

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION**  
**AT LAUTOKA**

**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 93 of 2013**

**BETWEEN** : **KRITESH CHAND** of Lavusa, Nadi, Unemployed

**PLAINTIFF**

**AND** : **KRISHNA KUMAR NAIDU** and **SHILVA NADAN** of Lot 2, Solovi  
Nadi and Chinakoti, Moto Ba, trading as **TROPIKO EXPORTS**

**FIRST DEFENDANTS**

**AND** : **SHELVIN RITNESH KUMAR** of Nasau, Nadi, Driver

**SECOND DEFENDANT**

**Mr. Rajendra P S Chaudary for the Plaintiff**  
**No appearance for the Defendants**

**Date of Hearing :- 23<sup>rd</sup> April 2015**  
**Date of Ruling :- 10<sup>th</sup> July 2015**

**RULING**

**(A) INTRODUCTION**

- (1) On 02<sup>nd</sup> August 2013, Judgment by Default was obtained against the Defendants by the Plaintiff with damages to be assessed, as no Statement of Defence was filed by the Defendants. Notice of Assessment of Damages were served on the Defendants.
- (2) The Plaintiff's claims arise out of a motor vehicle accident. He is seeking the following reliefs;
  - i) *The sum of \$540.00 as per paragraph 7.*
  - ii) *General damages for pain and suffering, loss of amenities of life and loss of earning capacity*

- iii) *Cost of future medical care*
- iv) *Any other and further relief that seem just to this Honourable Court*
- v) *Interest*
- vi) *Cost of this Action*
- vii) **IN THE ALTERNATIVE** *an award under the Workmen Compensation Act*

- (3) What are the facts here? The facts of this case are set out in the Statement of Claim which includes Particulars of Negligence and Particulars of Injuries. The Plaintiff has supplemented what he has stated in the Statement of Claim with his oral testimony in Court on the hearing of assessment of damages.
- (4) It is necessary to approach the case through its pleadings. I shall set out the assertions of the Statement of Claim.
- (5) The Plaintiff in his Statement of Claim pleads *inter alia* that;

- (i) **THAT** *all material times the First Defendants were trading as Tropiko Exports and were also the owners of a Truck registered number FA523.*
- (ii) **THAT** *all material times the 2<sup>nd</sup> Defendant were driving the said Truck as the servant and/or agent of the First and Second Defendant and during the course of his employment with the First Defendants.*
- (iii) **THAT** *all material times the Plaintiff was employed by the First Defendants as a vegetable packer and was a passenger on the said truck during and in the course of his employment.*
- (iv) **THAT** *on or about the 25<sup>th</sup> day of October 2012 the Second Defendant drove the said Truck so negligently, unskilfully, recklessly and carelessly on Queens Road, Nadi Airport near Westfield in the direction of Nadi Airport from Nadi that the said Truck went on its wrong lane and tumbled over on the side of the road.*

### **PARTICULARS OF NEGLIGENCE**

- *Failing to keep any or any proper lookout;*
- *Driving at an excessive speed having regard to all the circumstance;*
- *Failing to stop, to slow down, to swerve or in any other way so to manage or control the said motor vehicle as to avoid the said accident;*
- *Driving onto the incorrect lane*
- *Driving below the standard of a careful and prudent driver.*

(v) **THAT** on 29<sup>th</sup> October 2012 the Plaintiff(?) pleaded guilty to the offence of Careless Driving and was convicted of the offence of Careless Driving and was fined \$200.00. The said conviction is relevant to the issue of negligence in the within action and the Plaintiff intends to rely thereon as evidence of the same.(?)

(vi) **THAT** as a result of the matters aforesaid the Plaintiff suffered severe personal injuries.

### **PARTICULARS OF INJURIES**

He developed pain at the back radiating to both legs especially the left lower limb. Inability to move the left and the right knees and unable to sit cross legged. He complained of passing blood stain sputum.

### **ON EXAMINATION**

Range of motion of the left and right hip diminished

Range of motion of the left and right knees diminished

Sensation normal

Motor weakness of the EHL of the right and the left side and weakness of the right and left hip flexors

### **INVESTIGATIONS**

Radiological: X-rays revealed no bony injuries

### **DIAGNOSIS**

Disc prolapsed of the lumbar spine

Chest injury

Dislocation of the right shoulder

### **TREATMENT**

- Pain relief
- NSAID
- Physio therapy
- Walking Aid

He is still being reviewed at the Orthopaedic clinic.

