IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 124 of 2014

BETWEEN: **JONE RAIQEU** Junior of Namara, Nalawa, Rakiraki, Student by his father and next friend **JONE RAIQEU** Senior of Namara, Nalawa, Rakiraki.

Plaintiff

AND: **RAMESH CHAND** of Mid Road, Rewasa, Rakiraki, Farmer.

1st Defendant

AND: **RINAL RITIN CHAND** of Mid Road, Rewasa, Rakiraki, Farmer.

2nd Defendant

Before : Master U.L. Mohamed Azhar

Appearance: Mr. R. Chaudhary for the Plaintiff
Both Defendants are absent and unrepresented

Date of Decision: 17th July 2020

DECISION

Accident – claim for personal injury – no defence or counterclaim – interlocutory judgment by default – damages – special damages – necessity of proof – pain and suffering and loss of amenities of life – physical and social limitation – guiding principle – loss of future earning – loss of earning capacity – interest.

01. This is the Notice of Assessment of Damages, Interest and Cost, filed by the plaintiff pursuant to Order 37 rule 1 of the High Court Rules, following the Interlocutory Judgment sealed by him on 18th of April 2016 against both defendants in this case. The plaintiff on 22.11.2011, with some others, was travelling in a tractor-trailer belonged to the first defendant and driven by the second defendant, in Rakiraki. The tractor stopped and everyone, including the plaintiff got out of the trailer. The second defendant instead of moving the tractor forward reversed it and the left big tyre of the tractor went over the

left leg of the plaintiff, causing fracture of left distal tibia. The plaintiff being a minor sued, by his father and next friend, the defendants and claimed a special damage in sum of $764.00 and general damages for pain and suffering, loss of amenities and lose of earning capacity together with the interest and cost.

02. The plaintiff initially could not serve the writ on the defendants and it expired; however the plaintiff got it extended with the leave of the court and then served it on the defendants. The defendants did not file the acknowledgment or the defence. The plaintiff then sealed the interlocutory judgement for default against both defendants.

03. At the trial for assessing the damages the plaintiff testified and called the Orthopedic Surgeon Dr. Eddie McKay attached to Lautoka Hospital to give evidence on his behalf. The plaintiff and his witness tendered in evidence two Exhibits – his Birth Certificate and Medical Report. The plaintiff, having completed his Fiji School Leaving Certificate in 2012, was farming with his father in his farm. He was, at the time of giving evidence, following a course in Agriculture at Fiji National University to become a professional farmer. On 22.11.2011 he was seated on a tractor-trailer driven by the second defendant with others, and all of them got out of it at a destination. At that time the second defendant, instead of driving forward, negligently reversed the tractor. The tractor's big tyre went over the leg of the plaintiff near ankle and he fell down. The brother of the plaintiff who was with them shouted to stop the tractor and the second defendant then stopped it. The plaintiff was in severe pain. He was first taken to Rakiraki hospital, where he was given some injections for pain and thereafter was transferred by an ambulance to Lautoka hospital. The X-ray was done at Lautoka hospital and it showed closed fracture of left distal tibia. The left distal tibia was manipulated under anesthesia and he was discharged on 24.11.2011. He was readmitted on 06.12.2011 due to infected wound on the left ankle and treated with antibiotics and wound debridement. It must be noted here that, the injury was actually on left ankle of the plaintiff and he showed the scar to the court during his testimony. However, there is a typographical error on the Medical Report which says the injury was in his right ankle.

04. The plaintiff claims damages under three different heads, namely special damages in sum of 764.00, damages for pain and suffering and loss of amenities of life in sum of $ 20,000.00 and loss of earning capacity in sum of $ 10,000.00. In addition, he claims interest at the rate of 6% on the amount for pain and suffering and loss of amenities from August 2014 till November 2017.

