

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 52 of 2020

Urmila Wati
Plaintiff

v.

Fiji National University
Defendant

Counsel: Mr Daniel Singh for the plaintiff
Mr G. O'Driscoll for the defendant
Date of hearing: 14th November,2022
Date of Judgment: 21st April,2023

Judgment

1. The plaintiff, in her statement of claim states that she was employed as a hairdresser. The defendant was the owner and occupier of a Dental Clinic known as J.B. Savou Dental Clinic at CWM Hospital, Suva. On 10th August, 2017, she went to the Clinic for treatment. As she sat on the dental chair, it collapsed causing her to fall onto the concrete floor. Her head, shoulder and back struck the floor resulting in injury, loss and damage.
2. At the hearing, Mr O' Driscoll, counsel for the defendant said that the defendant does not dispute liability and the issue is only on the quantum of damages payable.

The determination

3. The plaintiff, (PW2) in evidence in chief said that in the aftermath of the fall, her head was numb and swollen. Her shoulder and back were injured. She was in great pain. She was given an injection and painkillers in the Emergency Dept of the CWM hospital. She stayed overnight in the hospital. She went for reviews several times. She also went to Zen Medicals, Lautoka, as she was in great pain. She returned to hair dressing two months after the injury, but cannot stand long.
4. The Fiji Police Medical Examination Form of 10th August, 2017, provides that on an initial impression, the plaintiff was “*Comfortable Mild distress.. Vitals stable*” and found to have “*(a) Scalp tenderness + mild swelling, (b) Left sided neck tenderness*”.
5. PW2, (*Dr Pauliasi Bauleka, Specialist Orthopaedic Surgeon, CWM hospital*) said that he examined the plaintiff on 21st November, 2019. Her x ray was normal. There was no serious injury Neither a fracture nor an injury to her spinal cord. He said he had to examine her to report on whether she still suffered pain and was unable to work. He assessed her with 5% impairment.
6. In cross examination, he said that the assessment was the lowest he could give. The plaintiff did not come back for review since 2019. She can still work in the same job. There was no big loss of capacity.
7. PW2’s medical report of 1st November,2019, provides that the plaintiff “*sustained a mild head injury with bruised (soft tissue) neck injury after a fall off the dental chair while undergoing dental treatment on the 10th August 2017(1330hrs). According to the documented history and the patient that he chair actually broke resulting in the fall. She landed her left side of neck and head and also lower back. She was taken straight to emergency department where she was fully assessed by the emergency doctors and kept overnight for neurological observation. Glasgow Coma Scale = 15/15. Mobilising without support (independent). Since then Ms. Wati has been complaining of occasional neck and headaches with associated lower backache.*

Diagnosis

Mild Head Injury

Soft Tissue Neck Injury

On Examination: (21/11/2019)

Head: no scar noted

Face: scar 5cm noted (from an old car crash injury)

Neck: tender over the muscle left side. Range of Motion = some asymmetrical movement and muscular guarding, Table 15-5 page 392: DRE Cervical Category 2 = 5% Whole Person.

Bilateral Upper limbs: no sensory loss, no loss of motor or power.

Lumbar Spine: no scar, no deformity, no scoliosis. ROM – full flexion and extension – lumbar spine. No loss of sensation, no motor loss to the lower limbs.

Final Assessment: 5% - Whole Person.

8. Mr Singh, counsel for the plaintiff in his closing submissions has cited several cases to support his claim of a sum of \$ 40,000.000 as general damages.
9. In assessing damages, past awards are useful guides, provided the pain and injuries are comparable.
10. In *Niranjans Autoport Ltd v Karan*, [2001]FJCA 38;ABU0005U.2001(18th October,2001) as referred to by Mr Singh the plaintiff was assessed with 5% impairment and awarded \$50,000.00 as damages for pain and suffering and loss of amenities and enjoyment of life. The facts in that case are clearly distinguishable from the present case. In that case, the plaintiff had suffered close head injuries, a fractured nose and a fracture of the left ankle. He was hospitalized for two days. His left leg was permanently shortened, a disability which was held would affect his earning capacity. The damages awarded included the estimate expense of surgery in Australia. The judgment of the Court of Appeal expressed the view that the assessment of 5% place on the injury to his leg was conservative.
11. In *Nisha v Chand*, Civil Action no. HBC 38 of 2016 (18th July,2018) the plaintiff had suffered a mild head injury and wedge compression fracture of the thoracic spine at level T2.. She was in hospital for 3 days was in severe pain, medically categorized as 5 out of 5.The medical evidence provided that she cannot bend nor stand for long and could no longer work as a labourer. I awarded her \$45,000.00 as general damages.

12. Nor can there be a comparison with the facts in *Prasad v Singh*, [2018] FJHC 947(28 September,2018) as also cited by Mr Singh. In that case, the final clinical assessment provided that the plaintiff's fracture had healed well. He suffered a closed fracture of his left lower limb, the mid shaft tibia and fibula. His left leg was broken and hanging on his skin. The pain was categorized in a scale of 1 to 5 as 5 out of 5. It was a "*high energy injury*" and pain was severe. He was hospitalised for 3 days. His leg was cast in plaster of paris for three months. He attended the outpatient clinic on 10 occasions.
13. In the present case, in the light of the medical evidence that the plaintiff did not suffer a serious injury, I assess and award the plaintiff a sum of \$10,000.00 as general damages for pain and suffering and loss of amenities.
14. The plaintiff claims special damages as provided in his statement of claim as follows: medical expenses: \$ 1500.000, transport expenses - \$300.00 and loss of earnings-\$1600.00.
15. Calanchini AP in *Nasese Bus Company Ltd v Chand* [2013] FJCA 9; ABU40.2011 (8 February 2013) stated that "*the burden rests on the plaintiff to prove a claim for past loss of earnings*".
16. The plaintiff in evidence in chief said that she earned \$200 a day. She could not work for a period of two months from the date of the accident.
17. In cross examination, she said that her average weekly earnings were \$600.00. She did not pay tax. She had no documents to establish her income nor receipts for medical or travelling expenses incurred, as pointed out by Mr O'Driscoll.
18. It transpired that she got a medical certificate stating she was unfit for work till 18th August,2017, which was 8 days after the incident. She was asked why she got a medical certificate, if she was self employed. She replied that she rented a chair and worked in a shop on her own with her own money and products.

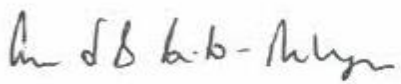
19. In my judgment, she is entitled to loss of earnings for a period of 1 week in terms of the medical evidence and the medical certificate she obtained.
20. I assess loss of earnings in a sum of \$ 600.
21. The plaintiff did not give details of her travelling and medical expenses, which was disputed in cross-examination. The claim is denied.
22. The plaintiff has claimed interest. She is entitled to interest at 6% per annum on general damages of \$ 10,000.00 from 28th February,2020, (date of service of writ) to 14th November,2022,(date of hearing). She is also entitled to interest at 3% per annum on special damages of \$ 600.00 from 10th August, 2017 (date of incident) to 14th November,2022.

23. **Orders**

The total sum awarded to the plaintiff as damages is made up as follows:

a.	General damages	10,000.00
b.	Interest on general damages	1600.00
c.	Special damages	600.00
d.	Interest on special damages	94.50
	Total	12294.50

There will therefore be judgment for the plaintiff against the defendant in the sum of \$12294.50 together with a sum of \$ 2000 as costs summarily assessed payable by the defendant to the plaintiff.


A.L.B. Brito-Mutunayagam
 Judge
 21st April, 2023

