IN THE SUPREME COURT OF FIJI (WESTERN DIVISION) 18
AT LAUTOKA
Civil Jurisdiction C00409
Action No. 84 of 1978

BETWEEN: SAJENDRA PRAKASH s/o Sudhendra Nath — Plaintiff

A N D : AHMED GAFFAR s/o Rafiq Mohammed — Defendant

Mr. Kapadia, Counsel for the Plaintiff
Mr. Sweetman, Counsel for the Defendant

J U D G M E N T

This is a claim by an infant male plaintiff for dreadful injuries received in an accident about one and half miles from Tavua on the Ba - Tavua road. He was 5½ years of age at the time and due to fractures of the spine he is now a severe paraplegic paralysed from the navel downward.

On Sunday, 4th August, 1977, about 4.45 p.m. he alighted from a bus on which he had travelled from Ba with his mother who had three children with her. As he crossed the road from the stationary 'bus he was struck by the plaintiff's car as it overtook the 'bus.

SUDHENDRA NATH, father of the plaintiff, witnessed the accident. He said that on the previous day, Saturday, his wife and a married female friend went to Ba with their children and were returning home. The father was waiting for the 'bus but rather surprisingly he waited on the opposite side of the road to the 'bus stop although his wife had three young children with her.

The road, King's Road, is the main highway to Suva and is tarsealed for a width of 24' and is straight on either side of the scene for one-quarter mile or more. There is no pull-in bay at the 'bus stop. At the time the surface was dry, the weather was fine and visibility was good. Motor vehicles approaching the 'bus from ahead or overtaking have a clear unobstructed view.

P.W. 1 says he saw the two families alight from the 'bus but in cross-examination agreed that he could see the far side of the 'bus. He could not see them until after they had alighted.

Accompanying the plaintiff's mother on the 'bus was the wife of one Bishun alias Bhagwan and her 7 year old son ATESHWAR.

P.W.1, father of the plaintiff, says Ateshwar a 7 year old boy and the plaintiff passed the front of the 'bus and walked across the road with Ateshwar slightly ahead. He says that Ateshwar had crossed the road and the plaintiff was just 2' or 3' behind him, when he was struck by the defendant's car. Later he said that the plaintiff was two to three yards away from P.W. 1's side of the road when he was struck. He later amended t is to 2' or 3' and later 3' to 4'. I do not expect P.W. 1 to be strictly accurate as to distances in such circumstances. He states that the defendant drove at a very high speed but in cross-examination he agreed that he could not estimate the speed in miles per hour or kilo-metres per hour. The plaintiff went under the car which dragged him along before passing over him. P.W. 1 estimated that the car stopped 30' to 40' beyond the spot where the plaintiff was left lying. He states that another car belonging to Ram Pratap Sharma (P.W. 4) had stopped nearby.

P.W. 1 said that the defendant was two to three chains from the 'bus when the plaintiff began to cross the road and it was then that he noticed the car. I would have expected him to be looking for approaching traffic from the moment the bus stopped and to have seen the plaintiff's car much sooner and to have crossed over to ensure that his young children did not run into the road.

If P.W.1's evidence is correct there could be little doubt that the defendant had time to stop or slow down sufficiently to avoid the plaintiff as the latter walked across the road.

In cross-examination the P.W. 1 said he first saw the car when it was a mile away then amended this to being as far along the road as one could see. It was two or three chains away he says when the plaintiff began to cross the road. He also said that the car stopped

about 30' to 40' beyond the 'bus after the accident.

P.W. 1 stated that the car of Ram Pratap Sharma stopped at the scene about one and half chains from the 'bus and facing the front of the 'bus. It was travelling in the opposite direction to the 'bus.

Ram Pratap Sharma (P.W.4) stated that he was travelling in the opposite direction to the 'bus when he saw it stop and passengers alight and he reduced speed. On seeing the defendant approaching from opposite direction at 40 - 45 m.p.h. P.W. 4 stopped. Then he saw two children walk across the road from the 'bus one behind the other; the leader crossed over but the other child was struck by defendant when just 2' or 3' from the defendant's offside of the road.

