IN THE COURT OF APPEAL, FIJI ISLANDS
CIVIL JURISDICTION

CIVIL APPEAL NO.ABU0049/99S
(High Court Civil Action No.284 of 1996)

BETWEEN:

JOVILISI KAMEA
THE ATTORNEY GENERAL OF FIJI

*Appellants*

AND:

MATEO RAISALAWAKE

*Respondent*

Hearing: 22 January 2002

Counsel: Mr. S.N. Sharma for the Appellants
Mr D. Singh for the Respondent

## *JUDGMENT DISMISSING APPEAL AND DEALING WITH COSTS AND INTEREST*

The respondent brought proceedings against the appellants for personal injuries sustained on 10 April 1995. On 30 August 1999 the High Court gave judgment in his favour as follows:

| | | |
|---|---|---|
| General Damages | - | $70,000 |
| Future Economic Loss | - | $93,600 |
| Interest at 6% on $70,000 from 10th June 1996 to 30th August 1999 | - | $13,300 |
| TOTAL | | $176,900 |

The Court also ordered the appellants to pay the respondent's costs to be taxed if not agreed, and directed that the damages were to be paid into Court to be invested by the Chief Registrar and paid to the Plaintiff, who was aged 9 at the time of the accident, when he turned 21.

The appellants appealed against the quantum of damages. Following a formal application by the respondent, the appellants made an interim payment of $5,000. Later they agreed to pay a further $10,000 on account.

On 21 January 2001 the appellants gave notice of discontinuance of the appeal. Pursuant to section 20 (h) of the Court of Appeal Act Cap.12 I dismiss the appeal.

Counsel appeared before me in chambers to deal with costs and interest. Under section 20(j) a single Judge has jurisdiction to deal with those matters.

Referring first to costs, the respondent asked for costs on a solicitor and client basis, on grounds that the appeal was unmeritorious, and that the appellants had been dilatory in making a decision whether to pursue the appeal.

On the facts I do not see any sufficient ground for departing from the normal basis of awarding costs. Certainly the appeal was pending for a long time but no doubt the problem of obtaining fixtures in this court in the period 2000 - 2001 contributed.

The appeal reached the stage of receiving a fixture, but the respondent had not yet prepared submissions when notice of discontinuance was given. The only formal step taken by the respondent was the application for an interim payment. I accept however that the lapse of time would have increased the costs of the respondent's solicitors, in keeping the file open. The award I make is therefore larger than would be normal on the dismissal of an appeal where little substantive work had been required of the respondent. I allow the respondent $750 costs, this sum including the costs of the appearance on 22 January.

Turning to interest, this is governed by section 17 of the Imperial Judgments Act 1838, see *Sushil and Others v. Suva City Council*, Civil Appeal No. 12 of 1989, judgment dated 27 October 1989 at page 4. As quoted in *Hunt v. R.M. Douglas (Roofing) Limited* [1988] 3 WLR 975, 978 this provides:

> ***"17..... every judgment debt shall carry interest at the rate of 4 pounds per centum per annum from the time of entering up the judgment..... until the same shall be satisfied, and such interest may be levied under a writ of execution on such judgment."***

Mr Sharma submitted that no interest should be awarded on that part of the judgment relating to future economic loss, nor on the award of interest comprising part of the High Court judgment.

The first matter to note is that under the Act interest is not left to be awarded upon application to the court. Interest accrues automatically at the statutory rate.

In my opinion that concludes the issue as to interest. I am unaware of any basis for exercising a discretion in the matter. If however a discretion exists, I would not exercise it in the way the appellants contend, for these reasons.

Interest is awarded to a Plaintiff for being kept out of money which ought to have been paid to him. See *Jefford v. Gee* [1970] 2 QB 130,146. The expression " being kept out of money that ought to have been paid" is not used to pejoratively. It simply expresses the concept that the plaintiff was entitled to the amount of the judgment as from a certain date but in fact, as events occurred, the money was not availabe to the plaintiff, but remained with the opposite party, "fructifying in the wrong pocket" as was said in the course of argument in *Newton v.Grand Junction Railway Co.* (1846)16 M&W 139,141.

Here, as from 5 October 1999, the date when judgment was formally entered, the respondent was entitled to payment of the judgment. Had the amount been paid on that date the respondent would have been entitled to have it invested on his behalf and to earn interest on it, not just on parts of it but on every dollar of the amounts awarded. The fact that the judgment and any interest will be held in trust for the respondent until he attains 21 is irrelevant. So, in my opinion, is the composition of the judgment. It matters not that part of the amount was for future earnings, and another for interest. All the

components merged in the judgment which became a single debt due. For these reasons the accrual of interest on a judgment does not involve "the giving of interest upon interest" in terms of section 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap. 27, to which Mr Sharma drew attention. In any event that section does not apply to the present situation.

I therefore make a declaration that the respondent is entitled to interest on the amount of the judgment (including costs) in terms of the Imperial Judgments Act 1838, section 17. Of course an adjustment is required for the interim payments.

Result

1. Appeal dismissed.
2. Costs in favour of the respondent $750
3. Declaration that subject to adjustment for the interim payments, the respondent is entitled to interest on the amount of the judgment (including costs) in terms of the Imperial Judgments Act 1838.

Dated at Suva this 23 January 2002.

FIJI COURT OF APPEAL

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Thomas Eichelbaum
Justice of Appeal

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