

IN THE HIGH COURT OF FIJI  
WESTERN DIVISION AT LAUTOKA  
EXERCISING CIVIL JURISDICTION

CIVIL ACTION NO. HBC 18 OF 2014

**BETWEEN** : **PARVEEN KRISHNA NAICKER** of Navoli, Ba, unemployed. **PLAINTIFF**

**AND** : **LAND TRANSPORT AUTHORITY**, a body corporate established under the LAND TRANSPORT ACT No. 35 of 1998. **1<sup>st</sup> DEFENDANT**

**AND** : **LEONI KACISAU** of Lot 63, Nasevou Street, Lami, LTA Officer **2<sup>nd</sup> DEFENDANT**

**BEFORE** : Hon. A. M. Mohamed Mackie- J

**COUNSEL** : Mr. R. Chaudhary- for the Plaintiff.  
: Ms. Prasad- for the 1<sup>st</sup> Defendant.  
: 2<sup>nd</sup> Defendant – initially self-represented and later absent.

**DATE OF HEARING** : 17<sup>th</sup> March 2025.

**WRITTEN SUBMISSIONS:** By the Plaintiff filed on 7<sup>th</sup> April 2025.  
Supplementary written submissions by the Plaintiff filed on 25<sup>th</sup> April 2025.  
By the 1<sup>st</sup> Defendant filed on 27<sup>th</sup> May 2025.  
Reply Submissions filed by the Plaintiff on 14<sup>th</sup> July 2025.

**DATE OF JUDGMENT** : 29<sup>th</sup> July 2025.

**JUDGMENT**  
**(On Assessment of Damages)**

**A. INTRODUCTION:**

1. The task before me now is the assessment of damages pursuant to the hearing held on 17<sup>th</sup> March 2025, wherein the Plaintiff (victim of the accident) namely, **Praveen Krishna Naicker**, and a Medical Doctor from Lautoka Hospital, namely **Dr. Marko Rokobuli**, gave evidence. Counsel for the 1<sup>st</sup> Defendant, Land Transport Authority (LTA), opted not to call any witness for and on behalf of the LTA.
2. In addition to the oral submissions made at the hearing, both parties have filed their respective written submissions as stated above.

**B. BACKGROUND HISTORY:**

3. The Plaintiff on 14<sup>th</sup> February 2014, filed this action against both Defendants seeking reliefs, *inter- alia*, Special Damages, General Damages for pain & suffering, loss of amenities and earning capacity resulted due to the Motor Vehicle accident occurred on Saturday 27<sup>th</sup> July 2013 at around 8.50 am on the Queen's Road, at Waimalika, involving the Plaintiff, who was crossing the road, wherein the Motor Vehicle bearing Registration no. FA 187, admittedly, owned by the 1<sup>st</sup> Defendant LTA and driven by the 2<sup>nd</sup> Defendant knocked down the Plaintiff causing him Bilateral knee Instability, Raptured Bowel and Multiple soft injury.
4. Initially, as no Acknowledgement Service and / or Statement of Defence was/ were filed by both the Defendants, an interlocutory default judgment was entered on 14<sup>th</sup> April 2014 against both the Defendants, for the damages and interest to be assessed.
5. The 1<sup>st</sup> Defendant LTA, on 4<sup>th</sup> November 2015, filed its Application for setting aside the default judgment pursuant to the relevant Order & Rule of the HCR of 1988, supported by an Affidavit sworn by one TOMASI RADAKUA on 29<sup>th</sup> October 2015. After an inter-partes hearing, then learned Master Hon. Jude Nanayakkara, by his ruling dated 04<sup>th</sup> November 2016, set aside the said default judgment on the basis that it had been irregularly entered. Accordingly, the 1<sup>st</sup> Defendant filed its Statement of defence on 16<sup>th</sup> November 2016. However, since the Plaintiff filed his Amended Statement of Claim on 18<sup>th</sup> November 2016, the 1<sup>st</sup> Defendant filed its Statement of defence to the amended statement of claim on 23<sup>rd</sup> January 2017.
6. When the matter came up before me for trial on 20<sup>th</sup> November 2017 against the 1<sup>st</sup> Defendant LTA, direction being given to the Plaintiff's Solicitor to serve the Amended Statement of Claim on the 2<sup>nd</sup> Defendant driver, and same being complied with, the 2<sup>nd</sup> Defendant appeared in person on 30<sup>th</sup> January 2018 and intimated that he will be contesting the action. Accordingly, he was granted leave to file his statement of defence, subsequently on 01<sup>st</sup> March 2018, he appeared again in person and intimated that he **will not be contesting** the matter, by referring to his letter dated 8<sup>th</sup> February 2018 addressed to the Registrar, which is self-explanatory and filed of record.
7. Accordingly, as the 2<sup>nd</sup> Defendant had subsequently opted before me not to contest the matter against him, and since the default judgment dated 14<sup>th</sup> April 2014, which was set aside on the Application of the 1<sup>st</sup> Defendant on the basis of irregularity, had been entered in common to both the Defendants, and since it cannot stand against the 2<sup>nd</sup> Defendant as well, this Court entered a fresh uncontested judgment against him on 6<sup>th</sup> March 2018, leaving the question of damages, costs and **interest** to be assessed.
8. Accordingly, when the matter against the 1<sup>st</sup> Defendant LTA had come up for trial before my predecessor Hon. A. Stuart – J (as he then was) on 8<sup>th</sup> February 2021, instead of proceeding for substantive trial, had directed the parties (the Plaintiff and the 1<sup>st</sup> Defendant) to adduce evidence to decide on the question of vicarious liability on the part of the 1<sup>st</sup> Defendant LTA as an uncontested regular judgment had been entered against the 2<sup>nd</sup> Defendant driver. This was the only issue to be adjudicated between the Plaintiff and the 1<sup>st</sup> Defendant.