In cross-examination, P.W. 4 said that when he saw the 'bus coming he stopped; he later said it was stationary when he first saw it and that he was ten chains from it. He slowed down and stopped about one and half chains from it. Then he saw people alighting but did not see the children alighting although he saw them crossing the road. He stated that he stopped because of the approaching defendant's high speed when the defendant was three to four chains away.

In cross-examination, P.W. 4 said that when he stopped one boy had crossed and the plaintiff was 2' or 3' from the defendant's offside and the defendant was about five chains away - he amended that to three to four chains.

If the plaintiff was 2' or 3' from the edge of the road when the defendant was three to four chains away an accident would have been highly improbable. Even if P.W.4 meant that the defendant was three to four chains from P.W. 4 the plaintiff himself was one and half chains from P.W. 4 and therefore he (the plaintiff) would be one and half to two and half chains from the defendant with only 3' of road left for him to cross. Mr. Sweetman, for the defendant, asked how in those circumstances the accident ever happened? P.W. 4 replied that it was due to the speed of the defendants and the plaintiff standing motionless instead of continuing across the road.

I was by no means impressed by P.W. 1 (the plaintiff's father) nor by P.W. 4 Ram Pratap. In my view it would be natural for the plaintiff to go towards his father. The latter by placing himself on the other side of the road created a peril for the plaintiff. His disregard for the plaintiff's safety is almost beyond comprehension. The parents now have to devote special care to ensure the plaintiff's survival. It would not be surprising if P.W. 1 adjusted his account to place as much blame as possible on the defendant. Child and parents are objects of compassion and it would not be surprising if P.W. 4 were swayed in favour of the plaintiff by feelings of pity. That may account for the contradictions appearing in P.W. 4's evidence and in that of P.W.1.

The defendant, AHMED GAFFAR, who is a policeman, described the vicinity as a long straight stretch of road. He said he saw the 'bus twenty chains or more ahead. His speed was 30 m.p.h. When the 'bus stopped he began to overtake and when he was three chains away a boy ran across the road. He sounded his horn and reduced speed to 20 m.p.h. Then as he reached the 'bus another boy ran from in front of it leaving defendant no chance of avoiding him. He swerved and applied his brakes but hit the boy. The defendant says that the plaintiff's mother ran to him and the 'bus driver ran to the scene. He most emphatically denied that P.W. 6, Ram Pratap, was at the scene and insisted that no other car was there.

In cross-examination the defendant agreed that people sometimes run from parked vehicles and 'buses. He maintained that after the first boy crossed the road was clear and there was no obvious need to stop.

Mr. Kapadia suggested to the defendant that on country roads motorists have precedence and defendant agreed. The defendant was not asked in what circumstances he thought motorists have precedence. It is the type of question which must be followed up if it is to have a significant bearing on the defendant's mode of driving.

In cross-examination he insisted that each boy ran separately across the road.

It was put to him that his car dragged the plaintiff for four or five yards and then continued for a further ten yards, before stopping. He denied those distances and said that he stopped about three yards in front of the bus. It appears that his evidence is inaccurate in that respect because the police plan Ex. P.9 shows that the defendant travelled 31' 3" after the impact. When the police officer P.W. 6 visited the scene the bus had gone and the defendant's car had taken the plaintiff and his father to Tavua clinic. The point of impact and the spot where the defendant stopped were pointed out by the defendant. No doubt his recollection at that time which was shortly after the accident would be more accurate than now. The plan does show that the point of impact occurred 4' 5" from the defendant's offside which in the circumstances is noticeably more than the 2' or 3' given by P.W.'s 1 and 4.

The defendant's evidence is that he was about the centre of the off-side lane when he struck the plaintiff.

The housewife who was accompanying the plaintiff's mother is now dead as is the 'bus driver. The police took statements from them both several weeks after the accident.

Their statements have been tendered by the defendant.

Ram Prasad, the bus driver, made a statement on 16th September, 1977 in which he said that he remembered the two women and five children on the 'bus. As he stopped he noticed the P.W. 1 standing on the opposite side of the road waiting for his children. Knowing the children would cross to their father he called to them not to cross because in his mirror he saw a car approaching. He says he told the **mother** to get hold of her children. He saw one child run across the road and as the mother held on to one child another ran across the road. That description corroborates the defendant's account that one child crossed over the road and then the plaintiff followed. The 'bus driver's evidence also reveals that the plaintiff's mother had alighted with her children and had failed or been unable to restrain them from running across the road.

