

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL JURISDICTION

Civil Action No. HBC 23 of 2017

BETWEEN

JONE SOKIA (1st Named Plaintiff)

RAKESH KUMAR LAL (2nd Named Plaintiff)

SURYA DEO (3rd Named Plaintiff)

PENAIA TUIDRAVU (4th Named Plaintiff)

INDAR VEER KUMAR (5th Named Plaintiff)

PLAINTIFFS

AND

MOHAMMED JAMAL of Korokadi, Lekutu, Bua, P.O. Box 3057,
Labasa

1st DEFENDANT

AND

THE PERMANENT SECRETARY FOR MINISTRY OF
INFRASTRUCTURE & TRANSPORT, Nasilivata
House, 87 Ratumara Road, Samabula.

2nd DEFENDANT

ATTORNEY GENERAL OF FIJI

3rd DEFENDANT

Counsel : Mr. A. Sen for the Plaintiff
Mr. A. Kohli for the Defendant

Date of hearing : 14th August, 2018

Date of Judgment : 25th September, 2018

JUDGMENT

Assessment of Damages

- [1] The plaintiff instituted these proceedings seeking to recover damages for the injuries caused to him due to the negligence of the 1st defendant.
- [2] At the time the plaintiffs were injured they were travelling in the vehicle driven the 1st defendant. The plaintiffs in this action and the plaintiff in action No. 22 of 2017 were travelling in the same vehicle. When both these matters came up for trial on 23rd April, 2018, the parties to this action agreed that they would be bound by the decision in HBC 23 of 2017 as to the negligence of the 1st defendant. On the same day the plaintiffs in both matters filed notice of discontinuance to discontinue proceedings against 2nd and 3rd defendants on the basis that the 2nd defendant had agreed to pay compensation. The court accordingly discontinued the proceedings against the 2nd and 3rd defendants. The parties thereafter requested the court to conduct the trial on the question of negligence and to decide the question of damages on another day after the 2nd defendant pays the compensation which the court allowed. The court in its judgment delivered on 09th May, 2018 found that the accident was due to the negligence of the 1st defendant.

- [3] The plaintiff called Dr. Sharma from Labasa Hospital to testify as to the medical condition of the plaintiffs. He has not seen this patient but he gave evidence on the medical reports which were tendered in evidence at the hearing.
- [4] In his evidence the doctor referring to the medical report (P4) said that **Jone Sokia** (1st named plaintiff) Dislocation of right shoulder and he was treated in hospital for ten days. He had presented himself for assessment on 30th June, 2016 after one years and six months from the accident. The report says that upon interview he was kempt and well-presented and that he was appropriate and fully conscious. However, the report also says that he finds it difficult to secure steady employment.
- [5] The medical report or the doctor's evidence does not say that this plaintiff is not medically fit to work or he has a permanent disability. The 2nd named plaintiff has not explained why he cannot secure a steady employment. There is no evidence that the 1st defendant refused to give him work after he was discharged from the hospital and whether the 1st defendant paid his salary for the period he was in hospital. Therefore, this plaintiff is not entitled to loss of future earnings. However, considering the medical evidence and the fact that he suffered 5% permanent impairment I award the **Jone Sokia** the 1st named plaintiff **\$30,000.00** (Thirty thousand) as damages for pain and suffering and **\$500.00** transportation and medication.
- [6] The medical report of **Rakesh Kumar Lal** (2nd named plaintiff) was tendered in evidence as "P5". The said medical report says that he came to the hospital On 31st December, 2014, the day of the accident with complaints of right shoulder pain, left arm, hand pain with backache and neck pain. The hospital had done an X-ray and it had not revealed broken bone or shoulder dislocation. Again he had gone to the hospital on the following day complaining of pain around his neck and back. The hospital had done another X-ray of chest and cervical spines but no fractures or any malalignment had been shown.
- [7] In his evidence this plaintiff tendered his wages slip as "P14" and said for one year he did not go to work because his whole body was paining. He claims as special damages \$200.00 for medical expenses and \$300.00 for travelling.
- [8] With all this pain he has not seen a doctor after 01st January, 2015 that is the day after the accident. In my view this evidence is grossly insufficient for the court to decide that he could not go to work because of the injuries sustained in the accident. However, he is entitled to some compensation for pain and suffering and for transportation and medication.

