

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Case No.: 37 of 2016

BETWEEN : **MITHUN YOGESH RAJ** of Vunivalu, Labasa, Disabled.

PLAINTIFF

AND : **FIJI SUGAR CORPORATION LIMITED** a statutory body
established under the Fiji Sugar Corporation Act.

DEFENDANT

Counsel : **Mr. A. Sen for the Plaintiff**
Mr. K. Patel for the Defendant
Date of Hearing : **1st December, 2017**
Date of Judgment : **4th July, 2018**

JUDGMENT

INTRODUCTION

1. At the outset of the hearing the Defendant admitted the liability and the hearing was confined only to the assessment of damages. The Plaintiff and a Doctor gave evidence for the Plaintiff and the Defendant did not call any witness.

ANALYSIS

2. The Plaintiff in his evidence said he was born on 19th May, 1981 and the he worked for the Defendant on or around 2nd April, 2014. His weekly salary was \$189.45 after deduction of FNPF contribution of \$16.47. He was 33 years old when the accident happened. He had followed a course in carpentry and worked as a carpenter. He also said that he needed both hands for carpentry. He said his hand was injured by rotating blade of the saw he was working. He also said due to deep cut injury two fingers of the left hand were injured. He said he was in lot of pain and no medication was given for about 30 minutes, though he was taken to the hospital 15 minutes after the injury. He said he was treated with general anesthesia and a surgery was performed. He said it was a severe pain and lot of blood drained from the wound.

3. A surgical intervention was needed to administer with sutures.
4. The injuries as described in P4 are as follows
*'Open fracture 3a to his distal phalynx ring finger (washed out and pinned)
Cut tendon to Flexor pollisus longus at zones 2 and 3 requiring extension into
the carpel tunnel (tendon repair accorded)'*
5. The Plaintiff was discharged after 3 days. But again had to be admitted to the hospital shortly and again and the wound was cleaned and warded in the hospital for further 4 days.
6. He said after discharge for the 2nd time he had attended clinical for 6 months. The Plaintiff in his evidence said that he is asking \$1,500 as special damages.
7. The Plaintiff said that he had gone back to work in 5 months and he was paid 2/3 salary for that period of 5 months he did not attend to work due to the injury. He said he is claiming remaining 1/3 and also FNPF contribution for the said period.
8. Though he had resumed work he said that he had lost the use of 2 fingers in his left hand and he said he cannot grasp things. He said that his left hand mussel is not working to the strength that is required for carpentry work. Though he said three of his fingers having some disability it is an exaggeration and not proved in the medical report. In the cross-examination this was admitted.
9. He said that he came back to work with the Defendant he could not do so and Defendant had terminated his employment and he cannot find employment.
10. He said that he cannot even do sports as he was a goal keeper in soccer who needed both hands and firm grip of the soccer ball, though he can play soccer in any other position. He said he cannot climb or even simple things like putting on cloths or removal of them are difficult without the help of all left arm fingers.

11. He said that he cannot do lot of household things without the help of all the fingers of his left hand.
12. In the cross-examination the Plaintiff admitted that he was a right hander and could gainfully employed though he had lost some utility of two fingers in his left hand. He said that he would try to find employment and according to him he was not so far successful. He also admitted that he could drive an automatic vehicle, without much difficulty.
13. He said that he if fairly experienced in the field of carpentry and could be a supervisor of carpenters, but he said that there is a persistent pain, and he may lose concentration. So, in the analysis of the evidence the Plaintiff can be gainfully employed though he could not grasp with full force from left hand.
14. He also said that twice he tried treatment and had failed and now he is not seeking any treatment. He also admitted that only thumb and index fingers are affected with restricted movement, according to the medical report filed by the Plaintiff marked as P3.
15. In the medical report marked as P3 the impairment is described as follow
*'The examination showed a longitudinal scar over the thenar eminence extending proximally from the base of the thumb metarpal to the flexor crease of the metacarpal-phalangeal joint of the index finger. The scar at its proximal end extends medially along the wrist crease then curving proximally along the middle of the distal forearm. Muscle wasting of the thenar muscles and skin contracture of the web space between the thumb and the index finger were quite evident. **Marked restriction of motion of the thumb was noted due to shin contracture of the first web and loss of function of the long flexor. There was loss of sensation to the palmar side of the thumb.'***
16. The final assessment 27% impairment as a whole person was attributed to the injury in the said medical report. There were no contradictory medical reports submitted and no evidence was produced by the Defendant.

17. The counsel for the Plaintiff had submitted cases to assess general damages. In *Eta Naqeletia v Ram Kumar* HBC 19 of 2010 an award of \$70,000 was made for a person with 27% permanent disability
18. The general damages are made for pain and suffering and for disfigurement of body due to the said injury and considering the awards in the cases submitted by both parties I award a sum of \$75,000 for pain and suffering and disfigurement.
19. An amount for pain and suffering for loss of arm or serious injury will invariably include any disfigurement of the body as well. There is no need to separate award for the disfigurement in a case like this.
20. The Plaintiff is not totally incapacitated he admitted that he can be even a supervisor in a carpentry workshop considering that he had worked for more than 8 years as a carpenter.
21. His weekly salary was \$189.45 and considering that his impairment as a whole person was less than 30% his future loss cannot be calculated on the basis that his total income is lost as done by the Plaintiff's counsel in the submissions. A suitable multiplicand needed to be calculated.
22. Considering that the impairment was 27% as a whole person in my judgment \$189.45/2 and half of FNPF contribution or (50% of \$189.45 and FNPF) X 52 would be a suitable multiplicand as he has the potential for employment even in the same field he was engaged though not necessarily in the same capacity. I have considered that reduction of movement of functionality in thumb and index fingers are important for carpentry but it is not total loss and should not be calculated in that basis.
23. Since the Plaintiff was 33 years old a suitable multiplier is also needed. Considering the age of the Plaintiff at the time of the accident and selection of suitable multipliers in judgments, the multiplier of 8 would be suitable considering the contingencies of life and also unpredictability of future events.

24. So the future loss of wages is $\$189.45/2 \times 52 \times 8 = \$39,405.60$
 Future loss of FNPF is $\$16.47/2 \times 52 \times 8 = \$3,425.76$
 Total Future loss is $\$42,831.36$
25. No amount can be granted for supplementary loss as claimed by the Plaintiff as there is no certainty as to availability of such work and the amounts earned to consider further loss.

Special Damages

26. The Plaintiff had claimed for special damage of \$1,500 and there is no dispute as to said claim so I award \$1,000 for that considering the time of healing and medication.
 Loss of wages for 5 months is $\$189/3 \times 20 = \1263
 Loss of FNPF for 5 months is $\$16.47/3 \times 20 = \219.60
 Total is $\$2,482.60$
27. I have also granted an interest of 6% on special and general damages from 21.7.2016 to 1.12.2017 (498 days).
28. The cost of this action is summarily assessed at \$3,000 to be paid within 21 days.

Calculation

29.

Special Damages	\$ 2,482.60
Pain and Suffering	\$ 75,000.00
Interest 6% for 498 days	\$ 6,342.96
Future earning loss	\$ 42,831.36 (including FNPF)
Total Damages	\$126,656.92

30. Therefore judgment for the Plaintiff against the Defendant in the sum of \$126,656.92 and cost of \$3,000 is awarded.

FINAL ORDERS

- a. The Plaintiff is awarded damages in a sum of \$126,656.92.
b. The cost of this action is summarily assessed at \$3,000.

Dated at Suva this 4th day of July, 2018



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Justice Deepthi Amaratunga
High Court, Suva