The other woman made her statement on 24th September, 1977. She was Kamla Wati.

She says that when the 'bus stopped Kamla Kumari (plaintiff's mother) got off the bus with her three children ahead of Kamla Wati. Whilst the latter was in the bus she heard a bang and realised something had happened. When she alighted Kamla Wati saw P.W.1 holding the child.

Her evidence supports that of the bus driver to the effect that the plaintiff's mother had alighted from the bus with her children before the accident occurred.

The bus driver said as soon as plaintiff passed the front of the bus he realised there would be an accident and as he exclaimed the car hit the plaintiff and dragged him four or five yards and then stopped ahead of the plaintiff. The bus driver says he told the defendant to take the plaintiff to the hospital.

The statements of the bus driver and Kamla Wati were not made on oath. However, there can be no disputing that they were at the scene. In particular the bus driver was excellently placed to see what occurred. His statement is extensively corroborated by P.W. 1 when he says P.W. 1 was waiting for his family on the opposite side of the road; that P.W. 1's wife and family were on the bus; that she was accompanied by a married friend and her children; that two children crossed the road; that the plaintiff was struck by the defendant's car; that the car passed over the plaintiff.

The 'bus driver differs from P.W. 1 and P.W.4 in saying that one boy had crossed the road before the plaintiff tried to cross. He also differs when he says that they ran across the road. But he does describe how this came about. He noticed that the children were eager to join their father on the opposite side. He endeavoured to check them by calling out and by calling to their mother to hold them back. That statement commends itself to me as having been uttered by someone who was giving truthful recollection of what he saw.

I accept the statements of Kamla Wati and Ram Prasad and the manner in which they corroborate the defendant's account.

Having carefully viewed the evidence I have no hesitation in stating that I regard Ram Pratap (P.W. 4) and the plaintiff's father (P.W. 1) as witnesses upon whom I cannot rely. I find that they

were deliberately untruthful in stating that the two children crossed over the road together with plaintiff just behind the other, and untruthful in their evidence that the boys walked across the road and untruthful in saying that the defendant passed the 'bus at a high speed. They were untruthful in saying that the plaintiff was only 2' or 3' from the side of the road when he was struck by the defendant's car.

I find that the accident arose in the following way. The plaintiff's mother and three children were on the 'bus from Ba to Tavua accompanied by a neighbour and her two children. P.W. 1 was waiting for them on the opposite side of the road from the 'bus stop thereby causing his children to abandon caution in the desire to join him.

The plaintiff's mother knowing that P.W.1 was waiting on the other side of the road failed to prevent the plaintiff from running across to him. When the defendant was about 66 yards away the first boy ran across the road and the defendant sounded his horn and the defendant reduced his speed. He says it was 20 m.p.h. The 'bus driver puts it at 25 - 35 m.ph. If I take the meaning of the estimate his speed would be about 25 m.p.h.

At that stage the plaintiff unrestrained by his mother ran across the road into the path of the defendant who had moved to his off-side in case passengers should move from a concealed position into the road.

I find that the defendant was near the front of the 'bus as the plaintiff emerged from the front of the 'bus and ran across the road. The 'bus is 7½' wide leaving 16½' for the plaintiff to cover within the defendant's field of vision. The plaintiff was about 4½' from the opposite side, when struck and had run 12' when he was struck. Of course defendant would not be aware of plaintiff until he was already running into the road.

Travelling at 25 m.p.h. the defendant, according to Mazengarh's Negligence on the Highway would stop in 71' (p.431).

