IN THE FIJI COURT OF APPEAL
Civil Jurisdiction
Civil Appeal No. 5 of 1980

Between: PARMANAND MAHARAJ (s/o Sahadeo Maharaj) Appellant

and

MOSESE SENIWAKULA Respondent

B.C. Patel and V. Kalyan for Appellant
H.M. Patel for Respondent

Date of Hearing: 24 June 1980
Date of Judgment: 30 June 1980

JUDGMENT OF THE COURT

Marsack, J.A.

This is an appeal against a judgment of the Supreme Court sitting at Lautoka on the 16th November, 1979 on the ground that the damages awarded to the appellant in that judgment were unreasonably low, in that no account was taken of probable loss of future earnings. Actions in the Supreme Court were brought by the appellant, his wife and his daughter, claiming damages for injuries sustained in a motor collision on the 22nd December, 1976. The actions were brought against the respondent on the 12th December 1978 alleging that the collision in the course of which the injuries were suffered was brought about by the negligence of the respondent.

In the pleading the respondent admitted liability; so the only question to be decided by the learned trial Judge was the measure of damages. He awarded $5000 to the appellant, $300 to the appellant's wife and $1500 to their daughter. The present appeal was lodged only against the award of $5000 to the appellant. The one ground of appeal was that the trial Judge erred in law in not considering the probable loss of future earning capacity of the appellant.

In his judgment the learned trial Judge describes the injuries to the appellant in these words:

> "He sustained a posterior dislocation of the left hip together with a fracture of the acentabulum and Ischial Tuberosity involving the articular surface of the hip.
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> The injury has healed and the only abnormality detectable at this stage is a moderate 5% restriction of the external rotation of the hip. However the injury has been complicated by an earlier injury to the right ankle. This places an extra strain on the left hip, causes further restriction on the plaintiff's activities, and is likely in the future to increase to the level of a probability the likelihood that there will be early onset (possibly in about 10 years) of degenerative joint changes in the hip resulting in considerable restriction and necessitating major surgery - i.e. to replace the hip joint."

Later on in his judgment the learned Judge outlines the facts relevant to the award of damages and then gives his judgment in the following words:

> "The plaintiff is a transport manager, and although he has tried to persuade the court that he needs to travel round the country in buses and cars, and to drive these vehicles, I think he has rather exaggerated his need. He has certainly not suffered any financial loss in his job, in fact on the contrary his salary has gone up as he has assumed greater responsibilities so there can be no award for loss of future earnings. His activities will become increasingly restricted, but some of this would be due solely to his ankle injury.

> In his case I would assess general damages for pain and suffering and loss of amenities and taking into account future pain and suffering and major surgery at $5000."

Counsel for appellant strongly contends that the learned Judge erred in making no award for loss of future earnings. He places much stress on the medical evidence to the effect that with the passage of time it must be accepted that there would be reciprocal changes in the head of the femur, and this combination would lead to development of osteo-arthritis of the hip which would then become painful and all movements would be restricted. This medical evidence was accepted by the learned Judge, as is shown in the extract from his judgment first quoted above. At the time of the accident appellant was 34 years of age with the result that, if the developments predicted by the Consultant Surgeon take place, appellant would still be under 50 years of age but would have his earning capacity greatly restricted.

In our view the medical evidence, and the learned Judge's finding, establish a definite possibility that the earning capacity of the appellant may well be seriously affected at a time when his age alone would not render him less efficient in his work. Accordingly, with respect, we think that the learned trial Judge was not fully justified in holding that there could be no award for loss of future earnings. It is true that the disability likely to be suffered by the appellant may well be augmented to a minor degree by his previously sustained ankle injury, and this may have to be considered in deciding the quantum of damages to be awarded; but cannot be held to eliminate those damages altogether. We propose therefore to increase

the damages awarded to compensate for the probable loss of earning capacity in the years to come.

As has been frequently held, the assessment of damages in cases of this character is a very difficult task. As is said in Hawkins v. New Mendip Engineering Ltd. (C.A.)(1966) 3 All E.R. 228 at page 231, "What has to be quantified is the uncertainty of the future." The general principle is authoritatively set out in the judgment of Lord Reid in British Transport Commission v. Gourley (H.L.)(1955) 3 All E.R. 796 at page 808:

> "The general principle on which damages are assessed is not in doubt. A successful plaintiff is entitled to have awarded to him such a sum as will, so far as possible, make good to him the financial loss which he has suffered, and will probably suffer, as a result of the wrong done to him for which the defendant is responsible."
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> "The loss which he has suffered between the date of the accident and the date of the trial may be certain, but his prospective loss is not. Yet damages must be assessed as a lump sum once and for all, not only in respect of loss accrued before the trial but also in respect of prospective loss. Such damages can only be an estimate, often a very rough estimate, of the present value of his prospective loss."

As we have said, the learned trial Judge, in our respectful opinion, erred in holding that there could be no award for loss of future earnings. Taking all relevant matters into consideration we consider that the sum of $3000 could well have been awarded to cover this aspect of the appellant's claim. We realise that it is impossible to make an arithmetically accurate assessment as to what his loss under this heading is likely to be. All we can do is to make an estimate, based on the evidence before us, of the present value of appellant's prospective loss.

Accordingly, the appeal is allowed and the judgment in favour of the appellant will be increased from $5000 to $8000. Appellant will have the costs of the appeal, to be taxed if not agreed upon.

(sgd.) C.C. Marsack
JUDGE OF APPEAL

(sgd.) G.D. Speight
JUDGE OF APPEAL

(sgd.) B.C. Spring
JUDGE OF APPEAL