

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

CIVIL ACTION No. 14 OF 2019

**BETWEEN:**            **POOJA PRIETHNA PRASAD** of Tuatua, Labasa, Clerical  
Officer.

**1<sup>st</sup> PLAINTIFF**

**AND:**                    **AMRIT PRASAD** of Tuatua, Labasa, General Employee.

**2<sup>nd</sup> PLAINTIFF**

**AND:**                    **VIJEND CHAND** of Korotari, Labasa, Farmer/Driver.

**1<sup>st</sup> DEFENDANT**

**AND:**                    **RESHMIN LATA** of Korotari, Labasa, School Teacher.

**2<sup>nd</sup> DEFENDANT**

**Counsel**                : **Plaintiff: Mr. Sen A**

                              : **Defendant: Ms. Devi S**

**Date of Judgment**    : **4.8.2022**

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**JUDGMENT**

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**INTRODUCTION**

1. The two Plaintiffs were driver and passenger in vehicle registration number IJ 231, respectively. It had collided with vehicle approaching left hand side to the main road with a registration number IP 163. Its owner, was second Defendant, who was also a passenger at the time of accident. There was no dispute that there was a 'stop' sign on the road, before e vehicle IP 163 approached the main road . It had stopped at the junction before it entered main road and to turn right side in order to travel opposite side to IJ 231 was travelling. Due to miscalculation of judgment of first Defendant had entered main road early, so as to collide with vehicle driven by first Plaintiff. This was negligence on the part of first Defendant. Again in written submission. The type of

injury in this accident to first Defendant did not include any 'cuts, bleeding or swelling'<sup>1</sup>. This indicate that the impact on the force was low, hence pain from the said impact needs to be comparable with the force. The observations regarding type of injuries, after accident at hospital, were 'left knee was tender and had pain on movement' and 'tenderness over the sternum at the site of impact, these were result of impact with, dashboard and steering wheel respectively. First Defendant was wearing a seat belt, hence impact was greatly reduced. Defendant provided assessment of Plaintiffs impairment, through an expert opinion. Defendants had obtained expert opinion of orthopedic consultant on the impairment assessment of the Plaintiffs. This expert opinion is accepted as unbiased witness who gave evidence after examination of victims. Both Plaintiffs are entitled for pain and suffering in proportionate to the injuries they suffered.

## FACTS

2. First Plaintiff's motor vehicle bearing registration number IJ 231, was travelling along James Madhavan Street, towards the four way, 'cross junction' on an evening
3. It had rained previously and road surface was wet, hence slippery due to wet surface of road and wheels of vehicles.
4. First Defendant drove his motor vehicle from Sarwan Singh Street and it stopped at the edge of that road before entering main road. There was a stop sign at the edge of Sarawana Sigh road before main intersection with James Madhavan Street.
5. First defendant saw vehicle driven by first Plaintiff approximately 100m away. First Plaintiff also saw the first Defendant's vehicle stopped at the junction waiting to enter main road.
6. First Defendant waited for a while and then drove into main road James Madhavan Street, when vehicle driven by first Plaintiff was about to turn to his right side at the intersection, collision happened.
7. First Plaintiff had the right of way and proceeded towards junction and there was no evidence of excessive speed.
8. First Defendant, who had stopped at the intersection, to allow traffic to pass intersection , and also to observe the traffic condition on both sides of the road

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<sup>1</sup> Document marked P3

where he needed to cross as he required to enter the road and take a right turn.

9. Before it could turn to opposite side IJ 231 driven by first Plaintiff collided with vehicle driven by first Defendant
10. The Police (Traffic) Officer - Mr Naicker told that the collision took place along the carriageway when the Plaintiff had the right of way.
11. In coming vehicle on the main road collided with right hand side near door and due to the impact and due to slippery condition on the road both vehicles have skidded from the point of impact.
12. Most of the facts of this case are not disputed though liability was denied by Defendants and an allegation of contributory negligence was made.
13. There is a dispute as to the evidence of two expert opinion evidence. Plaintiff did not submit an impairment assessment of Defendants. Plaintiffs relied on injuries they suffered and used a doctor to speculate on that.
14. Defendant had produced an assessment after examination of Plaintiffs. He also gave reasons for his conclusion without speculating.
15. Both parties had submitted written submissions.

