscellaneous Provisions) (Death & Interest) Act allows damages to be awarded in respect of funeral expenses incurred by the party for whose benefit the action is brought. The plaintiff himself is a beneficiary and personal representative of the Nair estate. He is therefore entitled to claim for funeral expenses. In Fiji, some courts have awarded damages for funeral expenses even in the absence of specific supporting evidence contrary to the general rule for strict proof with regards to special damages. It appears that in such cases where the Courts have made an award without strict proof, the Court would have drawn from its own knowledge (and perhaps judicial notice) of the cultural practices and traditions (and associated costs) on which local funerals are deeply ingrained. I follow the approach of Pathik J in **Moli v Bingwor [2003] FJHC 279** and award **\$2,500** for funeral expenses only.

Transportation Costs

6. The plaintiff also claims \$1,000 in transportation costs for traveling between Ba and Lautoka Hospital during the time the deceased Nair's body was in the mortuary. It is hard to imagine how many trips the plaintiff would have taken to necessitate such a high cost. I say that considering that Nair had died immediately upon impact. Had he survived for a few days or weeks thereafter before passing on, then a high claim on transportation would have been imaginable on account of visitation costs. Doing my best, I award **\$350-00** in costs for transportation.

Food & Other Expenses

7. In addition, the plaintiff also claims \$2,000 for food and other expenses during this time. Cost for food consumed during funeral rites would already be subsumed in the award for funeral costs above. However, with regards to costs for incidentals associated with post funeral ceremonies and rites, I think a reasonable award would be **\$1,500-00**.

Legal Costs

8. I award **\$800-00** in legal costs (for obtaining Letters of Administration & incidentals).

Total Award for Special Damages

9. The total amount I award for special damages is **\$5,150**.

GENERAL DAMAGES

Loss of Expectation of Life

10. In Fiji, the Courts have awarded damages for loss of expectation of life at **\$2,500**. I award the same in this case.

Damages for Lost Years – Law Reform Misc Prov) (Death & Interest) Act

11. A claim for lost years accrues to the estate of the deceased under the Law Reform (Miscellaneous Provisions) (Death & Interest) Act. The approach of Fatiaki J in **Hari Pratap -v- Attorney General of Fiji and Anor Suva High Court Civil Action No. HBC 95/1986** as reported in **Prasad v Hakim** is:

[33]. The conventional approach to the assessment of damages for the lost years is thus arrived at as follows:-

- (a). the deceased net earnings as at the time of the death.
- (b). from the net earnings, a deduction must be made of the deceased's personal earnings.
- (c). the sum in para (b) is then multiplied by the actual number of lost years, that too is to be ascertained by the Court taking into account the contingencies and vicissitudes of life.

12. I assess his net earnings at \$150 per week. From this, I deduct 30% per pay for personal expenses. I also think that a multiplier of 16 would be appropriate given the deceased's young age. My calculation is as follows:

(i)	Nett earning p.a.	\$150 p/w x 52 weeks	=	\$ 7,800-00
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(ii)	Nett per week \$150	\$150-00 As this is net amount, I make no deduction for PAYE as the figure given in evidence is the amount he actually received after PAYE deduction.	=	\$ 150-00
(iv)	(deduction for deceased's personal earnings) @ 30% weekly pay	\$150 x 30%	=	\$ 45-00
(v)	Balance left for estate for lost years	\$150- \$45 = \$105	=	\$105 x 52 weeks x 16 (multiplier) = <u>\$87,360.00</u>
	TOTAL			\$87,360.00

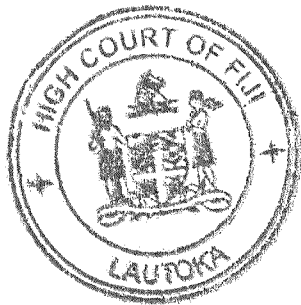
Damages under Compensation to Relatives Act

13. An award under the Law Reform (Miscellaneous Provision) (Death and Interests) Act is made for the benefit of the deceased's estate based on lost years. An award under the Compensation to Relatives Act will be made if the claimant is able to establish dependency.
14. I accept that the Nair's surviving father, having retired, would have depended entirely on Nair's income. The same would apply to Nair's surviving mother.
15. Nair was an only child and only breadwinner.
16. Even if a claimant is unable to establish a claim under the Compensation to Relatives Act, the Court may still award damages under the Law Reform (Miscellaneous Provision) (Death and Interests) Act. And even if an award had been made under the Compensation to Relatives Act, that award is usually merged with any award made under the Law Reform Act.
17. Awards are made under this Act to compensate dependants for the loss of support they would have been entitled to from a deceased breadwinner had the latter lived on.
18. In this case, Nair was 22 years of age and pursuing a trade. However, having found that, I will not make an award for loss of dependency or loss of financial contribution under the Compensation to Relatives Act. The approach of **Fatiaki J in Hari Pratap -v- Attorney General of Fiji**

and Anor Suva High Court Civil Action No. HBC 95/1986 as reported in **Prasad v Hakim** appeals to me. In that case, Fatiaki J declined any assessment of damages for loss of dependency but proceeded straight to assessment of damages for lost years under the Law Reform (Miscellaneous Provisions) (Death and Interests) Act as any assessment based on the former would have to be deducted anyway from any award made on the latter.

SUMMARY OF TOTAL AWARD

Special Damages	\$5,150-00
(this includes legal costs e.g obtaining Letters of Administration etc but <u>not</u> costs for this action)	
General Damages	
• Loss of Expectation of Life	\$2,500-00
• Lost years	\$87,360-00
• Interest	7% under section 3 of the Law Reform (Miscellaneous Provision)(Death & Interests) Act from 09 April 2009 (date of filing of claim) to 03 December 2015 (date of this ruling).
Costs for this action	\$ 1,000-00



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Anare Tuilevuka
JUDGE
03 December 2015