05. It is the general principle of the law that the compensation should, as nearly as possible, put the party who has suffered in the same position as he would have been in, if he had

not sustained the wrong. Lord Blackburn in **Livingstone v. Rawyards Coal Co.** (1880) 5 AC 25, held at page 39:

> I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

06. The court, in assessing the damages for the injury caused to any party due to the tortuous act or omission of other, should consider the several factors such as injury, pain and loss of amenities, expenses incurred, loss of earnings and future losses etc. However, tort-sufferer should not make a profit out of the wrong done to him. Hamilton LJ in **Harwood *v.* Wyken Colliery Company** [1913] 2 K.B 158 stated at pages 169 and 170 that:

> In assessing damages for injury caused to a plaintiff workman by the tortious negligence of the employer or his servants a jury would be directed that, their damages being a compensation once for all, they must consider not merely past injury, pain and suffering endured, expenses incurred and earnings lost, but also future loss. They would have to measure in money the future effects of permanent or continuing disablement, but they must consider also the possibility of future diminution or loss of earnings arising independently of the cause of action, from increasing age, from accident or illness in futuro, and so forth. They would be directed that they had to give solatium for suffering and compensation for disablement, but so that the tort-sufferer should not make a profit out of the wrong done him, the object being by the verdict to place him in as good a position as he was in before the wrong, but not in any wise in a better one.

07. The plaintiff in his testimony has given breakups for his claim of special damages in sum of $ 764.00. The total sum of $ 764 includes the three trips in carrier from Namara to Lautoka hospital at the rate of $ 70 per trip; four trips from Koronubu, Ba to Mission Hospital for check up at the rate of $ 20 per trip; three trips from Yalalevu, Ba to Mission Hospital by carrier at the rate of $ 8 per trip; two trips he made from Lautoka to Sigatoka by carrier for the purpose of indigenous massaging of his leg at the rate of $ 150 per trip and another $ 150 for the medication such as bandages, paracetamol, painkillers, plasters

etc. that he bought from the pharmacy. However, there is no single receipt for any of such expenses claimed to have incurred to him.

08. It is settled that, the special damages have to be pleaded and proved (Lord Goddard in **British Transport Commission v Gourley** [1956] AC 185). The specific damages are accrued and ascertained financial loss which the plaintiff had incurred. Unless agreed by the parties, special damages should be expressly pleaded; they must be claimed specifically and proved strictly (per: Edmond David LJ in **Cutler v Vauxhall Motors** [1971] 1 QB 418). The plaintiff pleaded the special damages claimed in this case; however, the question is whether those damages have been proved. Bowen L.J. in **Ratcliffe v Evans** [1892] 2 Q.B. 524 at pages 532 and 533 held that,

> The necessity of alleging and proving actual temporal loss with certainty and precision in all cases of the sort has been insisted upon for centuries: Lowe v.Harewood W.Jones.196; Cane v. Golding Sty.176; Tasburgh v. Day Cro.Jac. 484; Evans v.Harlow 5 Q.B.624.But it is an ancient and established rule of pleading that the question of generality of pleading must depend on the general subject-matter: Janson v.Stuart 1 T.R.754; Lord Arlington v Merricke 2 Saund. 412, n.4; Grey v. Friar 15 Q.B.907; see Co.litt 303d.Westwood v. Cowne 1 Stark. 172; Iveson v. Moore 1 Ld.Raym. 486. In all actions accordingly on the case where the damage actually done is the gist of the action, the character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.

09. DEANE J in **Commonwealth of Australia v Amann Aviation Pty Limited [1991] HCA 54** held at paragraph 4 of his judgment that;

> The frequent inability of curial procedures to determine with certainty what has happened in the past, let alone what would have been or what will be, necessarily gives rise to a need for a number of subsidiary rules governing the determination of the loss or injury which a plaintiff has actually sustained by reason of a wrongful act. One such subsidiary rule is that, even in an action for repudiation or breach of contract where damage

> is not an element of the cause of action, a plaintiff bears the onus of establishing the extent of her loss or injury on the balance of probabilities. To satisfy the requirements of that rule, a plaintiff must, if she is to recover more than a nominal amount in such an action, affirmatively establish assessable damage, that is to say, loss or injury which is capable of being measured in monetary terms (see, e.g, Luna Park (N.S.W.) Ltd. v. Tramways Advertising Pty. Ltd. [1938] HCA 66; (1938) 61 CLR 286, at pp 301, 307, 311, 312). In many cases, proof of the full extent of the loss or injury sustained will involve establishing an evidentiary foundation for positive and detailed ultimate findings by the court upon the balance of probabilities.

10. The court is not insisting on the plaintiff that, he should provide more evidence for his testimony of purported expenses, but there must be some evidentiary foundation for the court to believe the accuracy of the amount claimed. The plaintiff's explanation for not tendering any receipts for such expenses was that, he used the carriers and taxis for his transport and the carriers and taxi drivers are not giving receipts. For his failure to provide the receipts for medicines claimed to have been bought him from the pharmacy, he stated that, he did not keep those receipts with him. The court does completely reject the oral evidence of the plaintiff on his claim. Certainly, the plaintiff would have incurred some expenses for transport and other medication. However, the question is how accurate the amount claimed is? The accuracy of the amount claimed cannot be ascertained only on the oral evidence of the plaintiff, because he merely answered affirmatively for all the suggestions in relation to those expenses. Therefore, I am unable to award the total amount claimed by the plaintiff, but allow a sum of $ 500.00 as the special damages.

