

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

000442

A T L A U T O K A

Civil Jurisdiction

Actions No. 317 & 318 of 1980

Between

K R I S H N A
s/o Bal Krishna

Plaintiff

- and -

THE PUBLIC TRUSTEE OF FIJI

Defendant

- and -

R A M A
s/o Krishna

Plaintiff

versus

THE PUBLIC TRUSTEE OF FIJI

Defendant

Messrs. M. T. Khan & Co.
Messrs. A. K. Sharma & Co.Solicitors for the Plaintiffs
Solicitors for the Defendant

J U D G M E N T

The plaintiffs in these two cases were passengers in a car Registered No. AJ643 which was involved in a collision with a car Registered No. AD54 driven by one Muni Deo who is now dead and whose estate is being administered by the defendant, the Public Trustee of Fiji. Liability is not disputed and these proceedings were limited to the quantum of damages.

The plaintiff Rama is about 38 years old, and suffered a fracture of the left ulna and radius and lacerations of the lower leg and thigh. He was in hospital for five days when the lacerations were sutured and pins were put in his arm to immobilise it. A week later the arm was put in plaster and remained in plaster for about nine months. The fracture has now completely united but according to the assessment made by the doctor on 17th February, 1981 he is now having difficulty with protraction and supination of the left forearm, he has difficulty gripping objects firmly because of poor flexor muscle power in the hands, and Rama complains of pain in the cold weather. The doctor assessed permanent incapacity at 42% using the Workmen's Compensation tables, but that is not much of a guide since the doctor also says that with rehabilitation and exercise he sees no reason why most, at least, of the power in the hand and forearm should not come back.

Rama has claimed \$650 for medical expenses, though he has no receipts of any kind to support his claim. In evidence all that he has described is

eight tubes of massage medicine (whatever that is) at \$2 per tube, making a total of \$16. The only other expenses he has given evidence of are travelling expenses to and from the hospital. He says he went five times by car or taxi for which he says he paid \$25 a trip, and thirteen times by bus for which he paid \$4.36 return. Even if I were to accept this claim in full this would only amount to \$180 plus \$16 for medicine, far short of the \$650 claimed. I can appreciate the need to take a taxi home from the hospital, but I cannot see that a taxi was necessary five times, and in any case I think that invariably taxis are shared so that the cost to the plaintiff would be far less than \$25. He said that he used the same taxi every time, so I can see no reason why he should not have supported his claim with a proper receipt or receipts.

I will therefore limit special damages to \$150 to include medicine and transport costs.

Rama has also claimed loss of earnings at the rate of \$60 per week from 3rd November, 1979. He says he has had to employ a labourer since December 1979 at a cost of \$100 per month, but again although he says he kept records none has been produced. He says he also had to pay a substitute cane cutter \$4 per ton, though there was no evidence of the tonnage cut (except for what he says his own farm yielded) and no explanation why his labourer couldn't cut cane for him. He has five sons and four daughters, the eldest son being 19 and the next 17 years. Being an Indian family farm it would be very surprising if his sons did not help on the farm.

He also said there was no work he could do with his one good right hand and arm. I accept that ploughing might be beyond him, and cutting cane might be difficult, but I cannot accept that he is so helpless as he would have me believe, or that whatever disability he now suffers will not largely disappear with proper exercise.

There was evidence that the tonnage of cane produced on his farm fell to 164 tons from a total of 204 tons in 1978 and 250 in 1979, though the estimate for 1981 is about 200 tons. Tonnage of course depends on many factors, but I would accept that Rama suffered a loss of about 50 tons of cane. Allowing a price of around \$30 per ton and cost of production of \$12 per ton that would amount to 50 x 18 or \$900 for loss of earnings.

I am not convinced that hiring of labour was necessary or that the plaintiff should continue to be incapacitated so as to affect his earnings.

With regard to pain and suffering I would allow a sum of \$1000 so that the total claim I allow is \$1000 + \$900 + \$150 making a total of \$2050.

The plaintiff Krishna is about 74 years old, the father of Rama. He suffered a lacerated cut 5-6 cm long to the forehead requiring sutures, a small cut 1 cm long to the bridge of the nose; a swelling to the left wrist

joint and a superficial cut on the shin. These have healed and the doctor said there was no permanent disability though Krishna said that he had difficulty concentrating and a vision defect. He was taken to hospital after the accident but released the same day.

Krishna claims \$350 for medical expense, again completely unsupported by any documentary or other evidence. In fact on his own evidence all that he could make any pretence of justifying is \$5 for his bus fare back home, \$4 for five trips by bus to Tavua Hospital at 80c return and 50c for charges at Tavua Hospital at 10c per visit. So for medical expenses I award him \$9.50.

He claimed \$200 for loss of one month's earnings. He was self-employed as a hawker buying goods in the town and selling them in the villages and settlements.

He claimed that he made \$200-240 a month doing this, but he kept no books and was quite unable to support his claim or his claim that he made 50% profit on his turnover. I was in no way convinced either that as a result of his injuries he was obliged to give up his work. His only explanation was that if he walked a long distance in the heat he got a light behind his eyes. At his age of 74 years it is much more likely that this would force him to give up hawking. I cannot seriously entertain his claim for loss of earnings without much more convincing proof.

With regard to pain and suffering I would award him \$500, making the total award \$509.50.

LAUTOKA,
27th March, 1981

(sgd.) G. O. L. Dyke
Judge