Mr. Kapadia for the plaintiff quoted numerous authorities in his written submission. In his oral address he submitted that when the bus stopped the plaintiff should have stopped because motorists should never overtake stationary buses. He referred to Traffic

Regulations 1974 and R. 136 which requires one to reduce speed to a maximum of 10 m.p.h. when overtaking a stationary school bus. But the regulation does not require motorists to stop. In any event it has no application to the instant case. This was not a school bus and the defendant could have no reason to suppose that children would be alighting. Usually school buses are marked as such and travel through busy suburban areas where speed restrictions exist. In the instant case the situation is vastly different the accident having occurred on an unrestricted quiet main highway on a Sunday. Reference to judgments in Fiji Courts prior to 1973 are not of much assistance because in the past the highways referred to in similar cases were narrower and of earth and with much tighter bends. Neither in Fiji nor in any of the numerous countries I have lived and travelled in have I come across any law or custom which requires motorists to stop on main unrestricted highways because a bus has stopped. However, in Fiji and the U.K. the motorist must take care in passing a stationary bus. If he is aware or should be aware that people are alighting he should keep well to the offside of the bus to allow himself room for avoiding action should a careless passenger emerge from the concealed end of the bus, and likewise to give such passenger the chance to see the approaching car. He would be wise to sound his horn but it is difficult to comment upon what his speed of approach should be. This must depend upon all the circumstances, road surface; other traffic; proximity to towns, schools, weather and so forth. In my view the motorists cannot be expected to guarantee the safety of all pedestrians or bus passengers no matter how careless they may be. He is not entitled to assume that all passengers will behave as recommended and wait until the bus has moved on before crossing the road. Likewise he is not required to assume that one or more passengers will rush into the road.

In other parts of the world where there are well marked pedestrian crossings in towns and villages pedestrians have precedence on the crossings but Courts have held that this does not entitle pedestrians to adopt suicidal tactics of stepping immediately in front of

approaching traffic expecting a miracle to halt it. In such busy centres areas are delineated on either side of a crossing and if traffic is moving through such a zone the pedestrian does not necessarily have priority if he has not yet stepped on to the crossing. A motorist is entitled to be shown courtesy and respect by pedestrians and to expect them to behave carefully but should be on the look-out for the exceptions. The precautions are obvious with a school 'bus; or 'bus load of merry makers. However, one cannot be expected to anticipate that a child's father has created the kind of dangerous situation which arose in the instant case.

The motorist can only be guided by anticipating what may happen according to what he sees at the time and by applying his experience and commonsense. If as he approaches from behind he notices children alighting he should take special precautions; but if they are concealed from his view he does not have to imagine that children are alighting. If a child darts into his path from the concealed end of the 'bus and is knocked down one cannot say the motorist is careless unless the circumstances demonstrate his lack of care.

In the instant case one child had darted across the road in full view of the defendant and in my opinion this should have alerted the defendant to a greater degree of caution than he displayed. He should have anticipated that the child could have had a companion who may pursue him. I think that the defendant should have reduced his speed to less than the 25 m.p.h. at which he was travelling at the moment of impact. His degree of negligence was not great but he was not without blame.

It is a decision which has caused me the greatest of anxiety because of the amazing negligence of the parents and the father in particular. Had it been possible for me to do so I would have regarded them or the father as being about 60% to blame.

Had the plaintiff not been preceeded by another child and had simply run into the defendant's path I doubt if I would have regarded the defendant as blameworthy.

As a result of his injuries the plaintiff's spine was fractured and the spinal cord damaged so that he has lost the use of the lower part of his body from just below the

navel. He was in Lautoka Hospital from 25th September, 1977 until 28th January, 1981 when he was discharged. He has to be wheeled around and is strapped into the wheel chair in case he should fall forward. He has no control over his bowels and bladder and cannot use his stomach muscles as an aid to respiration. Accordingly he must be at a disadvantage in regard to respiratory ailments. Someone must be reasonably at hand to attend to his needs; to change his napkin when he has a bowel movement and to empty the urine container which is attached to his penis. Occasionally he needs massaging to maintain a degree of circulation and in bed his position needs to be changed to prevent bed sores.