11. The second head is the pain and suffering and loss of amenities of life. The plaintiff claimed a sum of $ 20,000.00 under this head. The leading English authorities on the principles applicable to damages for pain and suffering and loss of amenity are **Wise v Kaye** [1962] 1 QB 638 (CA), and **H West & Son Ltd v Shephard** [1964] A.C. 326. Though the damages for both pain and suffering and loss of amenities are generally claimed together under one head, there is a clear distinction between damages for pain and suffering and damages for loss of amenities. The former depend upon the plaintiff's personal awareness of pain, his capacity for suffering. But the latter are awarded for the fact of deprivation-a substantial loss, whether the plaintiff is aware of it or not (per: *Lord Scarman* in **Lim *v.* Camden Health Authority** [1980] AC 174 at 188). Further the principle of the common law is that a genuine deprivation, whether it is pecuniary or non-pecuniary in character, is a proper subject of compensation. The pecuniary loss was recognized in **Phillips v. London and South Western Railway Co.** (1879) 5 C.P.D.

280, and The House of Lords recognized the non-pecuniary loss in **H. West & Son Ltd. v. Shephard** (supra).

12. The loss of amenities of life refers to the loss or reduction of a claimant's mental or physical capacity, suffered as a result of personal injuries, to do the things he used to do before suffering those injuries. In other words, it is deprivation of plaintiffs/claimants of the capacity to do the things which before the accident they were able to enjoy, and prevention of full participation in the normal activities of life. Loss of amenity includes variety of physical and social limitations inherent in the injury itself, such as no longer being able to engage in pre-accident interest such as hobbies and sports (**H West & Son Ltd v Shephard** [supra]); Loss of the capacity to use one's limbs (**Hunt v Severs** [1994] 2 AC 350); impairment of any one or more of the five senses (**Cook v J L Kier & Co Ltd** [1970] 2 All ER 513 and **Thompson v Smiths Shiprepairers (North Shields) Ltd** [1984] QB 405); loss of marriage prospects and deprivation of sexual pleasure (**Moriany v McCarthy** [1978] 1 WLR 155 and **Cook v J L Kier & Co Ltd** [supra]); inability to play with one's children (**Hoffman v Sofaer** [1982] 1 WLR 1350); loss of a craftsperson's pleasure and pride in work (**Morris v Johnson Matthey & Co Ltd** (1968) 112 SJ 32); loss of enjoyment of a holiday (**Ichard v Frangoulis** [1977] 2 All ER 461 and **Hoffman v Sofaer** [supra]); and inability to fish (**Moeliker v A Reyrolle and Co Ltd** [1977] 1 All ER 9). The above are some of the deprivation that attracted the attention of the courts in personal injury matters; however the damages under this head may take account of wide range of factors.

13. Undoubtedly, the courts which assess the damages for non-pecuniary deprivation and quantify it in monetary terms cannot come to a scientifically accurate amount. The courts may consider the comparable cases both in local and foreign jurisdiction and direct their mind to come to a fair and consistent amount of compensation, not forgetting the fact that, the amount so ordered is the one-time payment which cannot be varied by subsequent contingencies, even though those contingencies are direct results of the tortious act or omission. The Supreme Court in **The Permanent Secretary for Health and Another v Kumar** [2012] FJSC 28; CBV0006.2008 (3 May 2012) laid down the guiding principle in measuring the quantum of compensation for pain and suffering and loss of amenities and held at paragraph 37 that:

> There are three guiding principles in measuring the quantum of compensation for pain and suffering and loss of amenities. First and foremost, the amount of compensation awarded must be fair and should compensate the victim of the injury in the fullest possible manner, bearing in mind that damages for any cause of action are awarded once and for all, and cannot be varied due to subsequent eventualities, some of which could

not even be anticipated at the stage a court makes an award. Hence, an award of damages should not only be fair, but also assessed with moderation, even though scientific accuracy is impossible. The second principle is that the sum awarded must to a considerable extent be conventional and consistent. Thirdly, regard must be had to awards made in comparable cases, in the jurisdiction in which the award is made. However, it is also open for a court to take into consideration a comparable award made in a foreign jurisdiction, particularly in cases where the type of injury is not very common, provided that the court takes into consideration differences in socio-economic and other relevant conditions that might exist between the two jurisdictions.