(vii) **THAT** as a result of the matters aforesaid the Plaintiff has suffered loss and damage, pain and suffering, loss of amenities of life and loss of earning capacity.

### **PARTICULARS OF SPECIAL DAMAGE**

7 trips from Togo, Nadi to Nadi Hospital and return  
At \$20:00 per trip  
[Clinic – by taxi]

\$140.00

5 trips from Togo, Nadi to Lautoka Hospital and return At \$80:00 per trip [Clinic – waiting charges]	<u>\$400.00</u>
<b>TOTAL</b>	<u>\$540.00</u>

**(viii)** THAT in the ALTERNATIVE and without prejudice to the foregoing, the Plaintiff was injured during and in the course of his employment with the Defendants. The Plaintiff is entitled to an award under the WORKMEN’S COMPENSATION ACT (CAP. 94) the same to be calculated with reference to the Plaintiff’s earnings and incapacity.

**(B) THE EVIDENCE**

- (1) Counsel for the Plaintiff called the Plaintiff and Doctor Joeli Mareko, the Consultant Orthopaedic Surgeon at Lautoka Hospital. They gave sworn evidence.
- (2) The Plaintiff supplemented what he has stated in the Statement of Claim with his oral testimony in Court on the hearing of assessment of damages. To give the whole picture of the injuries sustained by him due to the accident, I can do no better than set out hereunder, the contents of his oral testimony in relation to his injuries so far as they are relevant.

*Counsel: Now what happen on the way to the airport?*

*Witness: We were going in the truck and there was another truck in the front and our driver was like really fast and then he stopped and then he moved on the other side and there was another FEA truck coming and then he went on their side and the truck tumble on the other side.*

*Counsel: Truck tumble on the other side? You remember that happening*

*Witness: Yeah*

*Counsel: Now what happened to you when that happened, when the truck tumbled?*

*Witness: I was sitting in the middle then I slided on the side and in the front and then I hit the desk board and the seat was behind me tilt down and the jerk came and hit my back I was unconscious and then some people came and bring us out of the truck and then I was taken to the hospital*

*Counsel: So your body hit the desk board and the jerk hit you from the back?*

*Witness: Yeah*

*Counsel: How come the jerk hit you?*

*Witness: It was just lying behind the seat, it slid like this and hit me from the back*

*Counsel: How big was the jerk?*

*Witness: Big one for the truck*

*Counsel: Now, so where were you taken after the accident?*

*Witness: To Namaka Hospital, and from there to Nadi Hospital direct*

*Counsel: Nadi Hospital?*

*Witness: Yeah*

*Counsel: And what happen at Nadi Hospital*

*Witness: Then, I was vomiting there and blood were coming out and they admitted me over there*

*Counsel: How long were you admitted at Nadi Hospital?*

*Witness: Three (3) weeks*

*Counsel: And during those three weeks what was your condition in the hospital*

*Witness: I was in the Wheel chair and blood was coming out from the mouth and even if I go to urinate blood was coming out and all my body was paining and I was on drips all the time and they were giving me medication, pain killer, injections, couldn't move my body because of the pain*

*Counsel: Why were they giving injections?*

*Witness: Because of the pain I was having on my body*

*Counsel : Then what happened after three weeks?*

*Witness: Then they transferred me to Lautoka Hospital, then I was admitted there in the Trauma Ward and then ... ..*

*Counsel: So you were transferred to Lautoka Hospital and how long were you admitted at Lautoka Hospital?*

*Witness: Two weeks*

*Counsel: And what happen to you at Lautoka Hospital what did the Doctors do to you?*

*Witness: They took the CV Scan and then they took out fluid out from my knee and they tested the fluid and my whole leg was black, they took out the blood from there and they give me some injections, medical, capsules to eat*

*Counsel: And you were discharge after?*

*Witness: After two weeks, then I came back and admitted again for one week*

*Counsel: And again you were given pain killers?*

*Witness: Yes, pain killers, injections and physio, everything*

*Counsel: And did the Doctors tell you where your injuries was in your body?*

*Witness: My chest, my back, my knee*

*Counsel: Your chest, your back and your ?*

*Witness: knee*

*Counsel: There were no fractures of the limbs?*

*Witness: No*

*Counsel: Now, when you were discharged from Lautoka Hospital, how did you go home?*

*Witness: A van and on crutches' and my cousin came from NZ so he had the car and went on crutches and went in his car at home*

*Counsel: And how long did you use crutches?*

*Witness: For 4 months*

*Counsel: You don't use it now*

*Witness: No, only sometimes*

- (3) Dr. Joeli Mareko, the Consultant Orthopaedic Surgeon, gave evidence as to the nature of the injuries, he found in examination of the Plaintiff. The doctor's medical report (exhibit P.4) was tendered to court and is as follows;