On the day of the hearing leave was granted to file further particulars of the claim for special damages. The first ten items of incidental expenses amount to $2,199.53 which are not contested and appear to be reasonable. I allow them "in toto". Item 11 thereof is for $13,920, the alleged value of the parents' services from 25th September, 1977 to 28th January, 1981, at $80.00 per week, which represents the cost of two full-time qualified nurses. The claim is grossly inflated. There is nothing to suggest that either parent has ever had any nursing experience or training, or has any special aptitude for that profession. On the evidence P.W. 1, the father, no nurse has been called upon to assist in the past three and half years. Looking after the plaintiff is not a full time job requiring a perpetual presence at his elbow, although someone needs to be within call at any given time. For instance the plaintiff attends school like any other child and he requires no trained or specially experienced person in the class or the school during the hours of tuition.

His father wheels him to and fro school; if he has a bowel movement in school the father is called to remove him and change him; this probably can be done in the school toilets. Meanwhile the father has been able to carry on with his tailoring business. Moreover, the mother has had a further three children since the plaintiff's accident; their ages are 7 years, 2 years and 1 year. Whatever demands the plaintiff's condition has made upon her she has coped with her pregnancies and the burden of feeding and nursing those infants.

Dr. L. B. Naigulevu, P.W.3 stated that in his opinion the plaintiff would require the constant nursing of two fully trained nurses at $40.00 each per week. He did not impress me and I have no hesitation whatsoever in saying that I do not find Dr. Naigulevu as a careful and reliable witness. He did not give any reasons for that opinion. If two fully trained nurses are essential to the plaintiff's welfare in the future it is strange that their services have not been necessary in the past. I appreciate that financial stringency may have cut out the chance of outside paid help but the mother has borne further children and the father also works. It is not suggested that any special or expert attention is needed such as some sudden need for oxygen on occasions; or regular injections of measured amounts, force-feeding, heart-massage, special physiotherapy and so forth. It appears that there is no need for a fully trained nurse in the classroom.

P.W. 2, Dr. Welby, said that the plaintiff needs constant care but he did not refer to the expert care of two fully trained nurses being necessary. Undoubtedly the plaintiff needs constant care but that obviously does not mean perpetual expert attendance. He should not be left unattended for long periods but he is intelligent and able to summon attention when he realises that he needs some attention. He is eight years of age and conscious of his plight.

Dr. L.B. Naigulevu practices at Monasavu, in the "Hydro-Electric Project" area. He saw the plaintiff at Monasavu in January this year. To reach Monasavu requires a lengthy journey on rough escarpment road with many hair-pin bends which is not without hazard. I wonder why Dr.Naigulevu was selected in preference to a comparatively easy journey to some medical expert at Lautoka hospital?

I find that the value of the parents' services was not the value one would place on professional nurses. For the reasons I have given I also find that their services were not of a perpetual nature but amounted to the kind of vigilance required in caring for a baby plus the occasional massage at night or in the day, and avoidance of bedsores. During the first day's hearing the plaintiff was in Court in his wheet chair. Whilst in Court he was not exercised nor massaged nor removed for that purpose.

Likewise it is not suggested that this has to be done during the hours he sits in the class room.

I am not endeavouring to minimise the plaintiff's pitiful state but the claim for services under special damages and for services under general damages are grossly exaggerated. Unfortunately P.W. 1 is not a reliable and truthful witness as I have already found. I cannot rely upon his evidence as to the amount of time spent on the plaintiff. I have no doubt that he will readily distort the truth and exaggerate. I have to estimate the value of the parents' services as best I can by relying upon factors which speak for themselves. During the past three years the parents have not employed professional nurses nor anyone else to assist them; therefore the additional burden of caring for the plaintiff has been within their physical and mental capabilities. Provision of a full-time Indian domestic help could have released the father from the chore of wheeling the plaintiff to and from school. Such a person could have exercised the plaintiff by moving his arms and massaging him these matters being within the compass of the untrained parents. Assistance in domestic chores such as laundry and cooking would free the mother. The plaintiff could have given evidence on those lines to cover the claim under special and general damages for care and nursing. The amount that would probably be paid, in an Indian household to an Indian house-girl of similar ability and intelligence as the parents would, during the past three years, vary from $6.00 to $9.00 per week. That may appear to be a low figure but any honest Indian housewife in Fiji would, I am sure, agree to that figure. It is the value of an Indian domestic in Fiji with which I am concerned. I also accept that in addition to such help the parents would still have the overnight burden of tending the plaintiff and whenever the "domestic help" help's" was off duty. I also allow for that in my assessment.

