

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 76 of 2017

**BETWEEN : AHMED HUSSEIN
PLAINTIFF**

**AND : HERRY'S CONSTRUCTION LIMITED
DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. A. Nadan [Neel Shivam Lawyers]

DEFENDANTS : Mr. A. Dayal [Bale Law]

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : 25 March 2022

JUDGMENT

Introduction

1. The Plaintiff's claim against the Defendant is for damages for injuries sustained whilst in employment with the Defendant.
2. An interlocutory judgment was entered against the Defendant on 20th July 2017.
3. This is the Plaintiff's application for assessment of damages for determination.

Evidence

4. The first witness called was the Plaintiff himself. His evidence is summarized as follows:

He now works for Munna Builders as a supervisor. Prior to this, he was employed with Herry's Constructions as a carpenter earning \$216 per week. He did general carpentry work like plaster, maintenance etc.

In February 2016, he was working with a circular saw attached to a table. According to him, the company had modified the circular saw making this to a bench saw machine used to ripping timber.

He informs that the machine did not have a guard.

On the day in question, after his morning tea at 10.30am he was feeding timber to the blade when his hand went into the machine. As a result, he received injuries to his hand whereby his finger on his right hand got cut-off.

He explains that the second finger after the thumb was hanging on a little bit of skin whilst there were deep cuts on the thumb and the middle finger on his right hand.

He went to his boss who took him to the Valelevu Hospital in a company vehicle. At Valelevu Hospital he was injected with a pain killer. 2-3 hours later he was transported from Valelevu Hospital to Suva Hospital in an ambulance.

At Suva Hospital, a form was signed for cutting off the finger. Thereafter he was injected unconscious for operation at around 10.30 – 11pm.

At about 1.30am he was brought to the Namosi Ward.

He was admitted to the hospital for a day and was discharged on 25th.

He identified the discharge summary he was given when discharged from the hospital.

Initially after discharge he went to SOPD after 02 weeks to change the bandage and on a later date they cut off the stitches.

Thereafter he went to the SOPD for 6-7 months to get the bandage changed in every 02-03 weeks.

He was prescribed medication – Panadol, burifen for painkillers and another tablet to heal the wound.

After the incident he was at home as according to him he did not have any strength in the hand and there was pain in the hand.

He claims to be only paid 06 months wages whilst at home.

He started working for Munna in 2018 as supervisor and carpenter.

He is not working on a fulltime basis but goes to work, allocate work to the labourers and leaves. His hourly rate is \$5 per hour.

Prior to his injuries he would work 08 hours per day.

Due to his injuries, he cannot do 08 hours of work now. He explains he has no strength in his hand and it hurts during cold with his fingers getting numb.

Two of his fingers are not functioning due to the injuries.

He claims he cannot perform normal carpentry work neither can he eat food with his hand. He has to use a spoon to feed himself.

Whilst working at Herry's he earned \$216 per week. After injuries he works 02 hours daily and earns \$50 per week.

He now seeks financial assistance from his daughter and son-in-law.

He further goes on to state that previously he used to cut grass by himself. Now he has to get labour to assist him.

His wife assists him in getting dressed as he cannot fold shirts sleeves on left hand.

As of now he takes pain killers when he gets the pain especially during the cold season.

He informs that his previous employer was paying for his insurance which money he has not received.

He had also claimed for taxi fares but was not paid.

He had to pay the Doctor to attend court for the Hearing. His lawyer paid on his behalf for 02 days at \$500 per day.

He is also incurring legal cost.

5. The second witness for the Plaintiff was Doctor Vuatavou Scott Buadroma. He is currently based at Labasa Hospital as a General Surgeon and has pursued Post Graduate Diploma in Surgery and Masters in General Surgery.

He has also undergone training in assessment of permanent impairment. He explains that this is a training organized by Ministry of Labour for the purpose of assessing workmen compensation using the AM5 Medical Association 5th Edition and Fiji Work Care Guidance as assessment tool to objectively assess impairment assessment.

He is a Senior General Surgeon looking after patients who need surgery; reviews the patients after surgery; assess workmen compensation and compile medical report.