- [8] Taking all these factors into consideration I award the 2nd named plaintiff Rakesh Kumar Lal \$10,000.00 for pain and suffering and \$500.00 for medication and transportation.
- [9] The 3rd named defendant Surya Deo in his evidence said he earned \$5.11 per hour and his weekly pay was \$344.92. He also said that six months after sustaining injuries he went to work and now he works for the 2nd defendant. For the period of six months his wages have not been paid by the Ministry. He admitted that he was paid \$6000.00 as workmen's compensation.
- [10] According to the evidence of the doctor and his medical report he has not sustained any serious injuries. There had been only abrasions on his right shoulder and right leg. He had been given antibiotics and tetanus toxoid and discharged from the hospital on the same day. Thereafter, he has not seen a doctor during the period of six months he claimed that he was in pain and could not go to work. There is no medical evidence that there was a permanent impairment or he could not go to work. Since he is now working for the 2nd defendant there is no loss of future earning to the 3rd named plaintiff. For these reasons I award the 3rd named plaintiff Surya Deo \$10,000.00 for pain and suffering and special damages \$200.00 for medication and transportation.
- [11] The 4th named plaintiff Penaia Tuidravu who was born on 12th January, 1966 was at the time of the accident working for the 2nd defendant and he was paid \$5.25 per hour. In the accident his left leg was injured and had been in hospital for 10 days. He said after discharging from hospital he could not go to work for one year.
- [12] According to the medical report dated 28th July, 2017 (P3) his permanent impairment is 23%. It appears from the medical report that he had also undergone a surgery and also the doctor has recommended him another surgery. He said when he reported back to work he was not given the same work but light work. However, there is no evidence that he was not paid the same wages. Therefore, he is entitled to wages for that year. He admitted that he was paid \$17,916.08 as workmen's compensation.
- [13] Taking all these factors into consideration I award \$75,000.00 to the 4th named plaintiff as general damages for pain and suffering. Loss wages \$10103.60 (194.30 x 52), loss of FNPF \$878.28 (16.89 x 52), Loss of FNPF Employer Contribution \$1150.24 (22.12 x 52) and loss of allowances \$ 6552.00 (126 x 52). The plaintiff is also awarded \$1000.00 for medication and transportation.
- [14] The plaintiff also claimed \$5200.00 for loss of supplementary income but evidence does not say what this supplementary income is.

[15] The 5th named plaintiff Indar Vir Kumar was working for the P.W.D on contract extendable every three months. He said his whole body was paining. However, he has been discharged from the hospital on the same day. He said after discharging from the hospital he was in bed for 6 weeks and thereafter the PWD did not employ him. He said taxi fare to go to the hospital cost him \$500.00 and medication costs him \$300.00 but in the statement of claim he has only claimed \$50.00 for medication and transportation. He has been paid \$7500.00 and workmen's compensation. He said he is doing light work now. There is no permanent impair assessment of this plaintiff. The medical examination form was tendered in evidence which says 47year old male who was involved in an accident. Examination finding is suggestive mild injury and laceration of scalp. The report says further the range of motion of the left hip joint is normal but the he complained of pain.

[16] He has only claimed as special damages \$404.44 including loss of wages, loss of FNPF, loss of FNPF (employer contribution) and loss of allowances for a week. I see no reason not grant that amount. I also award \$10,000.00 as damages for pain and suffering.

[17] The damages awarded to each of the defendant are as follows:

1.	Jone Sokia (1 st named plaintiff)	-	\$30,500.00
2.	Rakesh Kumar Lal (2 nd named plaintiff)	-	\$10,500.00
3.	Surya Deo (3 rd named plaintiff)	-	\$10,200.00
4.	Penaia Tuidravu (4 th named plaintiff)	-	\$94,684.12
5.	Indar Vir Kumar (5 th named plaintiff)	-	\$10,404.44

The plaintiffs are also entitled to interest at the rate of 6% per annum from the time of filing of the action until the date of this judgment.




Lyone Seneviratne

JUDGE

25th September, 2018