9. Accordingly, the hearing on the question of vicarious liability was taken up before me on 31<sup>st</sup> August 2022, wherein the 2<sup>nd</sup> Defendant driver gave evidence in support of the Plaintiff. The 1<sup>st</sup> Defendant opted not to call any witness on its behalf. Both parties (Plaintiff & the 1<sup>st</sup> Defendant) filed their respective written submissions and this Court on 28<sup>th</sup> April 2023 delivered its Ruling to the effect that the 1<sup>st</sup> Defendant LTA is vicariously liable unto the Plaintiff on account of the tortious act committed by the 2<sup>nd</sup> Defendant driver. It was also ordered that there shall be a hearing for the assessment of damages, if the quantum is not agreed upon between the parties.
10. Being dissatisfied of the said Ruling, the 1<sup>st</sup> Defendant LTA preferred an Appeal to the Court of Appeal, and the Court of Appeal by its judgment dated 26<sup>th</sup> July 2024 dismissed the Appeal affirming the judgment dated 28<sup>th</sup> April 2023 delivered by this Court on the question of vicarious liability. Accordingly, on 17<sup>th</sup> March 2025, hearing on the assessment was taken up before me, wherein the Plaintiff and a Doctor from Lautoka Hospital gave evidence for and on behalf of the Plaintiff.

**C. EVIDENCE FOR ASSEMENT OF DAMAGES & ANALYSIS:**

11. The Plaintiff in his evidence, *inter alia*, stated as follows.
  - a. That he, being born on 26<sup>th</sup> December 1983, was 29 years of age at the time of accident and now he is 41 years. His Certificate of Birth was tendered in evidence marked as “Pex-1”.
  - b. That he had his primary education at Navoli Sangam School up to class 8, then went to Ba- Sangam School, where he completed form -6, and thereafter went to Nawaicoba Vocational Centre and obtained two Certificates, namely, **Trade Certificate in Light Motor Vehicle** and **Certificate Class iii; Motor Vehicle Mechanic** all marked as “Pex-2”.
  - c. That initially, from April 2008 he worked for a Bus Transport Company, namely, **Fiji Transport**, as a diesel mechanic and then on or about October 2011 joined **Island Tours Limited**. When accident occurred on 13<sup>th</sup> July 2013, he was on his way to work. He marked his pay slip dated 4<sup>th</sup> July 2013 from Island Tours Limited as “**Pex-3**” which shows his fortnightly gross pay as \$320.00 out of which \$25.60 is deducted as his contribution for FNFP. He was also paid \$20.00 as Security allowance thereby his fortnightly earning was \$365.60. From the date of accident ie 27<sup>th</sup> July 2013) till 20<sup>th</sup> January 2015 he did not work for 71 weeks, except for helping a grocery business owned by one of his brother, who provided him and his family food, accommodation and for his traveling expenses.
  - d. That, after January 2015, he worked at Fletcher Constructions for 2 or less than 2 years for a salary lesser than paid by Island Tours and the salary paid by Fletcher Constructions was \$3.20 per hour, 8 hours per day, work being limited to 5 days a week and it was light works. After staying at home for about 2 months, he went to New Zealand in October 2017 and his family joined him there after 1 year.