On the foregoing basis I consider that the value of past care and attention by the parents is worth $3,000.000 raising the assessment to $5,200. I allow interest of $800.00 on that sum giving a total of $6,000.00 for special damages.

I now turn to the difficult task of assessing general damages with practically no evidential assistance on practical values. A dominating issue is how long the plaintiff can be expected to live? There are different degrees of paralysis among paraplegics. Those paralysed from the waist downwards can control and move their chairs; use their shoulders to raise themselves and change their positions; some can drive specially adapted cars to and from a place of work and can take part in paraplegic athletics. No doubt such advantages favourably enhance their life expectancy. In the instant case the medical evidence reveals that the plaintiff being paralysed from the navel downwards cannot alter his position by using his shoulders to raise himself. Not being able to use his stomach muscles to assist his breathing must be a serious disadvantage in combatting respiratory infections. There is also the above average risk of urinary infection. Dr. Welby (P.W. 2) said that the plaintiff's expected life span would be shortened. He agreed that the plaintiff could live a normal life span but that is a speculation as opposed to an opinion. No doctor would say with certainty how long a person might live. Dr. Welby referred to a paraplegic who had lived 16 years and was still alive. The case is known to me; I have seen him wheeling his chair around and earning his living in the hospital by taking photographs. He seems to be 30 years of age and a very different type of case from the plaintiff. As I have said Dr. Welby stated that the plaintiff's life expectancy would be shortened. Dr. Naigulevu (P.W. 3) said that the Indian male in Fiji lives to about 61 years. He could not say how long the plaintiff was likely to live, but stated that he was more prone to infection than the normal child.

The medical evidence adduced is not helpful as to the prospective life span. Having regard to the seriousness of the plaintiff's paralysis at such an early age, the increased danger of infection, and to the decreased ability in fighting infection it would be most surprising if the plaintiff's life span were not substantially reduced. If the plaintiff were likely to live for anything like a normal life span I am sure the plaintiff would have adduced evidence to that effect. The

plaintiff appear to have taken the view that the least said in that respect the better. Tables in Kemp's Quantum of Damages, Volume II, in the March 1979 release show the life expectancy of some quadraplegics and paraplegics. The maximum life expectancy was 21 years and the minimum was 5 years. There is no indication of the full extent of their injuries. They were all, except for two two, shown as being over 21 years. I am sure the plaintiff plaintiff could have obtained from Suva or Lautoka hospital one or more considered opinions from qualified and experienced consultants on the expectation of life and I am hampered by the lack of such assistance. It would surprise me greatly if the plaintiff survived for a further 15 years. In fact I doubt if he will live another 10 years. Doing the best I can on the meagre evidence adduced I estimate that the plaintiff could live for a further 14 years.

I regard my estimate as erring on the high side if there is any error.

In endeavouring to assess the award for pain, suffering, loss of amenities and expectation of life I note the observations of the Court of Appeal in Fletcher v. Autocar 1968, 2 Q.B. 322, that one does not take into account the wealth or station in life of the injured person. Rich or poor, professional or artisan the monetary compensation should be similar. That of course means among persons resident in the same country and under the same jurisdiction.

The plaintiff has referred to awards made in the U.K. by reference to Kemp (supra). However, as Fiji Judges have stated in the past one cannot assess awards in Fiji on the basis of incomes and expenditure applicable in other countries. The plaintiff's expectation of life if he were in U.K. may be enhanced by greater, wider and more scientific facilities which are controlled by more proficient and intensively trained personnel plus increased opportunity for a wider range of specialist attention. It has been pointed out in Waldon v. War Office, 1956 1 W.L.R. 51 that the receipt of decisions on quantum by other courts even within

the same jurisdiction ought to seldom happen in that case each/has to be decided on its own merits. Wages, cost of living, standard of living and general amenities in the U.K. are higher than in Fiji and an award made in Fiji would be grossly inadequate in a similar case in U.K. and even more inadequate in U.S.A. where rates of earings are very much higher than in the U.K. I allow $21,500 for pain, suffering, loss of amenities and expectation of life.