*Patient was involved in a motor vehicle accident on 25/10/2012. He was a front seat passenger. He develop pain at the back radiating the both legs especially the left lower limb. He had inability to move the left and the right knees and unable to sit cross legged. He complains of passing blood stain sputum.*

#### **On Examination**

*Range of motion of the left and right hip diminish.*

*Range of motion of the left and right knees diminish.*

*Sensation normal.*

*Motor weakness of the EHL of the right and the left side and weakness of the right and left hip flexors.*

#### **Investigation**

*Radiological x-rays revealed no bony injuries*

#### **Diagnosis**

- *Disc prolapse of the lumbar spine*
- *Chest injury*
- *Dislocation of the right shoulder*
- *Bilateral Knee injury*
- *Head injury*

#### **Treatment**

- *Pain Relief*
- *NSAID*
- *Physio therapy*
- *Walking Aid*

*He has been subsequently reviewed in the ortho clinic. On review on 20/06/14, he still has:*

- *Dizziness in the head-post concussion syndrome*
- *Chest pain*
- *Some diminished Range of Motion of right shoulder*
- *Multiple joint pains*

*He is awarded 10% incapacity.*

## (C) ASSESSMENT OF DAMAGES

- (1) The basic principle in assessing damages is to, as close as possible, restore a Plaintiff to the position he or she was in before the accident.
- (2) A court typically divides personal injury damages into four main categories or heads including;
  - ❖ Special damages,
  - ❖ Future or prospective loss of earnings and profits,
  - ❖ Cost of future care, and
  - ❖ Non-pecuniary loss reflecting pain and suffering, loss of amenities and loss of expectation of life
- (3) *“Obviously, the severity of an injury and resulting loss indicates the extent to which all of these headings or categories of claim require attention. Concomitant with this approach is a general philosophy which recognises that personal injuries cannot be completely or perfectly compensated. The award should be moderate and fair to both sides and there should be no confusion between compensation and retribution, sympathy with, or compassion for the victim.” (Ivan J. Derer and William R. Mackay, in “Personal Injury Damages Assessment” at Page 08)*

## (D) QUANTUM OF DAMAGES

### (1) Pain and Suffering and Loss of amenities of Life – General Damages

Non-pecuniary damages are normally awarded for pain, suffering and loss of amenities of life. A person is entitled to be compensated for the wrongful infliction of pain and suffering, whether physical or mental. Similarly, damages are awarded to compensate for loss of amenities and inconvenience for an interference with the Plaintiff’s enjoyment of his life.

#### McGregor on Damages, Thirteenth Edition at. 1141 states;

*“Pain and suffering is the first of the two main heads of non-pecuniary loss. Both past and prospective pain and suffering are covered, although the past loss is not claimed as special damage in the pleadings as it is not quantifiable with exactitude. Past and prospective loss are therefore claimed together as general damage, and interest is now to be awarded on the whole.*



(a) **Matters included.** *The term “pain and suffering” has been used so constantly by the courts without any clear distinction between the two words that it is now a term of art ... ..*”

(b) **Amount awarded.** *It is virtually impossible to give clear guidance on amounts, varying as they do with the particular injury, the particular circumstances and the particular judge ... ..*”

**Also on the subject of “Loss of Amenities of Life” McGregor writes at P.1142 ;**

*“Loss of amenities of life is the second of the two main heads of non-pecuniary loss. As with pain and suffering, past and prospective loss are both covered, but with the total loss again claimed as general damage and again attracting an award of interest.*

(a) **Matters included.** *This head of damage concentrates on the curtailment of the plaintiff’s enjoyment of life not by the positive unpleasantness of pain and suffering but, in a more negative way, by this inability to pursue the activities he pursued beforehand .... ..*”

**Assessing damages for non-pecuniary loss is fraught with difficulties. Earl of Halsbury LC in “The Mediana” (1900) AC at 116 said;**

*“You very often cannot even lay down any principle upon which you can give damages .... Take the most familiar and ordinary case: how is anybody to measure pain and suffering in moneys counted? Nobody can suggest that you can by any arithmetical calculation to establish what is the exact sum of money which would represent such a thing as the pain and suffering which a person has undergone by reason of an accident ... .. But nevertheless the law recognises that as a topic upon which damages may be given.”*