12. The Plaintiff's evidence also included particulars as to how, on the day of the accident, when he was crossing the road near his work place, after looking at both sides of the road, the vehicle driven by the 2<sup>nd</sup> Defendant suddenly came from his left side, hit him and thereafter he became conscious at Nadi Hospital after 2 hours.
13. That he had extreme pain, was given pain killers, kept in Nadi Hospital overnight and on the next day (Sunday), after taking X-Rays and Scanning, he was transferred to Lautoka Hospital by Ambulance, where he was subjected to surgery for his ruptured bowel due to which he was in critical condition. After surgery, he had to be in Hospital for 3 weeks. He was walking on Crutches as he was not stable when standing. However, after coming from Hospital, he was with no work and staying at his brother's place doing a Cashier job at the grocery store owned by his brother, but still using Crutches to move around for about 18 months. He complained that he still has pain in his knees especially in cold weather.
14. Under cross examination of the "PW-1" there was an attempt by the Counsel for the 1<sup>st</sup> Defendant to question him on the alleged contributory negligence on the part of the Plaintiff, which was vehemently objected by the Counsel for the Plaintiff on the basis that the question of liability had already been decided. As correctly alluded to by the Counsel for the Plaintiff, the question of liability cannot crop up as an uncontested judgment had been entered against the 2<sup>nd</sup> Defendant driver, for which the 1<sup>st</sup> Defendant has been found to be vicariously liable by my Ruling dated 28<sup>th</sup> April 2023. This has been affirmed by the Court of Appeal by its Judgment dated on 26<sup>th</sup> July 2024. Hence, there is no need for this Court to adjudicate on the question of contributory negligence.
15. The rest of the evidence by the Plaintiff, except for in relation to his present condition, which he claims to be inhibiting him from taking up works involving weight lifting, has not been adequately challenged by the 1<sup>st</sup> Defendant. The Plaintiff has given clear evidence as to how he met with the accident, became injured, unconscious, and on the events that occurred after he was taken to the Nadi Hospital first and thereafter to Lautoka Hospital, where a Surgery was performed to fix his ruptured bowel. He further stated that he was given drips, pain killers and had to be on crutches for some time, being unable to go out for work. Also said that still he has pain in his right knee, cannot stand for long and lift heavy things. He exhibited in Court his scars of injured knees and that of the surgery on the stomach.
16. He also spoke about his condition after his discharge from the hospital being treated for 3 weeks, and about his serving as a cashier at a Grocery Shop owned by one of his brothers, where he and his family members were given food, lodging and his expenses for travelling to hospital for follow-up treatments.
17. I find that the Plaintiff has given straightforward evidence. His evidence was not shaken by cross examination. I also found him to be a truthful witness. There is no reason to disbelieve and reject his evidence. Hence, I have accepted his evidence.

