

AT LAUTOKA
Civil Jurisdiction
Action No. 64 of 1975

Between:

ANDREW ANDREW

Plaintiff

and

BAKAR ALI s/o Jafar Ali

1st Defendant

and

HUSSAIN ALI s/o Rahimtullah

2nd Defendant

Mr. Jai Raj Singh, Counsel for the Plaintiff

J U D G M E N T

This is a claim for personal injuries received in a motor accident by the plaintiff, a male citizen of New Zealand when he was employed by Western Electric Ltd. of Lautoka as manager.

The accident occurred on 28 February 1973 but the Statement of Claim was not filed till 23 May 1975.

On 15 August 1975 judgment in default of defence was filed for special damages amounting to \$1,280.66 which included the loss of two months' wages, with general damages to be assessed and with which these proceedings are concerned. By that time the plaintiff had left Fiji and had resumed residence in New Zealand. Evidence as to his condition had to be obtained from New Zealand and no one appears to have been very concerned about it.

A letter of request directed to New Zealand for evidence to be taken on behalf of the plaintiff was not issued until 18 August 1977. There is no indication as to why the plaintiff delayed for two years before applying for evidence to be taken overseas. The plaintiff's lawyer, Mr. Sharma, took up residence in New Zealand and he died in New Zealand in February 1979 without having taken action to obtain the necessary evidence under the letter of request. Then Dr. Parke, who was one of the witnesses resident in New Zealand died on 18 January 1980

necessitating a further letter of request to take the evidence of Dr. Smith in New Zealand; the plaintiff's evidence was taken under the same letter of request and the report of the deceased Dr. Parke was tendered. The hearing in New Zealand was in October 1980.

In his evidence the plaintiff stated that he was in hospital in Fiji for eight days immediately after the accident but his right foot which had been trapped in the car pained him so much that he had to go to New Zealand for treatment. He had also received injuries to his chest and right shoulder and for several months he could not raise his right arm above shoulder level. He gave up his job in Fiji and resumed resident in New Zealand where he received physiotherapy for his foot. Dr. Parke attended him and his report dated 7 March 1974 was tendered at the hearing in New Zealand. Dr. Parke stated that there had been a fracture of the right calcaneum giving rise to pain and limiting movement of the subtaloid joint. In other words the plaintiff was suffering from a badly injured right heel. He estimated disablement at 12% - 15% on the Workmen's Compensation Scale.

That report of Dr. Parke was confirmed by the evidence of Dr. Smith who stated that the plaintiff had no spring in his right foot which could not adapt to ground contour.

From those reports I am satisfied that the plaintiff has a permanent disability in the right heel is painful when subjected to pressure and which interferes with climbing ladders and hills, and walking as well as dancing. It is bound to interfere with his enjoyment of life as well as his attending to such domestic tasks as gardening and lawn mowing.

The plaintiff says that he got fresh employment but it is not apparent when he was able to resume work in New Zealand. However, Dr. Parke refers to the plaintiff being in employment when he saw him in November 1973. How long he may have been without a job in New Zealand is not apparent. However, the Statement of Claim was filed on 23 May 1975 and since only two months loss of pay was claimed as special damages it is apparent that there is no further claim for loss of wages. Had there been more

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than two months' loss of wages the plaintiff's advocates would have been fully aware of this in 1975.

The plaintiff worked until normal retiring age. Therefore I am only concerned with general damages for pain and suffering and loss of amenities.

His age was not indicated in the Statement of Claim nor in his evidence. However, Dr. Parke's report says he was born on 7th August, 1918. At the time of the accident he would be 54 years. In 1975 he would be 57 years of age.

Damages must be assessed by Fiji standards which in terms of cash values are necessarily lower than those in New Zealand. Awards in New Zealand and England give a guide to general damages but even so it would be too mathematical to endeavour to calculate a pro rata equivalent for Fiji values and currency.

I think the general damages at the material time would be covered by an award of \$3,520.00.

There will be judgment for the plaintiff for \$3,520.00 in addition to the existing award of \$1,280 for special damages, i.e. \$4,800.00 plus costs.

LAUTOKA,
16 October, 1981

(Sgd.) J.T. Williams,
Judge