

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 18 of 2019

**BETWEEN : PASEPA TUBUNA (a minor) by next of friend EMOSI SAUVOU
PLAINTIFF**

**AND : URSULA RUTH DAVID
FIRST DEFENDANT**

**: ATTORNEY-GENERAL OF FIJI
SECOND DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. S Ahmed [Nilesh Sharma Lawyers]
FIRST DEFENDANT : Interlocutory Judgment Entered on 03 December 2019
SECOND DEFENDANT : Ms S Ali with Mr. S. Kant [Attorney-General's Chambers]
RULING BY : Acting Master Ms Vandhana Lal
DELIVERED ON : 27 April 2022

RULING

Application

1. The Plaintiff's counsel moved the Court pursuant to Order 80 rule 8 of the High court Rules seeking the Court's approval for a settlement reached between the Plaintiff and the Second Defendant in respect of Pasepa Tubuna's (a minor) claim for injuries sustained to his right eye.
2. Parties have said to agree a sum of \$80,000 (including of cost) as full and final settlement amount with \$30,000 to be paid into the Plaintiff's solicitors Trust Account and remaining

\$50,000 to the account of the Chief Registrar for disbursement when needed for the minor's expense.

3. Counsels for both the parties were heard and both filed their respective submission.
4. The Plaintiff's counsel informed court that the counsel's legal fees will be paid from the \$30,000 by the minor's next friend after the sum is released to him.

Order 80 Rule 8

5. The said provision of law reads:

"Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into Court, whenever entered or made, shall so far as it relates to the person's claim be valid without the approval of the Court."

Determination

6. When such application is made the Court has to be satisfied that such settlement is for the benefit of the minor concerned.
7. In **Chand v Kumar and Others [1989] 35 FLR 154** Palmer J. stated that in application under Order 80 Rule 8 *"the court should be asked to approve settlement between parties and make any consequential orders."*

Whilst laying out *"proposed future practice"* he made following comments:

- The court acts as *parens patriae*. It stands ready to protect against disadvantages he may suffer as a result of such disability.

- The courts approach to the practice to be followed is well set out in the Supreme Court Practice 1985 ("The White Book") at paragraph 80/10-11/4:

"On the return day, the solicitors (and, in exceptional cases, counsel) for the parties attend. The first question to be considered is that of liability; the Master should be told whether the defendant admits or does not dispute liability, and if he does dispute liability, whether and to what extent such liability can be established. For this purpose, in accident cases, the circumstances of the accident should be briefly described. Each party should put his version before the Master, who should be told the age (and occupation) of the infant, the date and place of the accident, what evidence can be adduced and what witnesses can be called on behalf of the plaintiff and the defendant; if there are any police reports or notes of evidence or depositions in any criminal proceedings or in an inquest they should be produced or referred to, and, if there has been any prosecution against whom and with what results. If counsel has advised on liability, his opinion should be placed before the Master. In all, the Master should be put in possession of all the available material in the case, so as to enable him to form his own opinion as to the plaintiff's chances of success in the action, as to the probable extent of such success, and as to the degree or percentage of contributory negligence on the part of the plaintiff or the deceased.

The second question to be considered is that of the quantum of damages. For this purpose, in accident cases, there should be placed before the Master medical reports of both sides describing the nature and extent of the plaintiff's injuries, and their probable effect on the general health, education, enjoyment of amenities and earning power of the infant. The medical reports should be brought up to date. A list of the items making up the claim (if any) for special damage should also be produced....."

- Citing Meggarry J in **Re Barbour's Settlement, National Westminster Bank Ltd v Barbour [1974] 1 ALL ER 1188** regarding materials to be placed before the court:

"The solicitors must see that all the relevant matters are put before Court, that the right questions are asked and that the guardian ad litem or next friend of the minor fully understand and weighs counsel's advice when it is given."

- *"On the question of costs the apparent local practice of including an unquantified amount of costs in the overall settlement figure, as was done in these cases, is not one which in his opinion should be continued."*
- His Lordship also referred to the judgment of Moffitt J. in **Bearan v Pengelley (1968) NSW 707**:

- *It is undesirable that the amount of the costs be agreed upon or be negotiated at the same time as the amount of the verdict.*
- *The proper course is to agree to the amount of the verdict for the infant, subject to the approval of the court, the verdict of course, carrying the right of costs to be taxed if not agreed upon. The verdict should then be submitted for approval of the court. Therefore it is proper that there be negotiation, and agreement as to the costs when the parties are at arm's length. In this way it is entirely separated from the settlement of the infant's claim. No doubt it is in the interests of both the solicitor for the plaintiff and the solicitor for the defendant that the costs then be agreed rather than submitted to the delay and cost of taxation.*

- The verdict should be agreed first, without reference to the costs. Party-party costs are then agreed, or in the absence of agreement are taxed in the normal way and paid by the defendant since they follow the events if the plaintiff's solicitor accepts there in full satisfaction of his total claim for costs against his client that is the end of the matter. If party-party cost is not accepted than solicitor-client bill must be taxed.

8. In the current proceedings I find following discrepancies in the application made:

- The medical report submitted does not provide percentage of permanent incapacity due to the injury sustained to the left eye and whether there are chances of visual gain.

- A global settlement figure has been submitted and parties have failed to show how much was agreed upon each head of loss – special damages; general damages for pain and suffering (past and future), loss of amenities of life and propection loss of earning capacity and interest under Section 3 of the Law Reform (Misc) (Interest) Act.

- In the latest case cited by both the Counsel, **Kumar v The Head Teacher of Bainivalu Primary School & Others, a Suva High Court Civil Action HBC 115 of 2011**, the minor was awarded \$124,000 alone for general damages.

Hence the sum agreed upon in the current proceeding is far less than what the case laws have outlined is being awarded for similar injuries.

Hence, I find that the proposed settlement is not in line with what was stated in Chand's [supra] case.

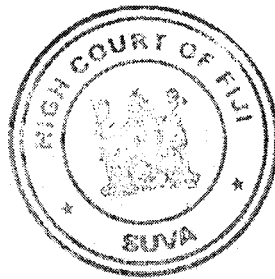
- Though in their letter to the Plaintiff's solicitor the sum agreed upon is "without any admission of liability", the Plaintiff's counsel has failed to address the court on "whether and to what extent such liability can be established."


- In order for the Court to order \$30,000 to be paid to the solicitor's trust fund no estimates has been provided for an estimate cost of keeping the minor since the date of the order;

9. The purpose of compensation is to put the injured party in the position that they would have been but for the accident, in as far as money can do so.

10. For these reasons I do not find the proposed settlement is for the benefit of the child and hence I refuse to make orders on the same.

11. Accordingly, the application is dismissed.




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Vandhana Lal [Ms]
Acting Master
At Suva.

 29 April 2022

TO:

1. Suva High Court Civil Action No. HBC 18 of 2019;
2. Nilesch Sharma Lawyers, Solicitors for the Plaintiff;
3. Ursula Ruth David, the named First Defendant;
4. Attorney-General's Chambers, Solicitors for the Second Defendant.