**Medical Evidence by P.W-02.**

18. The evidence on the Plaintiff's Medical history was presented by **P.W-2**, namely, **Dr. Mark Rokobuli**, Consultant Orthopaedic Surgeon attached to the Lautoka Hospital, who claimed to have 20 years of experience of serving in Fiji and New Zealand. He tendered in evidence 3 Medical Reports, the first one being the one dated 30<sup>th</sup> January 2014 from **Dr. Joeli Mareko**, Consultant Orthopaedic Surgeon, Lautoka Hospital marked as "**Pex5**", the second one being the Medical Report dated 21<sup>st</sup> June 2018 from **Dr. Vaigalo Eddie McCaig**, MBBS MMED Surgery, Consultant Orthopaedic Surgeon, marked as "**Pex-6**", and the third one being the Medical Report dated 3<sup>rd</sup> August 2020 prepared by Mr. Simon W Young (for Dr. Kilisitina K. Lavolo), marked as "**Pex-7**". Mr. Young is an Orthopaedic Consultant, Senior Lecturer Knee and a Shoulder specialist.
19. The "**Pex-5**" report by Dr. Joeli Mareko had listed the diagnosis as 1. Raptured Bowel, 2. Bilateral knees instability and 3. Multiple soft injury. The "**Pex-6**" Report prepared by Dr. Eddie McCaig around four years after the first Report (Pex-5") is comprehensive, which speaks about the seriousness of the injuries suffered by the Plaintiff and the consequences of the same in the following manner.
- "In summary, Mr. Praveen was in a Car crash which resulted in an acute abdomen (perforated bowel) and a right knee ligamentous injury. In terms of his right knee injury, it is expected that this will cause him pain and instability in the future with an increased chance of him developing post traumatic osteoarthritis"*
20. The Plaintiff in his evidence also stated that he is not stable on his knees, which prevents him from lifting heavy objects. The **PW-2**, Dr. Mark Rokobuli, in his evidence stated that the pain experienced by the Plaintiff would be lifelong one. The Exhibit marked as "**Pex-7**", which is a Report dated 3<sup>rd</sup> August 2020 prepared by Mr. Simon Young, deals with the injury to the knees of the Plaintiff. This Report shows how severe the injuries were and recommends "reconstructive surgery". The report also states that "**he has already post traumatic arthritic change**". Consul for the Plaintiff has drawn my attention to the prediction made by Dr. McCaig in his report marked as "**Pex-6**" dated 21<sup>st</sup> June 2018. This Medical evidence and the reports marked went into the record with no serious objection and the whole evidence on it has remained unchallenged.
21. The "**PW-2**", Dr. Mark Rokobuli, in his evidence fully relied on the medical reports marked as "**Pex-5**" and "**Pex-6**", which had been prepared by Dr. Joeli Mareko and Dr. V. Eddie McCaig respectively. There was no any sort of objection for this evidence being admitted, and though this Doctor was subjected to cross examination, his evidence remained un-assailed.
22. It is to be noted that no medical evidence, either oral or documentary, was adduced on behalf of the 1<sup>st</sup> Defendant to challenge the evidence of the PW-1 and PW-2. Learned Counsel for the Plaintiff in paragraph 7 of his reply written submissions, has drawn my attention to the fact that, on the arrangement made by the 1<sup>st</sup> Defendant, the Plaintiff was to be examined by **Dr. Taloga of Oceania Hospital** on 5<sup>th</sup> November 2019 and his MRI scan was also taken on 13<sup>th</sup> November 2019. The series of email correspondence between the Plaintiff's solicitors and the 1<sup>st</sup> Defendant's then Solicitors Messrs. Krishna & Company, annexed with the Plaintiff's reply written submission as "B" & "C", substantiate this arrangement. But, neither any sort of report was tendered as evidence nor the relevant Doctor was called as a witness by the 1<sup>st</sup> Defendant. Even the Plaintiff's Solicitors was not at

least provided with any such report. In view of the above, the safest inference that can be drawn is that, had the 1<sup>st</sup> Defendant adduced such medical reports as evidence, it would not have assisted the 1<sup>st</sup> Defendant.

### **Further Analysis**

23. 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] UKHL 3; (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 possibly 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.*

24. The Court, in assessing the damages for the injury caused to any party due to the tortious act or omission of another, 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] UKLawRpKQB 31; [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 future, 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.*

25. In light of the oral and documentary evidence adduced on behalf of the plaintiffs and the contents of the written submissions filed by both parties, I proceed to assess damages that would be awarded to the plaintiff.
26. In **Permanent Secretary for Health vs Kumar (2008, Fiji Court of Appeal, ABU0084 of 2006S**, wherein their Lordship said:

*“Each case must depend on its own circumstances, but pain and suffering and loss of amenities of life are not susceptible measurements in terms of money and conventional figure derived from experience and awards in comparable cases must be assessed”*

27. The evidence given by the Plaintiff and the PW-2 Medical doctor called on Plaintiff's behalf, which was not sufficiently challenged by the 1<sup>st</sup> Defendant, has convinced me that the Plaintiff should be adequately compensated for the loss and damages he has suffered as a result of this accident. The Plaintiff was initially deprived of his stable earnings from the permanent job he was engaged in at the time of accident. Subsequent to his discharge from Hospital, he could not freely move about to do a job that he was doing prior to the accident or anything similar to that. His income was curtailed having to work as a Cashier at a known place, where his remuneration was in the form of food and lodging for him and his family and his travelling expenses to go for follow-up treatments at the BA and Lautoka Hospitals. Thereafter, his earning in Fiji was still low since he could not take up heavy works as he was used to prior to the accident. Finally, he went to New Zealand in search of greener pasture, but his physical condition is still said to be inhibiting him from engaging in works involved heavy weight lifting and hard works.

**D. DAMAGES:**

28. Mr. Chaudhary on behalf of the plaintiffs, in his initial written submissions, referred to the following case authorities that deal with the assessment of special and general damages.

