

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 132 of 2015

Rakesh Kumar
Plaintiff

v

Water Authority of Fiji
Defendant

Counsel: Mr Daniel Singh for the Plaintiff
Mr A. Vulaono for the Defendant

Date of Hearing: 3rd March, 2018

Date of Judgment: 3rd May, 2019

Judgment

1. The plaintiff, in his amended statement of claim states that on 10th January, 2013 he was playing soccer at Naitonitoni Ground, Navua. When he left the grounds to get the ball, his left leg fell into an uncovered waterlogged manhole chamber. He sustained injuries. His injury was caused by the defendant's breach of statutory duty and/or by the negligence of the defendant, their servants and/or agents. The particulars of negligence are pleaded. The defendant, in its statement of defence neither admits nor denies the claim.
2. On 15th February, 2018 Mr Singh, counsel for the plaintiff stated liability was admitted, as was confirmed by Mr Vulaono, counsel for the defendant. The hearing proceeded on 3rd March, 2018 on the assessment of damages.

The determination

3. The plaintiff, (PW2) in evidence in chief said that he is presently employed as a Youth Administrator at the Ministry of Youth and Sports. After he fell into the uncovered manhole, he was taken to the Navua hospital. He was given pain killers and brought to CWM hospital. His left leg was put in a cast and he was discharged. After two weeks, he was operated. He was in crutches for two months. He feels his left leg is shorter than the other. He feels pain in cold and hot weather. His ankle is swollen. He cannot walk long distances nor stand on his left foot. He has stopped playing soccer. He returned to work three to four months after the injury. He was a Recorder at Navua hospital. His contract was not renewed on 2nd October, 2014 as his ability to work had gone down.
4. It transpired in cross examination that he was in the CWM hospital for two days, as provided in the medical report. He said that he made ten trips to CWM hospital. His services were terminated by his employer, as he was on crutches.
5. PW1, (*Dr V. Scott Buadromo, Surgeon, CWM hospital*) said that the plaintiff suffered a fracture of "*medial mellolus*" on the inner side ankle of his left leg. He examined him a week before the hearing. He was initially treated "*non-operatively*" with a plaster of paris cast. Thereafter, he underwent an operation, as the fracture had displaced. Plates and screws were put in. One screw was removed three years post operation, due to pain. He examined the plaintiff, the week before. He can walk more than 200 meters, but given that he is a field worker, long distance walking will result in pain and swelling. His condition will worsen, as he ages, due to "*degenerative changes*". It is "*highly likely*" that he would develop arthritis. The screws can result in future pain and suffering.
6. The plaintiff has suffered pain since he befell the accident on 10th January, 2013. His left leg was put in a cast of plaster of paris, in the first instance. He underwent surgery, as the fracture had displaced. The medical report of 2nd April, 2013 provides that the plaintiff was admitted to the CWM hospital on 4th February, 2013. He underwent "*an open reduction and internal fixation for his fracture*". He was discharged on 6th February, 2013 with a "*below knee cast.. and has been followed up accordingly in the fracture clinic*". The medical evidence provides that there will be some degree of impairment.

7. Mr Vulaono objected to PW1 producing the plaintiff's medical report made last week, on the ground it was not disclosed to the defendant in time. Mr Singh said that he will not produce it.
8. In determining damages, it is necessary to consider general level of comparable awards for pain and suffering.
9. The plaintiff, in his closing submissions claims a sum of \$ 35,000 for pain and suffering and loss of amenities of life. Mr Vulaono submits an award between \$ 15,000 and \$ 25,000 is reasonable.
10. Both counsel have cited several authorities in their respective closing submissions. The injuries suffered in the following cases cited by Mr Vulaono are comparable.
11. In *Narayan v Native Land Trust Board*, [2008] FJHC 291; HBC 275 of 2004 L (20th June, 2008) the plaintiff suffered injuries in a motor vehicle collision. His medical records documented a fracture on his left lower limb and plaster of paris was applied. He was 31 year old. There was no deformity nor disfigurement. No evidence was presented to indicate that the injuries may lead to permanent impairment. He was awarded general damages for pain and suffering in a sum of \$ 5000.00.
12. In *Krishna v Standard Concrete Industries Limited*, [2008] FJHC 42; HBC 17 of 2006 (19th March, 2008) the plaintiff, a welder by profession had a fracture of the right ankle bone at work site and screws and plates were placed by an operation. It was found that there was no disability. A sum of \$14,000.00 was awarded as general damages for pain and suffering.
13. The facts in *BW Holdings Limited v Vuli* [2010] FJCA 16; ABU 89 of 2008 (26th February, 2010) are similar to the present case. The plaintiff/respondent fell into an uncovered drainage chamber when she was walking along the Suva foreshore. She suffered "*fracture of right distil radius*" and was placed in a full cast of plaster. The award of \$15,000 as general damages for pain and suffering was increased to \$20,000.00 by the Court of Appeal.