**Megaw LJ in Fuhri v Jones, 1979 C.A. unreported said;**

*“It will be appreciated, of course, though it is not always fully understood by persons who are not directly concerned with the law, that the law cannot attempt to attribute any particular figure of damages to any particular physical injury, serious or trivial. There is no way in which it can be said that such-and-such an injury is worth so much in terms of money. Indeed, in most cases for most injuries, anybody would say ‘I would rather have avoided this injury than have any amount of money whatever in compensation’. But the court has to do the best it can by way of what are really conventional figures in relation to injuries, the court assessing, of course, on the individual facts of the case, what is sometimes called the tariff, making adjustments for particular facts of the particular case.”*

**Kemp & Kemp, the Quantum of Damages, Vol 1, p.1009 said;**

*“... the court must take into account, in making its assessment in the case of any particular plaintiff, the pain which he actually suffered and will suffer and the suffering which he has undergone and will undergo. Pain and suffering are not measureable by an absolute standard and it is not easy, if indeed possible other than in the most general way, to compare the degree of pain and suffering experienced by different people, however, the individual circumstances of particular plaintiffs clearly have a significant effect upon the assessment of damages”.*

While there is much confusion over how “Non-Pecuniary” damages should be assessed, Justice Anderson, in **Penso v Solowan** (1982) 4 W.W.R. 385, said that a uniformity could be achieved by using the following steps;

- ❖ The court should analyse the facts to determine appropriate conventional awards by comparing the case before it with awards made in previous cases for similar injuries.
- ❖ Allow the appropriate amount of inflation
- ❖ Adjust the conventional award to meet the specific circumstances of the individual case, including the need for solace of the particular Plaintiff. (*Ivan J.Derer and William R,Mackay, in “Personal injury Damages Assessment” at Page 08*)

**Bearing all those legal principles in my mind**, I now turn to assess “Non-Pecuniary Loss”. I remind myself that the amount for “Non-Pecuniary Loss” is in the discretion of the Court. That discretion must, of course, be exercised judicially and upon the basis of the evidence given.

Moreover, I bear in mind that the Plaintiff’s economic and social position is irrelevant in the assessment of General Damages.

**McGregor on Damages, Thirteenth Edition, writes at P.1141;**

*“But it may be questioned whether a plaintiff’s economic, or indeed his social, position should affect the award for pain and suffering. And indeed, should this be introduced as a relevant factor in the assessment, there remain opposing arguments as to whether an elevated position should increase or decrease the award. For while it may be argued, on the other hand, that the poor should obtain more because an addition to total assets has so much*

more significance for them, it may be argued, on the other hand, that the rich should obtain more because a larger amount is necessary to have a significant effect on their lives. Accordingly, it would seem that the sensible view is that rich and poor, great and humble, should be treated alike, receiving similar amounts for pain and suffering. And it appears from **Fletcher v. Autocar and Transporters** that the courts have moved towards acceptance of this view. In that case, where suit was brought for a very serious injury to a wealthy plaintiff, the Court of Appeal agreed that his wealth should not affect the size of the non-pecuniary award. "High though his deprivation ranks," said Diplock L.J.,

*"I cannot think that it ranks any higher because the plaintiff, before the accident, was a rich man. Had an ordinary working man, who, like the plaintiff had led before the accident a full, active and useful life in his own sphere, sustained the same injuries with the same physical and mental results, he would in my view have been entitled to monetary compensation of the same order as the plaintiff."*

Salmon L.J. was even more emphatic. He said: ***"The plaintiff's economic and social position is irrelevant. The normal compensation for the loss of an arm as such is the same for a rich man as it is for a poor one."***

*(Emphasis added)*

In determining an award for General damages, I take into consideration the followings;

- ❖ The nature of the physical injuries
- ❖ The age, awareness and other personal factors of the Plaintiff
- ❖ The habits and way of life of the Plaintiff

The Plaintiff was born on 27<sup>th</sup> August 1988. He was 23 years old on the date of the accident. He was a manual worker. He had played soccer in New Zealand. The injuries sustained by the Plaintiff as recorded on the medical examination are as follows;

#### **On Examination**

*Range of motion of the left and right hip diminish.  
Range of motion of the left and right knees diminish.  
Sensation normal.*

*Motor weakness of the EHL of the right and the left side and weakness of the right and left hip flexors.*

**Investigation**

*Radiological x-rays revealed no bony injuries*

**Diagnosis**

- *Disc prolapse of the lumbar spine*
- *Chest injury*
- *Dislocation of the right shoulder*
- *Bilateral Knee injury*
- *Head injury*

**Treatment**

- *Pain Relief*
- *NSAID*
- *Physio therapy*
- *Walking Aid*

*He has been subsequently reviewed in the ortho clinic. On review on 20/06/14, he still has:*

- *Dizziness in the head-post concussion syndrome*
- *Chest pain*
- *Some diminished Range of Motion of right shoulder*
- *Multiple joint pains*

*He is awarded 10% incapacity.*

Reference is made to the sworn testimony of the doctor in relation to the physical injuries.