Mr. Kapadia's approach on awards for future nursing $160,000 and $80,000 loss of earnings are unrealistic and unsupported by any acceptable evidence.

With regard to future nursing I have reviewed in the claim for special damages what I consider to be the needs of the plaintiff in that respect. He does not have to go into a special home but will remain with his parents. As I have said there is no acceptable evidence that the plaintiff nees or will need any skilled nursing beyond the kind which his parents are capable of providing. I am not stating that the parents must do any part of the nursing without help or without compensation for the nursing they may do. I merely refer to them as indicating the level of competence and skill required of any help that may be engaged by the parents in the future. In my view, on the evidence available, there is no need to suppose that the plaintiff's need for supervision and assistance are greater now than they have been during the past three years or that they will become greater. I do appreciate that the ability of the parents to provide the amount of care that they have provided in the past will be likely to decrease and that the cost of hiring suitably intelligent assistance is now higher than the average of the past 3½ years and will continue to increase. No realistic evidence having been placed before me to aid in assessing such costs I consider that such services would be worth $1,700 per annum. Acturial tables indicate that this rate of payment could be secured over a period of 14 years by purchasing an annuity for $18,877. If I assess the total without any deductions such as arise in calculating annuity purchases it could

assist in offsetting the effects of inflation and so the figure I arrive at is $23,800.

No claim under general damages has been argued as to extra expense caused by the family moving into a flat in Tavua away from the farm. I assume that this is because the family have by now moved into the flat which was mentioned in the claim for special damages. The plaintiff's evidence indicates that it is now a family home; he is a tailor and probably has his business in Tavua; likewise the children do not have to journey to school from Yasiyasi to Tavua. It is not mentioned as a head of general damages and in any event I would not know what amount of any increase in rent to apportion to the plaintiff's special needs. No doubt those occupying the farm dwelling will be paying rent to the plaintiff's parents in cash or kind.

Regarding the claim for loss of earning capacity in the future Mr. Kapadia has estimated earnings as high as $4,000 per annum in his written submission. Where he gets such a figure from is not apparent. He also submits that the plaintiff will live for about 40 years. I cannot reconcile such submissions with my earlier findings. If the plaintiff lives for 14 years he will no doubt be schooling until he is 16 years during which time there will be no loss attributable to wage earning. After reaching the age of 16 years the plaintiff on my findings would have a further 6 years to live, during which time he would have been receiving training or apprenticeship for a period of 4 or 5 years at a relatively low rate of pay unless he were receiving further education and [illegible] earning nothing or he could be unemployed. I allow $5,000 under that head giving a sum of $(21,500 + 23,800 + 5000) = $50,300.

It is not uncommon practice for a judge to look at the sum he has arrived at and consider whether on the basis of experience and making a so called educated guess, it is low or high and adjusting accordingly. I come to the conclusion that it would not be unfair to enhance it and I increase it to $54,000 which along with $6,000 special damages gives a total of $60,000.

There will be judgment for the plaintiff for $60,000 plus costs, which shall be paid into Court within 21 days from the date hereof.

It is Ordered that the $6,000 special damages be paid to the plaintiff on payment in along with a further sum of $1,500 to cover expenses incurred from 28th January 1981 and expenses occurring up to 31st December, 1981.

The balance of $52,500 to be paid to the Public Trustee and held for the plaintiff's future use as follows:

(i) $22,300 to be invested and used for expense of caring for the plaintiff at the rate of not more than $130.00 per month on and from 1st January, 1982 with leave to apply to the Court for a lumpsum to cover any requirement of the plaintiff which may arise.

(ii) The balance of $30,200 to be invested by the Public Trustee and to be paid out for the plaintiff's benefit in such sums as this Court may order upon application.

I regard the forgoing Orders as necessary in the infant's interests in ensuring that the money may not be lost or misapplied in unwise investments. They will ensure that there will always be funds in his estate should anything untoward happen to deprive him of the care of either of his parents, or to reduce the income of his parents.

LAUTOKA,
1st March, 1981.

(Sgd.)J.T. Williams
JUDGE