

PARBATI

v.

THE ATTORNEY-GENERAL & PITA LESI

[HIGH COURT, 1990 (Palmer J) 5 September]

Civil Jurisdiction

Damages- negligence causing death- assessment of dependency- Compensation to Relatives Act (Cap 29)- Fiji National Provident Fund Act (Cap 219) Sections 36 (1) & 36 (3).

The Plaintiff's husband died as a result of an accident at work. Liability was conceded and the High Court was only called upon to assess damages. The Court assessed the dependency taking into account payments received in Workmen's Compensation and from the Fiji National Provident Fund. It also apportioned a part of the award in favour of the younger child.

Cases cited:

Attorney-General v. Waisale Naicegulevu (Civ. App. No. 22/89)

British Transport Commission v. Gourley [1956] AC 158

Cookson v. Knowles [1978] 2 All ER 604

Davies v. Powell Duffryn Collieries [1937] AC 826

Subramma v. Chandra (Civ. App. 40/82)

V. Maharaj for the Plaintiff

Ratu Joni Madraiwiwi for the Defendants

Action for damages for negligence causing death.

Palmer J:

The Plaintiff is the widow and Administratrix of Hirday Ram deceased. The deceased was a driver for the Union Manufacturing and Marketing Company Limited. On the 18th December 1987 he was waiting near his truck at his employer's yard when he was struck by a piece of timber which had been dislodged from another truck as a result of the negligent driving of the Second Defendant. He received injuries which eventually caused his death. Liability has been admitted and the Court is concerned with the assessment of damages only.

I find the following facts which are agreed between the parties: The deceased was injured on the 18th December 1987 and died as a result of those injuries at the C.W.M. Hospital on the 23rd December 1987. At the time of his death he was almost 43 years of age, having being born on the 7th January 1945. At the time of his death the deceased was employed as a truck driver by Union Manufacturing and Marketing Company Limited in whose employ he had been for over 12 years. The deceased's gross weekly earnings immediately prior to his

A death were \$60.52. His take home pay amounted to \$53.77 after deductions of \$2.55 for tax and \$4.20 for Fiji National Provident Fund. he deceased was married to the Plaintiff Parbati Devi on 8th May 1968, On 10th May 1988 Letters of Administration of the Estate of the deceased were granted to the Plaintiff. There are three children of the marriage who are

a son	Manoj Ram	born 11. 6. 70	
a daughter	Roshni Devi	born 21. 12. 72	and
a daughter	Rajneeta Devi	born 29. 5. 86.	

B

The deceased was the registered owner of a residential three bedroom house at Valelevu built on a Housing Authority Sub-lease.

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Certain items of household expenditure have been agreed between the parties as a representative average, but I do not find them of any assistance in arriving at the dependency.

D

The Plaintiff was the only witness called on the assessment. She said that her husband had been a driver at all times since the marriage. He derived additional income from the sale of grog. He had started this about five years before his death, selling it at the company where he was working. It was pounded by the Plaintiff and the children and he would take it to work and when driving out on jobs and sold it there. He derived a profit between \$20 and \$22 per week from this, all of which he gave to the Plaintiff. He bought it from Navua. He used \$60 when he first started this business to start off five years ago. She did not know how much he spent each week on purchasing the grog but he told her that the \$20 to \$22 per week represented the net profit of the week's operation. Her husband had been a healthy man having no chronic disease, he did not smoke or drink except grog. He gave her \$49 each week from his wages, retaining only the balance of \$4.77 for his own use. He had no other expenses except buying grog for himself. His employer provided transport. He had savings of \$400.

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The Plaintiff said that she herself was 42 years of age. She had not worked since her marriage. She was educated to class two level, she has no trade or skills, she stays at home and looks after the children and now in particular the youngest child. She suffers from asthma and sinusitis and has done so for some three years. She goes to the doctor for this two or three times a month and pays the doctor \$2 or \$3 at the Bayly Clinic. She also spends \$5 to \$6 each week for medication, she has no receipts for any of this expenditure which is incurred at the Bayly Clinic or the Valelevu Health Centre. The house which is now ten years old is now in her name. She has not seen the clothing damaged in the accident. She paid \$366 for the cost of obtaining the Letters of Administration. She does not intend to take up employment in the foreseeable future in view of her absence of skills and training and the need to look after the youngest child. She has received no income other than the Workers Compensation and Fiji National Provident Fund payment, which she has placed in her bank on passbook. She does not know what the rate of interest is.

G

The parties agree that these payments were as follows:

Workers Compensation:

Plaintiff	\$ 3,333.00	
Manoj Ram	\$ 2,067.00	
Roshni Devi	\$ 2,100.00	
Rajneeta Devi	<u>\$ 2,500.00</u>	
	<u>\$10,000.00</u>	

A

The Children's share is held by the Public Trustee.

B

2. Fiji National Provident Fund:

Plaintiff	\$3,500.00	
Children	<u>\$3,500.00</u>	- held by Public Trustee
	<u>\$7,000.00</u>	

C

As to the children she said all three were at school at the time of her husband's death. Obviously that cannot be right since the youngest child was only 18 months of age then. She said that after the husband's death she could not afford the school fees. The boy Manoj Ram had been working for one year at the time of this hearing, which was in April 1990, he is living with her. He is working in a garment factory earning \$39 per week nett. The girl Roshni Devi has been working in the same place for two years earning \$27 per week nett. She is also staying with the Plaintiff and both children are contributing to the household expenses. The son wants to get married and she would also like to marry the daughter off this year. She does not know whether they will stay with her after that. The youngest child Rajneeta Devi is expected to start school in two years time. The school is one mile from home.