- 1) *Kumar v Drawe* 36 FLR 90.
- 2) *Mohammed Riyaz v Arun Kumar, Lautoka H.C. Action No- HBC 172 of 2006.*
- 3) *Mohammed Shahim v Rakesh Chand Civil Appeal number ABU 0070 of 2005.*
- 4) *Sheik Anmeer v Dee Cees Bus Limited & Uday Singh Lautoka H.C Action No- 77 of 2006.*
- 5) *Govind Sami v Karl Francis O'Brian & another -Lautoka H.C. Action No- 0349 of 1997.*
- 6) *Lusiana Rokodovu v Jovesa Rokobutabutaki & another Suva H.C action No-01 of 1997.*
- 7) *Attorney General v Valentine Civil Appeal No-ABU 0019 of 1998.*

29. The authority number 1 above, inter alia, deals with on claim of medical expenses as special damages, while rest of the cases deal with the General damages past & future, Special damages, Loss of earning capacity, how interest to be calculated and how the inflation should be taken into consideration when considering present worth of past awards used for comparison. Mr. Chaudhary, in his supplementary written submissions, has also drawn my attention to a case with similar facts – **Prasad v Island Limited and Pacific Plumbing Services Limited**, Suva High Court **Action No-HBC 194 of 216** (judgment delivered on 9<sup>th</sup> /4/2025) which dealt with, inter alia, loss of earning capacity. Accordingly, he submits that the Plaintiff is entitled to receive award under this head at least in a sum of \$40,000.00.

30. In **Govind Sami v Kari Frances O'Brian & Seru Serevi; HBC No. 349/97L** the court awarded \$45,000.00. In **Kumar v Ali [2016] FJHC 743; HBC 96.2014** the court awarded \$23,000.00. In **Prakash v RoadSupervisor, Taveuni [2016] FJHC 501; HBC 06.2013** the court awarded \$45,000.00. In **Kumar v Reddy [2016] FJHC 311; HBC 282.2013** the court awarded \$18,000.00. In **Ali v Lautoka General Transport Company Limited (Lautoka High Court Civil Action number 295 of 1999)** the plaintiff was 18 years when he suffered an injury to one of his legs – both tibia and fibula with the broken fibula. His hip was dislocated. He had ankle pain and there was the onset of Osteoarthritis. He was awarded a total of \$40,000.00 as general damages (\$20,000.00 past, \$20,000.00 future).

31. In **Rakesh Chand v Mohammed Shahim (Lautoka Civil Action number 300 of 2001)**, the Plaintiff was 36 years old at the time of the accident. He also suffered leg injury (tibia and fibula fracture) apart from other minor injuries. In the High Court, he was awarded total general damages of \$50,000.00 (\$30,000.00 past, \$20,000.00 future) plus \$15,000.00 for loss of earning capacity. On appeal, the total sum of \$65,000.00 was reduced to \$50,000.00.

**a. Special damages.**

32. Special damages are measurable loss calculated between the date of injury and the date of trial. Every type of special damages must be specifically pleaded and proved.

33. The Plaintiff claims a total sum of \$704.00 being the special damages as particularized in paragraph 7 of the Amended Statement of claim. Those expenses, as per his evidence, include the taxi charges for 4 Trips from Kashmir to Lautoka each trip at \$10,00 totaling to **\$40.00**, 11 Trips by Van from Navoli- Ba to Lautoka Hospital each trip at the cost of \$30.00 each totaling to **\$330.00**, 6 Trips Navoli to Ba Mission Hospital at \$15.00 each totaling to **\$90.00**, another 4 return trips from Navoli to Ba Hospital at \$30.00 each totaling to **\$120.00**, pain killer & Panadol **\$50.00**, for walking stick **\$50.00**, and for knee caps **\$24.00**.

34. He has not produced any receipts for the above expenses. It is understood that generally no receipts are asked for and issued for the travelling expenses of this nature. No receipts are generally preserved when small items are purchased. I don't think that the Plaintiff is making a bogus claim in this regard when the nature of the expenses and the amount total amount claimed are considered. He appeared to be telling the truth in this regard.

35. Mr. Chaudhary cited the authority in **Kumar V Drawe 36 FLR 90** wherein by judgment dated 24<sup>th</sup> July 1990 Hon. Judge Plumer, who faced with a similar situation, stated as follows:

*"There is further a claim for medical expenses. The Plaintiff gave evidence that he paid Dr. Sharma \$225.00 for his report and \$25.00 for his first checkup and \$5.00 to the hospital for its report. Notwithstanding that not a single receipt has been produced in evidence I am satisfied from the Plaintiff's evidence that he paid those amounts and I propose to allow the sum of \$255.00 accordingly".*

36. I stand convinced that the plaintiff has incurred the above expenses on account of transportation to the hospital, for medicines and walking stick. He could not have used public transport for this purpose as he was on crutches. It is also to be observed that the claimed amount of \$704.00 was not challenged by the defence Counsel during cross examination. Accordingly, I decide to allow the said sum of **\$704.00** as special damages.