*Counsel: Now, if I can go through the report with you, there is a relevant portion where he said he was involved in an accident. He develop pain at the back radiating the both legs especially the left lower limb. He had inability to move the left and the right knees and unable to sit cross legged. He complains of passing blood stain sputum. Were those the symptoms you found on him when he was admitted?*

*Witness: That was the symptom he presented straight after the accident when he was referred to Lautoka, Your Worship*

*Counsel: And this thing, about the pain at the back radiating both legs especially the left lower limb. What would be the cause of that?*

*Witness: When we, I mean we see these cases all the time with MPA they got a lot of pain but this one had specific pain to the back and the pain radiating to the limb indicating there was some neurologic compression on the nerve roots at the back going down to the legs and that was the association*

*Counsel: So, it's back injury at the back*

*Witness: That is correct, Your Worship*

*Counsel: He stated in his evidence here that he was hit by the jerk at the back. Do you think the reasons for that?*

*Witness: Maybe he was involved in the crash, truck tumbled over and he was in the front seat and he was hit by an object, he had a lot of pain in the body*

*Counsel: If I can go on to the examination, you say range of motion of the left and right hip diminish, range of motion of the left and right knees diminish, can you elaborate on those two Doctor.*

*Witness: Yes, as the effect of the accident Your Worship, he couldn't walk, he was brought in by a wheel chair and that was sometimes after the initial accident. When he was admitted in Nadi and then he came to Lautoka he was still very much in capacity and that's what we found.*

*Counsel: So after three weeks when he came to Lautoka he was still in the wheel chair?*

*Witness: Yes, that is correct Your Worship*

*Counsel: Sensation was normal*

*Witness: Yes, That's correct Your Worship*

*Counsel: Then you say motor weakness on the EHL of the right and the left side and weakness of the right and left hip flexors, if you can elaborate on that Doctor.*

*Witness: There's a weakness of the muscle that the EHL means there was something happening at the nerve roots of L5 so it was not only my observation it was the observation of my colleagues and they have documented it on the folders that he had lost power in the dorsum of the EHL, it's the muscles that extends the toes so that's what we're referring to. He had weakness there.*

*Counsel: And he went to X-ray but there were no bone injuries?*

*Witness: That's correct My Lord, the investigation that we did was he did not have any bone injury but the X-rays is quite insensitive now, we have got other avenues of investigations which is the CT scan, later on in the CT scan it showed the exact suspicion that we had that he had a disc involvement and the MRI is not available in Lautoka but we have the CT scan in Lautoka Your Worship and we did that and that showed there were some disc involvement in that level*

*Counsel: Coming back to diagnosis, you said disc prolapse of the lumbar spine, can you elaborate on that?*

*Witness: That is a clinical diagnosis that even before the CT scan results that came and we have suspected that there were some compression syndromes at the nerve roots at the level of L5 and that what it meant and number 1 is the disc prolapse of the lumbar spine.*

*Counsel: Now that disc collapse, is that..like can that be fixed or is that a life long problem?*

*Witness: No, when God made us he made the bones and there was some buffer in between to assist the disc that we referring to, its got a capsule around it and some gel material for impact and once it ruptures it ruptures so that is what we suspected it happen to this one when it ruptures it compresses the next structure which is there, the spinal cord. That's what happened Sir.*

*Counsel: And what sort of problems will have caused him*

*Witness: The problems the patient was showing was the weakness of the muscles of the low limbs and he was not able to walk*

*Counsel: The disc which collapsed will it hinder him from such as bending down*

*Witness: Yes, that's what we advise the people with this prolapse is not to bend down, use their knees instead of using their back to bend coz when they use their knees they don't bend and they don't stress the disc coz the chances of aggravating the disc prolapse is by bending*

*Counsel: So for him, bending down and lifting*

*Witness: We will advise him not to do that*

*Counsel: Chest injury*

*Witness: Well he was coughing out some sputum and some blood stain too, even though it didn't show any bone injuries probably there was some soft tissue injuries as well*

