

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)  
AT LAUTOKA

Civil Jurisdiction  
Action No. 117 of 1980

BETWEEN : MONIKA DOMTILA d/o Krishna Plaintiff  
A N D : VIJAY CHAND s/o Brija Nand Defendant No. 1  
A N D : MATAIASI NAKOLOTI Defendant No. 1

Messrs. Stuart, Reddy & Co. Counsel for the Plaintiff  
Messrs. Umarji Mohammed & Co. Counsel for the Defendants

J U D G M E N T

This is a widow's claim under the Compensation to Relatives Ordinance Cap. 20 for herself and two children aged 8 years and 4 years following the death of the husband.

An appearance was filed by the defendants but no defence has been filed and judgment was entered in default of defence. The instant proceedings are to assess the damages.

The deceased was an Indian male 25 years of age who was employed as a lorry boy by the first defendant. He was killed on 26th July, 1979 whilst travelling in the course of his employment, on defendant 1's lorry which was driven by the defendant 1's servant, the 2nd defendant.

The plaintiff impressed me considerably as an honest and frank witness.

I am satisfied that the deceased was in good health and industrious. His salary was \$100.00 from which he retained \$5.00 for his pocket. His widow says he handed her the balance of his wages - \$95.00 and the cost of his keep was \$20.00. Accordingly her dependency was \$75.00 per month at the time of his death in 1979. At the time of trial, following "tripartite awards" agreed between employers and labour the deceased's salary would have risen

by two increases of about 13% i.e. which would be reflected as two increases of \$10.00 each per month in the extent of the plaintiff's dependency, i.e. \$20.00 per month. Thus the dependency of the plaintiff at the time of the trial would have increased from \$75.00 to \$95.00 per month. The average figure for her dependency during the period between her husband's death and the date of the trial would be half  $(\$75.00 + \$95.00) = \$85.00$  per month which amounts to \$1,020.00 per annum, Her dependency at the date of trial would be  $12 \times \$95.00 = \$1140.00$ .

Following the directions of the House of Lords in Cookson v. Knowles; 1978 2A.E.R.604 I divide the award into two parts viz. the pre-trial period of 22 months from 26th July, 1979 (date of death) to the date of this judgment, (it would be convenient to regard it as two years instead of 22 months) and the post trial period i.e. her future loss from the date of judgment.

I allow interest of 4% the pre-trial loss following Cookson v. Knowles (supra). I calculate the pre-trial loss at \$1,020.00 per annum for two years which gives \$2,040 plus interest at 4% amounting to \$163.20 giving a figure of \$2,203.20.

Regarding the future loss I see no reason why the deceased should not have continued to work for another 30 years. Of course the dependency of the children aged 8 years and 4 years would not continue for that period although that of the wife could well do so. If the accident had occurred six years later a multiplier of 15 or 16 would not have been regarded as too high. Having regard to the falling value of the Fiji dollar the annual figure representing the plaintiff's dependency would in 6 years' time be about \$1,450.00. Therefore the sum if awarded in 6 years would very much higher than an award to-day based on the same multiplier.

It is possible in the U.K. and other countries to invest in securities which have the ability to keep pace

to some extent with inflationary trends. Such opportunities are virtually non-existent in Fiji and bank interest rates in Fiji are fixed at a maximum of 8% which is very much lower than other areas of the world including U.K. I am not knowledgeable in actuarial methods. Although we are guided by decisions of the House of Lords and Court of Appeal in England the multiplier limits established in the very different economic atmosphere of England are not necessarily the limits applicable in Fiji. Thus although it may be appropriate to suggest that the top limit to the multiplier should be 15 in England that is not necessarily just and fair in Fiji. I have no knowledge of actuarial methods of calculation and we have no established guides created in Fiji itself. If I adopted a multiplier of 15 and deducted 2 therefrom to cover the pre-trial loss the future loss would be 13 times the present annual dependency of \$1140.00 per annum, i.e. 13 x \$1140.00 giving an award of \$14,820.

Such a sum would in my view be substantially on the low side having regard to the youth of the plaintiff who was 25 years old when these proceedings were instituted 2 years ago and the deceased who was 25 years old when he died. It would not purchase a modest modern home, but Fiji is fortunate in that we have what is described as a low cost housing scheme. By putting her name on the waiting list the plaintiff in say two years may procure a reasonable priced piece of land on which to erect a modest house. In England the corresponding employee would be paid at least five times as much as the deceased. The corresponding award in England of £36,000 odd would purchase something more than a modest little house.

I am of the opinion that a multiplier of 16 as from the date of judgment would be by no means excessive in all the circumstances. It gives a figure of \$18,240.00 which when added to the pre-trial figure amounts to the \$20,443.20 which might conveniently be rounded up to \$20,500.00.

I also allow \$200.00 claimed as funeral expenses.

There will be judgment for the plaintiff for \$20,700.00 plus costs.

It is Ordered that the sums of \$2,500.00 for the child Salini Devi (4 years) and \$2,000.00 for Anjini Devi (8 years) be paid to the Public Trustee for investment and for \$16.00 per month to be payable to the plaintiff for each child, a total of \$32.00 per month. In the event of a child predeceasing the plaintiff the balance of the capital sum thus reserved for her maintenance to be paid to the plaintiff.

L. UTOKA,  
5th June, 1981

sgd. J T Williams  
JUDGE