**b. Loss of Earnings:**

37. The claim under this heading was not objected by the learned Defence Counsel. If not for this unfortunate accident, the Plaintiff would, probably have continued to work at Island Tours or any other place and earned the amount claimed in a sum of \$12,978.90 or more from the date of accident (from 27<sup>th</sup> July 2013 till 19<sup>th</sup> January 2015) as he pleaded and confirmed in his evidence. The Plaintiff under his cross examination by Defence Counsel, has stated that after his discharge from the hospital, he along with his family was staying with

his brother's family for 2 years assisting his brother in his Grocery business by serving as a Cashier, on account of which he and his family members were given food, shelter and transport expenses.

38. The Plaintiff had spent almost 3 weeks in Lautoka Hospital, where the Surgery was performed for his ruptured bowel and got treatment for his Bilateral Knee instability and Multiple soft injury. His "Pex-5" Medical Report issued by **Dr. Joeli Mareko** on 30<sup>th</sup> January 2014, states he was still on Crutches, he was handicapped and required assistance. This was issued just after about 6 months from the date of accident on 27<sup>th</sup> July 2013.
39. The "**Pex-6**" Medical Report dated 21<sup>st</sup> June 2018 (prepared as per OT notes) speaks about his admission on 28<sup>th</sup> July 2013, discharge on 19<sup>th</sup> August 2013 and about his medical condition prevailed at that time as per the X -Rays taken on 7<sup>th</sup> August 2013 and the CT scan done on 30<sup>th</sup> August 2013. There has not been any Scanning or X-Rays freshly taken during the time material to this Report dated 21<sup>st</sup> June 2018. However, I take note of the contents of the last paragraph of this report, wherein Dr. V.Eddie McCaig states "***In terms of his right knee injury it is expected that this will cause him pain and instability in the future with an increased chance of him developing post traumatic osteoarthritis***".
40. The position taken up by the defence in its written submissions that the evidence adduced by the Plaintiff is not sufficient for an award to be made for loss of earning capacity during the period from the date of accident till 19<sup>th</sup> January 2015, is not convincing.
41. As a result of the injuries and consequent disability, the plaintiff has suffered the loss of earning capacity. During the said period after the accident, he was not physically fit or capable as he was prior to the accident. I take guidance from **Appal Swamy Naidu –v-Bechni and Anor (Civil Appeal No-43 OF 1994 FCA). 2. Ravindra Pratap v Leoni Valalagi and AG Action number 52 of 1990 (4 August 1997))**.

In **Appal Swamy case**, the Fiji Court of Appeal said on page 7:

*"...The real question is whether his capacity to earn has been adversely affected, and, if so, what is reasonable compensation for such loss. There is no justification for limiting this head of damage to loss of his present employment resulting from this 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 loss all change of choice?"*

In **Ravindra Pratap above Justice Lyons** stated on pp 4 -5;

*"In his work he is back doing the same work as before [Driver/Salesman] but no long trips, such necessary constant use of clutch causes his leg to give some pain. In my view the Plaintiff would if thrown into the employment market, suffer a diminution of his employability for which he should be compensated. For example, the option of heavy work, such as furniture removal driver, is out for him. His injuries are precluding from doing such work"*

42. In view of the above, it is apparent that the Plaintiff was incapable of performing his job at Island Tours, or at a similar job at any other place, due to the injuries caused by this accident. I decide to allow the loss of earning for the period from 27<sup>th</sup> July 2013 till 19<sup>th</sup>

January 2015 in a sum of **\$12,978.80** as pleaded and prayed for in the Amended Statement of Claim.