He has been working with the Ministry of Health for 09 years.

Prior to working at Labasa, he was based at Colonial War Memorial Hospital and was there in 2016 working as a plastic surgical registrar.

He recalls seeing the Plaintiff who he says sustained work place injury involving power tool, a circular saw, resulting in traumatic amputation of right index finger.

This injury comes under his scope of work for hand plastic surgery.

The Plaintiff was admitted for admitted for operation to clean the wound and close the same. They had to ensure that bone was not sticking out and that there is no stiffness.

He had prepared an assessment report for the Plaintiff. This is dated 28th June 2016. The purpose was to provide a final assessment to quantify level of impairment.

The report speaks of injury of Ahmed Hussein; the treatment and finding that Ahmed had reached the maximum medical improvement. The report also describes how AMA 5 was used to quantify impairment.

AMA 5 is American Medical Association 5th Edition assessment tool used for assessment of impairment assessment.

The Plaintiff is said to have lost index finger of the dominant hand which comprises 11% of whole improvement. Extra 1% was given for deformity. There is 12% whole person impairment.

Maximum medical improvement is assessed once a patient is deemed to have received full medical care and whatever remains beyond this is permanent.

The discharge summary dated 25th February 2016 talks about his presentation on admission and treatment Ahmed underwent with final diagnosis; follow up treatment and the management of amputation of the right index finger.

As part of the treatment, the dressing was changed every week at the nearest Health Centre and the Plaintiff was seen at the special outpatient clinic in 02 weeks.

Due to the traumatic amputation the Plaintiff would have chronic complex pain which means resistance to standard form of pain relief with pain extending beyond the initial sight of injury.

These types of pain last for years and its highly possible to last a lifetime.

The injured hand is at risk of further injury and losses the ability to naturally protect itself.

He explains that in the Plaintiff's type of work which involves sharp tools and power tools, put risk of more work place accident.

He further explains that most labourers enjoy working with tools which becomes a hobby. Having lost ability to work with tools equates to loss in quality in life which in turn affects the health.

Determination

Special damages

6. In his Statement of Claim, the Plaintiff has pleaded special damages as follows:

- Loss of 1/3 wages from 09th September 2016
until 14th October 2016 at the rate of \$64.00 x 6 weeks - \$384
- Hospital charges for paying ward at Hospital - \$245
- Medical report - \$54
- Travelling expenses from Nakasi to CWM Hospital

(Taxi Fare)	- \$90
• Medication, pain killers, bandages	- \$205
Total:	\$978

7. I will allow the claim for special damages in the sum of \$978 as claimed.

Loss of Future Earnings

8. I take into account the nature of the Plaintiff's injuries and his inability to how work for 08 hours. However, he can still do supervisory work in the carpentry field and he does work for another construction company for a lesser hours and wage.

9. Prior his injuries he would get \$216 per week for working 08 hours daily.

10. After injuries he earns around \$50 per week.

11. I allow his loss of prospective earning at \$100 per week.

12. Only evidence regarding his age is the discharge form which states his date of birth as 1955. Hence, he was 61 years of age when he received the injuries.

13. Accordingly, I will allow a multiplier of 04 years.

14. The sum awarded for loss of future earnings is \$100 per week x 52 weeks x 04 = \$20,800.

General Damages

15. I am satisfied with the evidence before me regarding the injuries the Plaintiff sustained and the impairment assessment done by Doctor Buadroma.

16. In **Prakash v Ranjit Garments (MFG) Limited**, a Suva High Court Civil Action HBC 0371 of 2004, the Plaintiff worked as a machinist and quantity controller for the Defendant company.

Whilst working on a stud machine (adjusting a piece of garment on it) the upper arm descended affixing a stud through her right index finger.

Her finger was amputated at the joint nearest to the palm of her hand. It was found she had 8% residual disability.

After finding her to be contributorily negligent by one third, the Court awarded her \$25,000 as general damages (\$20,000 to cover pain & suffering till the date of judgment and \$5,000 for future pain and suffering).

17. In **Raj v Fiji Sugar Corporation Limited a Labasa High Court Civil Action No. HBC 37 of 2016**, the Plaintiff worked as a carpenter for the defendant.