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As regards special damages there is no evidence at all as to any damage to clothing or the amount thereof if any. As to funeral expenses she has no receipts but says that they amounted to five or six hundred dollars. With regard to the cost of obtaining Letters of Administration no receipts have been provided. It would have been a very simple matter to prove those expenditures by receipts. However I accept the Plaintiff's evidence as to this and I propose to allow the sum of \$366 in respect of the Letters of Administration and the sum of \$550 in respect of funeral expenses. So the award for special damages will be \$916.

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The Plaintiff impressed me as a truthful witness and I accept her general evidence, which has not been challenged.

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The action is brought pursuant to both the Law Reform (Miscellaneous Provisions) Act, (Cap.27) and the Compensation to Relatives Act, (Cap 29).

With regard to the former I note that the deceased died 5 days after the accident. I would award in respect of pain and suffering and loss of amenities the sum of \$1500. However it is clear from authority that any benefit accruing to a dependant

from an award to the estate under the Law Reform Act falls to be deducted from the damages under the Compensation to Relatives Act (Davies v. Powell Duffryn Collieries, [1937] AC 826).

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This is not a case where less than the full amount of the Law Reform award falls to be so deducted and no argument has been addressed on the point. It would therefore be an exercise in futility to make the award and then deduct it from the final judgment. I propose therefore to pass on to the claim under the Compensation to Relatives Act.

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Loss of Earnings

The starting point, for arriving at the multiplicand is the nett wage, that is to say the gross wage less tax (British Transport Commission v. Gourley, [195]6 AC 185). However the contributions to the Fiji National Provident Fund are not to be deducted (Attorney-General v. Waisale Naicegulevu FCA Repts 90/66).

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The following is the result:

Gross wage from employment :	\$60.52
Less Tax	2.55
Sale of "Grog"	57.97
	<u>\$79.00</u>

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which equals \$4108 per annum.

The deceased was plainly a good provider. He had provided a home and accumulated some savings. His personal wants were minimal and he was content to pass the bulk of his earnings over to his wife for the maintenance of the family, including himself of course. In all the circumstances I think a dependency of 2/3 is a fair assessment. It may be argued that the dependency of the 2 older children has changed or ceased since the death. However I believe that that factor would not have led to greater expenditure on himself. Moreover some contribution to the children's expenses may well have continued, including expenditure on the impending weddings. The children may have remained at school longer. Also, with the passage of time the cost of maintaining the youngest child must progressively rise. So I assess the multiplicand as 2/3 of 4108 = \$2740 per annum in round figures.

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As for the multiplier, the deceased and his wife were of the same age. No actuarial material as to life expectancy was placed before me. He was in good health and there is nothing to suggest that his employment would not have continued until he retired somewhere between 12 and 17 years later. He may have worked even longer. Income from sale of "grog" may have continued longer. I have considered all the authorities cited by counsel and some others. Taking all factors into account I think a multiplier of 14 is appropriate.

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Following Cookson v. Knowles, [1978] 2 All E.R. 604. I divide the award into

two parts, viz. the pre—trial period of approximately 2 1/2 years as from date of death (18.12.87) to the date of this Judgment and the post trial period of future loss from the date of this judgment. The pre-trial amount is 2 1/2 times 2740 = \$6850. I allow 4% interest thereon following Cookson v. Knowles (supra) which amounts to \$685.

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The pre-trial period of 2 1/2 years is to be deducted from the multiplier selected, which is thereby reduced to 11 1/2 years. The result is as follows:

Future loss	-\$2740 x 11 1/2	:	\$31,510
Pre-trial loss	-\$2740 x 2 1/2		6,850
Interest			<u>685</u>
			<u>\$39,045</u>

B

It is conceded that the amount of \$10,000 Workers Compensation received is to be deducted.

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It is also conceded that the payment from the Fiji National Provident Fund are to be deducted. However, in spite of that concession a further adjustment is required.

In Subramma v. Chandar - (FCA Reps 82/573) the Fiji Court of Appeal considered the point. The Court referred to section 36 of the Fiji National Provident Fund Act, (Cap.219), subsections (1) and (3) of which are as follows:

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“36. (1) On the death of an entitled member after 1 January 1971, the amount standing to his credit in the Fund shall be increased by such proportion of the maximum sum as may be prescribed in accordance with subsection (2) and the amount of such increase shall be paid from the general revenues of the Fund.

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(3) The amount payable under subsection (1) shall not be taken into consideration in the assessment of compensation or damages payable to the dependants or beneficiaries of the deceased member under the provisions of the Compensation to Relatives Act.

The Court held that the increase calculated under subsection 2 should not be deducted from the award of damages. No evidence or argument as to the amount in question was presented to me, so I follow the action of the Fiji Court of Appeal and assess the increase from the Fund's general revenue at the minimum sum prescribed by section 9 of the Act, namely \$1000.

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The final award therefore is as follows:

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General Damages	\$39,045
Special Damages	916
	<u>\$39,961</u>

Less : Workman's Compensation - \$10,000

A	FNPf payment -	\$7,000		
	Less -	<u>\$1,000</u>		
		\$6,000	- <u>6,000</u>	
			\$16,000	<u>\$16,000</u>
				<u>\$23,961</u>

B There will be Judgment for the Plaintiff for \$23,961 and costs to be taxed if not agreed.

C In the circumstances I do not consider that any apportionment is necessary except in respect of the youngest child. She is only 4 years of age and will require support for a good many years yet. The Public Trustee is holding \$2,500 from the Workmen's Compensation for her, together with an unknown share of the \$3,500 from the Fiji National Provident Fund. Presumably this is in his discretion. I think some further specific provision should be made for her and I direct that \$2,000 of the amount awarded in this Judgment be paid to the Public Trustee for the benefit of the child Rajneet Devi.

D *(Damages awarded as assessed.)*

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