**c. Damages for Pain & Suffering, Loss of Amenities & Future Earning Capacity:**

43. Mr. Parveen Krishna was 29 years old at the time of the accident. He was 41 years old when giving evidence before me on 17<sup>th</sup> March 2025. According to Dr. M.J.Winston Rokobuli, and the contents of Medical Reports marked as “Pex-5”, “Pex-6” & “Pex-7” by him, the injuries suffered by Mr. Praveen Krihna were very serious, namely, ruptured bowel, which required an urgent Surgery, and internal knee injury, which compelled him to be on a crutches for a long time. He had to endure severe pain, which is said to be continuing. His left Knee MRI Scan has shown a complete rupture. A reconstructive surgery has been recommended. He states that he could not go for the surgery as it is costly in New Zealand.
44. However, I find that the last medical report “Pex-7” obtained in New Zealand is way back in August 2020. It has been prepared to Plan a Reconstructive Surgery on his left Knee, which he has not attended either in Fiji or New Zealand. Dr. Simon Young, who prepared it, appears to have relied on the MRI scan taken when the Plaintiff was hospitalized in Fiji. As I alluded to in a foregoing paragraph, Dr. V.E. McCaig, who made the “Pex-6” Report, also has relied on the X-Ray taken on 7<sup>th</sup> August 2013 and the CT scan done on 30<sup>th</sup> August 2013 in Fiji.
45. No Medical evidence whatsoever, depicting the Plaintiff’s current physical state, in the form of recently obtained Report/s, supported by findings through X-Ray and/or Scan, is before the court to demonstrate that he cannot still engage in a job where he is required to lift heavy items. He is said to be presently engaged as a Bus Driver in New Zealand. There is no evidence to show that his chances of being employed for a job that involve lifting of heavy items, with better pay and to suit his qualification / experience, have been denied to him owing to his alleged present condition. Thus, I am not inclined to order any damages on account of his future earning capacity.
46. Having considered the conventional figure derived through experience and awards made in comparable cases cited above, the evidence adduced and submissions made, I assess general damages for **Mr. Parween Krishna Naicker** at **\$40,000.00 (Forty Thousand Fijian Dollars)** on account of Pain & Suffering, Loss of Amenities: with interest at 6% p/a from **18<sup>th</sup> February 2014** to the date of this judgment.

**d. Interests**

47. In respect of the interest payable for the amounts adjudged as special, general damages and loss of earnings, I am inclined to follow the decisions on similar personal injury claims. Mr. Chaudhary has drawn my attention the decision by Court of Appeal in **Attorney General V Charles Valentine – Civil Appeal No- ABU 0019 of 1998**. I also take into account the time period of over 10 years that the Plaintiff has toiled to get the relief finally.

48. Counsel for the Defence in her written submissions has argued that no interest should be granted either on the special or general damages awarded. as the same was not specifically pleaded in the statement of claim.
49. As correctly alluded to by Mr. Chaudhary, Counsel for the Plaintiff, the basis of awarding interest in personal injury cases is on an Act of Parliament, on Statutory powers bestowed on the Court by the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act, Cap 27.
50. Mr. Chaudhary has drawn my attention to the decided case of **Attorney General (Appellant) v Charles Valentine (supra)** (Judgment dated 28<sup>th</sup> August 1998) wherein in page 1 thereof it was stated as follows;

*The power to award interest in the High Court is contained in **s3 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act, Cap. 27:***

*"In any proceedings tried in the Supreme Court (now the High Court) for the recovery of any debt or damages the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment."*

*There is a proviso in s3(a) forbidding interest on interest. The fundamental principle is that interest is to compensate a party for having to stand out of the money to which he or she was entitled.*

*Section 3 gives an unfettered discretion to the Court and although guidelines may assist it is not for this Court to circumscribe that discretion by specific rules. However, it must be exercised rationally and in *Jefford v Gee* [1970] EWCA Civ 8; [1970] 2 QB 130 the Court of Appeal analyzed the logic behind the assessment of interest in personal injury claims in a way which may assist the High Court in the proper exercise of its discretion. Its relevant conclusions are summarized at p.151 and we set them out together with our comments: -*

51. The case record shows that Plaintiff is on a long wait for last 11 years to get his relief. The value of the money that the Plaintiff used to earn prior to the accident has considerably depreciated. If the Plaintiff is to be deprived of the interest, serious prejudice would be caused to him. Had the 1<sup>st</sup> Defendant opted to pay a reasonable sum as damages at the inception, it could have avoided the interest both prior to and post judgment.
52. The 1<sup>st</sup> Defendant has had sufficient notice of the claim for the interest. It was prayed for in the prayer to the Statement of claim. The Judgment against the 2<sup>nd</sup> Defendant granted the Plaintiff the interest, which left to be assessed along with the quantum of damages. The Notice of Assessment of damages & Interest also had put the 1<sup>st</sup> Defendant on notice of the claim for interest. Now the 1<sup>st</sup> Defendant cannot plead ignorance of it. No prejudice has been caused to the 1<sup>st</sup> Defendant in this regard.
53. There is no hard and fast rule that the interest must be pleaded in the pleadings, if it is to be awarded. I am inclined to be guided by what the Court of Appeal in the case of **Abbco Builders Ltd v Star Printery Ltd FCA No-ABU 0087 of 2015** had to say in paragraphs [36],[37],

[39] [41], [62] and [66] as alluded to by the Counsel for the Plaintiff in his reply written submissions.