14. Furthermore, it remains the general practice of the courts when awarding damages in respect of verity of non-pecuniary losses to make a one inclusive sum or a global award without dealing them as separate items (**H West & Son Ltd v Shephard** (supra) at 365; **Fletcher v Autocar and Transporters Ltd** [1968] 2 QB 322, 336C-E, 341-342, 364B-C). The plaintiff testified on the pain and the suffering caused due to this accident and his inability to do what he did before, like playing and working in farm. The second witness – the Orthopedic Surgeon testified that, with the injuries sustained by the plaintiff, it is highly possible that he will develop osteoarthritis in future, because the ankle is the weight bearing joint and it is more stressful. The plaintiff too testified that, he gets pain during the cold weather. The doctor further testified that, it can be debilitating and affecting the daily activities of the plaintiff. Though there is a treatment, which is the joint replacement, it is expensive. The general advice by the medical experts for this kind of situation is to give less weight and start using walking stick.

15. The plaintiff is 24 years old young man and this accident happened when he was a minor. He was playing rugby before the incident and he is unable to play now as he played before. Furthermore, the being the farmer by profession, the plaintiff is to spend most of his life in farm field which is uneven. The nature of his work requires hard activities unlike the other office workers and it is highly possible that these daily activities may exaggerate his aches and pain and even may lead to osteoarthritis sooner than expected. If that situation arises, the young man has to suffer rest of his life. I bear in mind the three guiding principles laid down by the Supreme Court in **The Permanent Secretary for Health and Another v Kumar** (supra) and also consider other cases such as **Tuberi v Gopal** [2001] 1 FLR 47 (2 February 2001) and **Appal Swamy Naidu v Bechni and Anohter** FCA Civil Appeal No. 43 of 1974 (4 November 1974, unreported). The circumstances of those cases are not exactly same as in the present case and each case must be considered on its own merits. However, they can guide the court in arriving to a conventional and consistent amount of damages. Finally I award a global sum of $

15,000.00 for pain and suffering and loss of amenities of life and another sum of $ 1,000.00 for scarring. This amount would not only be fair but also be consistent with what has been complained of, in this case.

16. The next head of damages claimed by plaintiff is the damages for loss of earning capacity. He claims a sum of $ 10,000.00 under this head. It must be emphasized at the outset that, the loss of earning is different from loss of earning capacity. Lord Denning MR in **Fairley v John Thompson (Design and Contracting Division) Ltd** [1973] 2 Lloyd's Report 40 explained the difference between these two heading and said at page 42 that:

> It is important to realize that there is a difference between an award for loss of earnings as distinct from compensation for loss of earning capacity. Compensation for loss of future earnings is awarded for real assessable loss proved by evidence. Compensation for diminution of earning capacity is awarded as part of general damages.

17. Before the decision in **Jefford v Gee** [1970] 1 All ER 1202, the damages for loss of earning capacity were included as an unspecified part of the general damages for pain, suffering and loss of amenity. However, after that decision the damages under this head must be separately assessed and quantified. **Ashcroft v Curtin** [1971] 3 All ER 1208 and **Smith v Manchester Corporation** (1974) 17 KIR 1 are some of the cases which separately considered the damages for this head. The effect of this head is that, the damages are granted if the plaintiff's chances in the future of getting in the labour market work or getting a work as well paid as before the accident have been diminished by his injury. The court will grant damages under this head only in cases where a plaintiff is, at the time of the trial, in employment, but there is a risk that he may lose this employment at some time in the future and may then, as a result of his injury, be at a disadvantage in getting another job or an equally well paid job (per: *Browne LJ* in **Moeliker v A Reyrolle and Co Ltd** [1977] 1 All ER 9 at 15).

18. The Fiji Court of Appeal, contemporary with English courts, unanimously recognized this head of damages in **Appal Swamy Naidu v Bechni and Anohter** (supra). Henry J.A (with whom Gould V. P. and Marsack J.A. agreeing) held that:

> With the greatest respect to the learned judge he has not addressed himself to the real issue. His finding is no more than a finding that Appellant is not at the present time suffering any financial loss as the result of his injury, and, if he continues his present employment, he will never suffer any such loss. The real question is whether his capacity to earn has been adversely

affected, and, if so, what is the reasonable compensation for such loss. There is no justification for limiting this head of damage to loss of his present employment resulting from his disability. What if that employment is terminated for any other reason? Is he to be bound to be an employee for one employer all his working life and lose all chance of choice?.....