*Counsel: Soft internal injury leading to blood*

*Witness: That's correct, coming out of his mouth*

*Counsel: Sir, you said in your diagnosis, dislocation of the right shoulder*

*Witness: Well, he was already 3 weeks in Nadi and was admitted there and they had reduced that dislocation in Nadi so when he came to us, it was still painful but the dislocation was reduced*

*Counsel: And by later knee injury*

*Witness: Yes, in our document here its documented that we had to drain some blood from the knee both knees*

*Counsel: Drain some?*

*Witness: Collect blood*

*Counsel: Collection of blood, because of the trauma blood had hardened*

*Witness: Blood had collected in the knee it had to be drained*

*Counsel: Would that injury cause pain later?*

*Witness: Yes, people usually with NVAs have some degree of head injury as well, with him we are asked him because he had been in Nadi for two weeks he was still having headaches when he came here, we asked him he said "I've lost some consciousness now at the time of impact and I am regaining now so he had mild head injuries also, Your Worship.*

*Counsel: That before going to treatment there's 1 more point on the bilateral knee injury Doctor. That cause of injury can it cause arthritis*

*Witness: Yes, it did not show any bone injury on the X-ray Your Worship, but cut injury or ligament injury and that could be exposed to secondary arthritis, Your Worship*

*Counsel: So, in years to come arthritis can set in*

*Witness: Yes, as I have mentioned*

*Counsel: In his knees*

*Witness: That is correct Your Worship*

*Counsel: And that will rather cause a lot of pain when bending*

*Witness: Yes, there will be another continuous pain*

Reference is made to the sworn testimony of the Doctor in relation to the permanent disabilities;

*Counsel: And then you say last paragraph he has been subsequently reviewed in the Ortho Clinic and on 20th of June last year, you found that still dizziness in the head- post concussion syndrome*

*Witness: That is correct Sir*

*Counsel: And he has chest pain and diminished range of motion of right shoulder*

*Witness: That's correct*

*Counsel: And multiple joint pains and have given him 10% incapacity*

*Witness: That is correct Your Honor*

*Counsel: Now out of all these injuries Doctor would it be correct to say that his disc collapse is the most serious*

*Witness: That is correct*

*Counsel: And as you have heard him saying he was a manual worker, his work required lifting, shifting and sorting out vegetables and all that, now would that type of work be suitable for him now*

*Witness: Well, I don't think he should go for that type of work now, because our investigations has shown that he has a disc problem and lifting would be complicated and with this type of work he would probably aggravate his symptoms more ... ..*

*Counsel: with the back problem?*

*Witness: Yes, with back problem*

*Counsel: Would he need on going treatment or medication*

*Witness: Yes Sir he will need on going treatment as for the joint ailment*

*Counsel: Doing things like gardening, using a folk*



*Witness: I don't think he will be doing that very comfortably because he will be having pain all the time*

*Counsel: I think that is all Sir*

Reference is made to the sworn testimony of the Plaintiff in relation to the degree of pain and suffering and loss of enjoyment of life;

*Counsel: Now, so where were you taken after the accident?*

*Witness: To Namaka Hospital, and from there to Nadi Hospital direct*

*Counsel: Nadi Hospital?*

*Witness: Yeah*

*Counsel: And what happen at Nadi Hospital*

*Witness: Then, I was vomiting there and blood were coming out and they admitted me over there*

*Counsel: How long were you admitted at Nadi Hospital?*

*Witness: Three (3) weeks*

*Counsel: And during those three weeks what was your condition in the hospital*

*Witness: I was in the Wheel chair and blood was coming out from the mouth and even if I go to urinate blood was coming out and all my body was paining and I was on drips all the time and they were giving me medication, pain killer, injections, couldn't move my body because of the pain*

*Counsel: Why were they giving injections?*

*Witness: Because of the pain I was having on my body*

*Counsel : Then what happened after three weeks?*

*Witness: Then they transferred me to Lautoka Hospital, then I was admitted there in the Trauma Ward and then*

*Counsel: So you were transferred to Lautoka Hospital and how long were you admitted at Lautoka Hospital?*

*Witness: Two weeks*

*Counsel: And what happen to you at Lautoka Hospital what did the Doctors do to you?*

*Witness: They took the CV Scan and then they took out fluid out from my knee and they tested the fluid and my whole leg was black, they took out the blood from there and they give me some injections, medical, capsules ... ..*