54. Accordingly, I calculate and decide the interest payable as follows.

a. The interest on the sum of **\$704.00** (awarded as special damages) shall be 3% calculated from 27<sup>th</sup> July 2013 to till 29<sup>th</sup> July 2025, the date of this judgment (approximately 12 years)

$$\text{\$704.00} \times 3\% = \text{\$21.12} \times 12 \text{ years} = \text{\$253.44 cts}$$

b. Interest on loss of earnings (awarded in a sum of \$ 12,978.80) from 27<sup>th</sup> July 2013 to 29<sup>th</sup> July 2025 (date of judgment) (approximately 12 years)

$$\text{\$ 12,978.80} \times 3\% = \text{\$389.36 cts} \times 12 \text{ years} = \text{\$4,672.36 cts.}$$

c. Interest on general damages of **\$40,000.00** (awarded for pain & suffering, loss of amenities past) should be at 6% from 14<sup>th</sup> February 2014 till 29<sup>th</sup> July 2025 (date of this judgment) (4176 days)

$$\text{\$ 40,000.00} \times 6/100 \times 4176 / 365 = \text{\$27,458.63 cts}$$

**TOTAL INTEREST-----\$ 32, 384.43 cts**

(Thirty Two Thousand Three Hundred Eighty Four & cts 43)

**e. Costs**

55. The Plaintiff claims \$4,000.00 as costs of this action. The protracted litigation for over 10 years would, undoubtedly, have compelled the Plaintiff to bear an enormous amount as costs. I will take into account the fact that the 2<sup>nd</sup> Defendant driver did not contest the proceedings, which saved the time and unwarranted expenses. Accordingly, I order the 1<sup>st</sup> Defendant to pay the Plaintiff \$2,500.00 (**Two Thousand Five Hundred Fijian Dollars**) as summarily assessed costs.

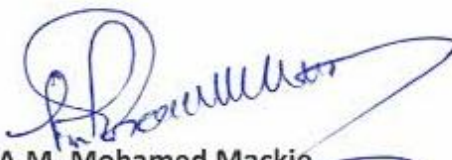
56. All in all, the Plaintiff is entitled to the following sums as special cum general damages, interests and costs;

<b>a. Special Damages</b>	<b>\$ 704.00</b>
Interest at 3% for 12 years (approximately)	\$ 253.44
<b>b. Loss of Earning</b> (for 12 years “ “	<b>\$ 12,978.80</b>
Interest at 3% for 4320 days	\$ 4,672.36
<b>c. General Damages</b>	<b>\$ 40,000.00</b>
Interest at 6% for 4120 days (from 14/2/2014 to 28/07/2025)	\$ 27,458.63
d. Costs	<u>\$ 2,500.00</u>
<b>Total payable</b>	<b><u>\$ 88,567.23</u></b>

**E. FINAL ORDERS:**

1. The 1<sup>st</sup> Defendant shall pay the Plaintiff the following sums as calculated in the foregoing paragraph.
  - a. Special damages in a sum of **\$704.00**, together with interest on it at 3% in a sum of **\$253.44**.
  - b. Loss of earnings in a sum of **\$12,978.80**, together with interest on it at 3% in a sum of **\$4,672.36**.
  - c. General damages in a sum of **\$40,000.00**, together with interest on it at 6% in a sum **\$ 27,458.63**
2. The 1<sup>st</sup> Defendant shall also pay the plaintiff a sum of **\$2,500.00** being the summarily assessed costs.
3. The total amount payable by the 1<sup>st</sup> Defendant unto the plaintiff as of today is **\$88,567.23** (Eighty-Eight Thousand Five Hundred Sixty-Seven Dollars and Twenty-Three Cents)
4. The Plaintiff shall also be entitled to post judgment interest (4%) on the principal sums awarded above from the date of this judgment until the total principal sum is fully paid and settled.
5. No interest on interest could be charged.
6. Errors, if any, in calculation of the interest can be remedied by further orders.



  
A.M. Mohamed Mackie  
Judge

At High Court Lautoka this 29<sup>th</sup> day of July, 2025.

**SOLICITORS:**

For the Plaintiffs:

Messrs. Chaudhary & Associates- Barristers & Solicitors.

For the 1<sup>st</sup> Defendants:

In House Solicitors- LTA.

For the 2<sup>nd</sup> Defendant:

Self represented.