There is clear evidence that appellant's capacity to earn has been adversely affected, although, as long as his present employment continues, he will get as much in remuneration as if he had not been injured and had remained in that employment. Other avenues of exploiting his abilities, either as an employee or on his own account or in other localities, are adversely affected. Any termination of his present position for any cause will place him on the market as a man with a considerable impairment in respect of the class of the work he has qualified himself for and chosen for his occupation. In my view the learned judge erred in law and in fact in holding that appellant suffered no loss in his capacity to earn. For this some reasonable assessment must be made in fixing general damages.

19. The loss of earning capacity arises at the time of and in consequence of the accident; however, its financial consequences may or may not arise or may arise at any future. Orr LJ in **Clarke v Rotax Aircraft Equipment Ltd** [1975] 3 All ER 794 said at page 798 that:

> 'It is true, as stated by Scarman LJ in *Smith v Manchester Corpn*, that the loss of earning capacity has arisen at the time of and in consequence of the accident, but its financial consequences may or may not arise at all or may arise at any future time.'

20. Accordingly, a plaintiff, who is employed at the date of the trial and earns as much as he was earning before the accident and injury or more, has no claim for loss of future earnings. If he is earning less than what he was earning before the accident and injury, he has a claim for loss of future earnings which is to be assessed on the ordinary multiplier and multiplicand basis. However, he may have a claim, or an additional claim, for loss of earning capacity if he should ever lose his present job. But, the court will not grant compensation under this head of loss of earning capacity if it comes to the conclusion that there is no 'substantial' or 'real' risk of the plaintiff's losing his present job in the rest of his working life.

21. Browne LJ in **Moeliker v A Reyrolle and Co Ltd** (supra) explained as to how the court should assess the damages under this head and detailed the factors to be considered by the court. His Lordship held at pages 16 and 17 that:

> Where a plaintiff is in work at the date of the trial, the first question on this head of damage is: what is the risk that he will, at some time before the end of his working life, lose that job and be thrown on the labour market? I think the question is whether this is a 'substantial' risk or is it a 'speculative' or 'fanciful' risk (see *Davies v Taylor*, per Lord Reid and Lord Simon of Glaisdale). Scarman LJ in *Smith v Manchester Corpn* referred to a 'real' risk, which I think is the same test. In deciding this question all sort of factors will have to be taken into account, varying almost infinitely with the facts of particular cases. For example, the nature and prospects of the employers' business: the plaintiff's age and qualifications; his length of service; his remaining length of working life; the nature of his disabilities; and any undertaking or statement of intention by his employers as to his future employment. If the court comes to the conclusion that there is no 'substantial' or 'real' risk of the plaintiff's losing his present job in the rest of his working life, no damages will be recoverable under this head.
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> But if the court decides that there is a risk which is 'substantial' or 'real', the court has somehow to assess this risk and quantify it in damages. Difficult as this is, the courts sometimes have to assess the money value of a chance in other contexts (see, for example, *Chaplin v Hicks* and *Otter v Church, Adam, Tatham & Co*). Clearly no mathematical calculation is possible. Edmund Davies and Scarman LJJ said in *Smith v Manchester Corpn* that the multiplier/multiplicand approach was impossible or 'inappropriate', but I do not think that they meant that the court should have no regard to the amount of earnings which a plaintiff may lose in the future, nor to the period during which he may lose them. What I think they meant was that the multiplier/multiplicand method cannot provide a complete answer to this problem because of the many uncertainties involved. The court must start somewhere, and I think the starting point should be the amount which a plaintiff is earning at the time of the trial and an estimate of the length of the rest of his working life. This stage of the assessment will not have been reached unless the court has already decided that there is a 'substantial' or 'real' risk that a plaintiff will lose his present job at some time before the end of his working life, but it will now be necessary to go on and consider (a) how great this risk is and (b) when it may materialize, remembering that he may lose a job and

> be thrown on the labour market more than once (for example, if he take a job and then finds he cannot manage it because of his disabilities). The next stage is to consider how far he would be handicapped by his disability if he was thrown on the labour market, that is what would be his chances of getting a job, and an equally well paid job. Again, all sorts of variable factors will, or may, be relevant in particular cases, for example, a plaintiff's age; his skills; the nature of his disability; whether he is only capable of one type of work or whether he is, or could become, capable of other: whether he is tied to working in one particular area: the general employment situation in his trade or his area, or both. The court will have to make the usual discounts for the immediate receipt of a lump sum and for the general chances of life.