*Counsel: And you were discharge after?*

*Witness: After two weeks, then I came back and admitted again for one week*

*Counsel: And again you were given pain killers?*

*Witness: Yes, pain killers, injections and physio, everything*

*Counsel: And did the Doctors tell you where your injuries was in your body?*

*Witness: My chest, my back, my knee*

*Counsel: Your chest, your back and your ?*

*Witness: knee*

*Counsel: There were no fractures of the limbs?*

*Witness: No*

*Counsel: Now, when you were discharged from Lautoka Hospital, how did you go home?*

*Witness: A van and on crutches' and my cousin came from NZ so he had the car and went on crutches and went in his car at home*

*Counsel: And how long did you use crutches?*

*Witness: For 4 months*

*Counsel: You don't use it now*

*Witness: No, only sometimes*

*Counsel: Now, have you done any work since you were discharge from hospital?*

*Witness: No, I haven't*

*Counsel: Have you gone back to hospital for clinics?*

*Witness: Yeah*

*Counsel: Why have you gone back?*

*Witness: Because I was still feeling pains at my back so I went there did my check ups, CT Scan and then they give me some medical like tablets and injections to have, so I was there for a long time*

*Counsel: And what is your condition now, physically?*

*Witness: Like, I'm not that good as before. I still have pain at my back, my neck over here and can't lift heavy goods at the moment*

*Counsel: This pain that you have at your back, how often do you have your pain?*

*Witness: It's all the time, always paining, day and night*

*Counsel: That pain occurs when you stress yourself or just its there?*

*Witness: Just there*

*Counsel: At day or at night?*

*Witness: Both day and night*

*Counsel: Would you be able to lift heavy goods now?*

*Witness: No.*

*Counsel: Bending?*

*Witness: No, I can't bend that much coz I put the bandage over here all the time?*

*Counsel: What do you do?*

*Witness: I put the bandage over here*

*Counsel: Why do you put bandage?*

*Witness: To support my back*

*Counsel: Have you got it now?*

*Witness: Yeah*

*Counsel: Just show it...come this side, why do you have that?*

*Witness: Because my hips are paining all the time?*

*Counsel: And that helps?*

*Witness: Yeah*

*Counsel: What about mentally? Do you feel steady?*

*Witness: No, I don't*

*Counsel: How do you ....*

*Witness: Like when my back is paining I can't sleep at night so all the stress*

*Counsel: Apart from doing work like work at Tropical were you doing any other work at home?*

*Witness: Yeah, carrying firewoods and looking after the chickens*

*Counsel: Chickens, anything else?*

*Witness: Gardening at home*

*Counsel: What sort of gardening did you do?*

*Witness: Just vegetables at home*

*Counsel: And what equipment did you use for gardening?*

*Witness: Like forks, spades*

*Counsel: Can you use a folk now*

*Witness: No I don't use at home*

*Counsel: Where do you stay, with whom do you stay?*

*Witness: With my parents*

*Counsel: And? and anybody else there*

*Witness: My Dad, he is disable and my mom and my brother*

*Counsel: Your mother and your disable father and your?*

*Witness: one brother*

*Counsel: Now, have you tried to find any work?*

*Witness: No*

*Counsel: Why have you not tried?*

*Witness: Because I applied once, and they said to bring my medical, I was rejected from there*

*Counsel: Sorry*

*Witness: I was rejected because my medical says I was unfit to work*

*Counsel: Where did you apply?*

*Witness: Prouds in Nadi*

I accept the Doctor's medical report, evidence and what the Plaintiff said about his condition at the hearing. The Plaintiff still suffers from back and neck pain. He is on pain killer drugs. He cannot lift or carry heavy load. He is having the pain, both at night and day. As for General damages, for pain and suffering, the plaintiff is entitled for prospective as well as past suffering.

*In HEAPS J PERRITE LTD (1937) 2 AER 60 GREER L.J. said:-*

*"We have to take into account not the suffering which he had immediately after the accident but the suffering that he will have throughout his life in future."*

*"In actions for personal injuries, the court is constantly required to form an estimate of chances and risks which cannot be determined with anything like precision; for example, the possibility that the injury will improve, or deteriorate, or the possibility of improved earnings if the accident had not occurred: see **FAIR v LONDON AND NORTH WESTERN RLY CO** (869) 21 LT 326". MUNKMAN: *Damages for Personal injuries and Death* 8<sup>th</sup> Ed. at p.10)*

The accident took place on 25<sup>th</sup> October 2012. The Plaintiff was 23 years old on the date in question. This pain it appears to me will remain with him for sometime. To be more precise, his condition will not be back to normal, as it was before the accident. The Plaintiff's Counsel submitted that the Plaintiff is entitled to \$50,000.00 for pain and suffering and referred to two authorities. The two authorities cannot be compared with the one before me and the award of damages in the two authorities are in the very high side.