His left hand was injured by the rotating blade of a saw. He said to be a right hander.

As per the medical report the impairment was described as follows:-

The examination showed a longitudinal scar over the thenar eminence extending proximally from the base of the thumb metacarpal to the flexor crease of the metacarpal-phalangeal joint of the index finger. The scar at its proximal end extends medially along the wrist crease then curving proximally along the middle of the distal forearm. Muscle wasting of the thenar muscles and skin contracture of the web space between the thumb and the index finger were quite evident. Marked restriction of motion of the thumb was noted due to skin contracture of the first web and loss of function of the long flexor. There was loss of sensation to the palmar side of the thumb.

The final assessment was 27% impairment as a whole person.

The Plaintiff was found not to be totally incapacitated and he admitted he can be even a supervisor in carpentry workshop.

He was aged 33 at the time of the injury.

He was award \$75,000 for pain and suffering and disfigurement.

18. In **Naidu v Fiji Forest Industries Limited a Suva High Court Civil Action 39 of 2011**, the Plaintiff worked as a labourer in the Defendant company. On the day of injury, he was working on a sanding machine and met with an accident injuring his right hand.

It was determined that the Plaintiff had lost the little finger of his right hand and sustained impairment of his index, third and ring finger of the same hand. He was assessed with a permanent impairment percentage of 21% and a hand impairment of 53%.

The Court found the Plaintiff had been severely incapacitated with the loss of the use of all but his thumb of his dominant hand.

The Plaintiff was awarded \$60,000.00 as general damages.

For loss of future earnings, he said to have looked for job and the Defendant did not offer any light job. The Court found he had lost his pre-accident earning capacity to work as a mechanic or labourer.

The Court found the Plaintiff was paid salary till he was 44 years. Hence the court applied a multiplier of 08 years to calculate the loss of future earnings.

He was awarded 6% interest for general damages from service of writ of summon and 3% on special damages from date of accident to the hearing date.

19. In *Singh v Valebasoga Tronic Bond Limited & Ors*, a Suva High Court Civil Action 43 of 2006, the Plaintiff aged 43 years was a truck driver with the Defendant.

On day of the accident, he drove a 10 wheeler truck used to transport logs from the forest to the Defendant's factory. The truck encountered problem so he brought the same to the yard, unloaded the logs and informed one of the receivers of the Defendant company of the same. The Plaintiff was asked to go home and mechanics would attend to the truck.

The next morning the supervisor of the mechanics informed him that the truck was fixed and he was sent to Mount Kasi to get logs.

On his return job, the brakes failed to slow down the truck whilst going downhill. The truck went off the edge of the road and capsized trapping the Plaintiff in it. The logs shifted on top of the cab of the truck.

He received injuries to his index finger (fracture), right leg and his back.

For his injuries he was awarded \$30, 000 for past pain and suffering.

20. For the pain and suffering and loss of amenities and enjoyment of life I award a general damages of \$65, 000 to the Plaintiff.

Interests

21. I award interest at 6% each on special damages and general damages from 24 February 2016 till to-date.

Orders

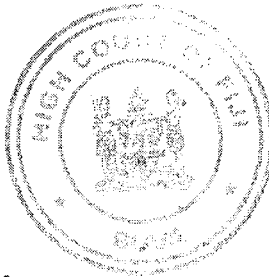
22. The award made in favour of the Plaintiff is as follows:

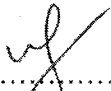
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|-----|-------------------------|----------------------------|
| i. | General damages | \$65,000 |
| ii. | Loss of Future Earnings | \$31,200 20,800 |

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- iii. Special damages \$ 978
- iv. Interest at 6% from 24 February 2016 till to-date

23. The Plaintiff is also entitled to cost of this action summarily assessed at \$1,500.




Vandhana Lal [Ms]
Acting Master
At Suva.

25 March 2022

TO:

1. Suva High Court Civil Action No. HBC 76 of 2017;
2. Neel Shivam Lawyers, Solicitors for the Plaintiff;
3. Bale Law, Solicitors for the Defendant.