22. The above factors are not exhaustive. The courts should consider all the relevant factors of a given case and decide the damages, as much as possible, under this head. Browne LJ, in the above mentioned case, explained that the courts should consider this head in two stages and held at page 17 that:

> The consideration of this head of damages should be made in two stages. 1. Is there a 'substantial' or 'real' risk that a plaintiff will lose his present job at some time before the estimated end of his working life? 2. If there is (but not otherwise), the court must assess and quantify the present value of the risk of the financial damage which the plaintiff will suffer if that risk materializes, having regard to the degree of the risk, the time when it may materialize, and the factors, both favourable and unfavourable, which in a particular case will, or may, affect the plaintiff's chances of getting a job at all, or an equally well paid job.
>
> It is impossible to suggest any formula for solving the extremely difficult problems involved in the second stage of the assessment. A judge must look at all the factors which are relevant in a particular case and do the best he can.

23. In the present case, the plaintiff in his short testimony stated that, he was farming with his father after completing Fiji School Leaving Certificate, at the time of accident and injury. He was working on the same farm with his father at the time of trial in this case. Even though he has not testified on his weekly or fortnightly income, there is nothing to suggest that, he was earning less than what he was earning before the accident and injury. Therefore, he has no claim for loss of future earnings. Likewise, he was following a course on Agriculture with the aim of the becoming a professional farmer. His evidence does not suggest that, he will lose his present job, since he is fortunate to work with his father in his farm. It does not seem that, he has to go to labour market in future. This

compels me to conclude that there is no 'substantial' or 'real' risk that he will lose his present job at some time before the end of his working life. As a result he has no claim under this head too for loss of earning capacity.

24. Lord Denning MR in **Jefford v Gee** (supra) laid down that there should be interest on damages for pain and suffering, but that on damages for loss of future earnings there should be no interest. The rationale is that, as regards those future earnings the plaintiff ex hypothesi had not been kept out of his money. On the contrary, he will have received it in advance. His Lordship says at page 1209 under the heading of 'Loss of future earnings' that:

> 'Where the loss of damage to the plaintiff is *future pecuniary loss*, e g loss of future earnings, there should in principle be *no* interest. The judges always give the present value at the date of the trial, i e, the sum which, invested at interest, would be sufficient to compensate a plaintiff for his future loss, having regard to all contingencies. There should be no interest awarded on this because a plaintiff will not have been kept out of any money. On the contrary, he will have received it in advance.'

25. Orr LJ followed the same principle in **Clarke v Rotax Aircraft Equipment Ltd** (supra) and allowed the appeal excluding the interest awarded by the trial judge on the future earnings and held that:

> If those financial consequences arise during the period before the trial they will be taken into account by way of special damages, and interest will be payable on those damages in accordance with the established rules. But if they have not arisen at the time of the trial, then it seems to me that for the purpose of interest they are in the same position as damages awarded for future loss of earnings as such. It seems to me to be impossible to say as regards future consequences of a loss of earning capacity that the plaintiff in these circumstances will have been kept out of his money. For these reasons, in my judgment, the award of interest in this case under this particular heading was wrongly made, and I, for my part, for the reasons I have given, would allow this appeal to the extent of reducing the figure of £1,250 to £,250 and eliminating the interest on that sum.

26. The above principle has been adopted by the courts in Fiji on several occasions. Whilst in some cases, the plaintiffs were awarded interest at the rate of 4% and in some they were given at the rate of 6%. Therefore, the plaintiff in this case too should be awarded interest

on the amount awarded for him for pain and suffering, applying the same principle laid down in above cases.

27. In the result, I make the following awards:

a. Special damages in sum of $ 500.00,

b. Pain and suffering and loss of amenities in sum of $ 15,000.00,

c. Scarring in sum of $ 1,000.00,

d. Interest on $ 15,000.00 at the rate of 6% from August 2014 to November 2017 in sum of $ 3,000.00, and

e. Summarily assessed cost of $ 2000.00.

U.L Mohamed Azhar
Master of the High Court

At Lautoka
17/07/2020