**McGregor on Damages, Thirteenth Edition at. 1141states;**

*“(b) Amount awarded. It is virtually impossible to give clear guidance on amounts, varying as they do with the particular injury, the particular circumstances and the particular judge.”*

In this case, I award by way of general damages for pain and suffering and loss of amenities and enjoyment of life the sum of \$40,000.00

**(2) Loss of Earning Capacity**

The Plaintiff was a manual worker. He was born on 27<sup>th</sup> August 1988 and he was 23 years old on the date of the accident. At the time of the accident, he was paid \$90.00 per week net. He is single. He was providing for his elderly parents.

The accident was on 25<sup>th</sup> of October 2012. He was working for the Tropiko Exports since October 2011 as a vegetable packer. Evidently the Plaintiff did not work at all after the accident. He says that he is unfit to work. However, the doctor stated that there is 10% permanent incapacity. The Plaintiff says that his hips are painning all the time and he is unable to bend or lift heavy goods. He is a manual worker. There is no prospect of re-employment. The Plaintiff is in mid twenties and he would have probably worked until 55 years of age. Therefore, I award the sum of \$14,040.00 for loss of earnings. [90 x 10/100 x 52 x 30 = \$14,040.00]

**(3) Special Damages**

The Plaintiff is claiming \$540.00 for transportation to the Hospital. The Plaintiff was treated at Nadi and Lautoka Hospital and for that purpose he had to make a number of trips between Togo, Nadi and Lautoka.

I award the sum of \$540.00 as special damages.

**(4) Future Medical Care**

The Plaintiff says that he spends \$25.00 per week on pain killer drugs. There was no detailed evidence of any actual expenditure by the Plaintiff on medicine. Nevertheless, there must have been some such expense. In the absence of receipts and other documents, it is difficult to enable a calculation to be made of the amount which should be awarded. In the course of the hearing in this court, Counsel for the Plaintiff indicated a sum of \$4000.00 would be regarded as sufficient to meet the medical expenses. I think a sum of \$4000.00 would be appropriate in view of his on going back pain, chest pain and joint pain. This pain it appears to me will remain with him for some time.

I award \$4000.00 for future medical expenses.

(5) **Interest**

There is a claim for interest in the Statement of Claim. The Plaintiff is entitled to interest under section 03 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act, Cap 27 at the rate of 6% per annum on General Damages and at the rate of 3% per annum for special damages. Section 03 provides;

*“In any proceedings tried in the High Court for the recovery of any debt or damages the court may, if it thinks fit, order that there shall be included in the sum of for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.”*

I would award interest on General Damages at the rate of 6% per annum from 27<sup>th</sup> May 2013 (date of writ) to 10<sup>th</sup> July 2015 (date of ruling) which amounts to \$4,800.00.

I would award interest on Special Damages at the rate of 3% per annum from 27<sup>th</sup> May 2013 (date of writ) to 10<sup>th</sup> July 2015 (date of ruling) which amounts to \$32.40

(6) **Cost**

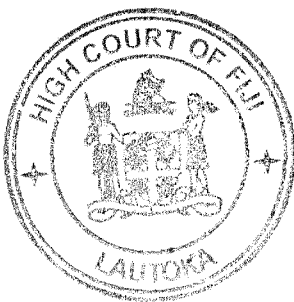
The Plaintiff is entitled to cost which is summarily assessed at \$2000.00

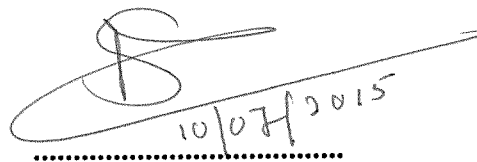
(E) **SUMMARY OF AWARDS**

• General Damages – Pain and suffering And loss of amenities in Life	:-	\$40,000.00
• Interest on General Damages	:-	\$ 4,800.00
• Loss of Earning Capacity	:-	\$14,040.00
• Special Damages	:-	\$ 540.00
• Interest on Special Damages	:-	\$ 32.40
• Future Medical Care	:-	\$ 4,000.00
• Cost	:-	<u>\$ 2,000.00</u>
TOTAL		<u>\$65,412.40</u>

(F) **ORDERS**

The Defendants are ordered to pay \$65,412.40 to the Plaintiff.



  
10/07/2015

**Jude Nanayakkara**  
**Acting Master of the High Court**

At Lautoka  
10<sup>th</sup> July 2015