14. Calanchini AP (as he then was) in *Nasese Bus Co. Ltd v Chand*, [2013] FJCA 9; Civil Appeal ABU 40 of 2011(8 February,2013) at paragraphs 49 to 50 stated:

In my judgment not only is it necessary to consider recent decisions when comparing awards of damages, it is also appropriate for this Court to review on an on-going basis awards of damages for non-pecuniary loss in the case of personal injuries. In Heil -v- Ranken [2000] 2 WLR 1173 at page 1192 the Court of Appeal observed:

"But, in considering whether the level of the awards of damages for non-pecuniary loss is too low, there is no change in the law involved even if we come to the conclusion that a change in the level is required. The court is doing no more than considering the adequacy of the level of current awards by applying existing principles and in so far as they are inadequate, bringing them up to date."

In the absence of any legislation in Fiji providing guidance for assessing or setting limits on the award of non-pecuniary damages in personal injury actions, the observations of the Court of Appeal, in my judgment, can be regarded as an endorsement of the statement made by Lawton LJ in Cunningham -v- Harrison [1973] QB 942 at page 956:

"_____ if judges do not adjust their awards to changing conditions and rising standards of living, their assessments of damages will have even less contact with reality than they have had in the recent past or at the present time."

15. In the light of the principles applicable to assessing damages, I assess the general damages for pain and suffering and loss of amenities of life in the circumstances of this case at \$ 35,000.00 (Thirty five thousand dollars).

Special damages

16. The plaintiff gave evidence in respect of his claim for special damages as pleaded.
17. He claims \$ 1900 as transport, \$2 for medication and \$90 for transport to see his solicitor in Suva totaling a sum of \$992.00.
18. Although there were no receipts produced for travel expenses, the evidence established that the plaintiff had to travel to hospital and clinic on several occasions. I allow the claim for transport on 5 occasions and medication in the sum of \$2.

19. In *Narendra Kumar v Sairusi Drawe, Minister for Home Affairs and Auxillary Army Services and The AG*, [1990]36 FLR 90 at page 95, Palmer J stated:

Notwithstanding that not a single receipt has been produced in evidence I am satisfied from the Plaintiff's evidence that he paid those amounts

20. The plaintiff, in his prayer claims past and future economic loss, but has not pleaded any fact in support, as pointed out by Mr Vulaono.

21. Singh J in *Krishna v Standard Concrete Industries Limited*, (*supra*) said that a "plaintiff's prayers must be supported by the pleadings. There must be enough facts pleaded in the body of the statement of claim to support every prayer. ...there is inadequate information in the body of the claim for plaintiff to seek loss of wages".

22. Calanchini AP (as he then was) in *Nasee Bus Co. Ltd v Chand*, (*supra*) at paragraph 65 stated:

In a personal injury claim a plaintiff should provide in his pleadings (with an up to date amendment at the start of the trial) full details of his past loss of earnings. There is also an obligation on the part of a plaintiff to particularise the facts upon which calculations for past loss of earnings have been made.

23. The claim for past and future economic loss is declined.

Interest

24. The plaintiff has claimed interest. Interest on general damages is awarded to compensate a plaintiff for being kept out of the capital sum. In the exercise of my discretion, I award interest at 6% per annum on the general damages awarded from date of service of writ (9th August, 2016) to date of trial and 3% per annum on special damages awarded from date of accident to date of trial .

Orders

25. The total sum awarded to the plaintiff as damages is \$38844.00 made up as follows:

General damages	35000.00
Interest on general damages	3325.00
Special damages	452.00
Interest on special damages	67.00
Total	\$38844.00

There will therefore be judgment for the plaintiff against the defendant in the sum of \$38844.00.00 together with a sum of \$ 1500 payable by the defendant to the plaintiff, as costs summarily assessed.



A.L.B. Brito-Mutunayagam
Judge
3rd May, 2019