## **ANALYSIS**

16. Accident happened on a junction, due to collision of two cars. Plaintiffs travelled on the vehicle driven main road and Defendant had entered main road from left hand side of Plaintiffs' vehicle.
17. First Defendant is required to wait till traffic on both sides of the road are cleared in order to drive in to main road and also take a right hand turn to travel, to the opposite side where Plaintiffs were travelling. Before that vehicle driven by first Plaintiff collided with vehicle that entered main road, driven by first Defendant.
18. At this junction where accident happened, there was a stop sign on the road where first Defendant was, indicating the person driving on the said road must stop at junction and also observe the traffic and enter main road and he should be responsible to take care that road is clear from both sides before entering the main road and proceeding as intended.
19. In order to do so, first Defendant's vehicle needs to fully cross the half side of the road where first Plaintiff's vehicle, was approaching the junction and then enter the other side of the road where vehicles were approaching the junction from opposite side.

20. First Defendant had stopped at the junction before entering and had seen incoming vehicle towards junction, driven by first Plaintiff. So, he was required to make a proper judgment as to the speed of which it was approaching, towards the junction and also to take a judgment whether it is safe to pass the junction or to wait till it passed the junction.
21. If there was any doubt, first Defendant should not enter the main road as it was his fault in a collision with incoming vehicles to said junction from both sides. This is the reason that warning sign was on the by road, before approaching main road. So the decision to move vehicle should be taken if there was no risk of collision from both sides of the road.
22. First Defendant needed not only to stop and observe, but also make a judgment as to the speed of the incoming vehicles and probability of the colliding with his vehicle at the time he decided to enter main road and take right turn to proceed opposite side.
23. First Defendant in his evidence said that he need not wait till the vehicle driven by first Plaintiff reached junction as it was a 'waste of time' to wait. This was a wrong assumption, as waiting few minutes could have saved this accident and waste of time and also resources of all the stake holders.
24. First Plaintiff said that she saw vehicle IP163 stopped at the intersection before entering junction and she had proceeded on the belief that it would wait till she pass the junction along the main road, but as she was about to enter junction, first Defendant entered main road and also turned the vehicle to right side, in order to go opposite side.
25. It was too close and first Plaintiff had attempted to avoid it by turning vehicle away, but collision, could not be avoided, hence there was no negligence on the part of first Plaintiff.
26. There is no contributory negligence proved by Defendant in this accident, the entire negligence was on the part of first Defendant who thought waiting few minutes, to leave traffic in main road to pass the junction, as a waste of time. It was not a waste of time but the haste of first Defendant coupled with misjudgment that resulted this accident.
27. After considering evidence I conclude that this accident happened due to misjudgment by first Defendant as to the time of entering main road where first Plaintiff had the right of way. If she drove fast, first Defendant would not have entered main road, as collision was highly probable. No reasonable person would do such a thing.
28. First Defendant entered main road, on the belief that he could pass and turn the vehicle to right side before vehicle driven by first Plaintiff entered intersection. If he thought otherwise he would not have entered main road. This misjudgment was first

Defendant's sole negligent act, as he was entering main road from a by road. He should let traffic on main road to proceed uninterrupted, as they had right of way.

29. The doctrine of *res ipsa loquitur* is pleaded in the statement of claim and also contended in written submissions. This applies when the negligence of Defendant is so apparent on the facts, prima facie, without any explanation from Defendant as to how such a thing happened. Since I have come to the conclusion that accident was due to negligence of first Defendant it is not necessary to consider this doctrine.

### **Assessment of Damages**

30. Due to this accident both vehicles got damaged and Plaintiff is claiming damages for vehicle driven by her, without proof of any document as to its ownership. Not only that there was no documentary evidence to prove that she had spent money to repair and how much was expended. These are all special damages, which can be produced without difficulty if incurred.
31. If the vehicle driven by first Plaintiff belonged to her, she could have produced its registration and without that there is no proof that it belonged to first Plaintiff. Plaintiff cannot seek damages to something that she cannot prove ownership.
32. Despite this fact first Plaintiff was using the vehicle IJ 231 and deprivation of that caused a loss of using that. This was allowed under special damages.
33. Plaintiff did not produce any receipts or estimates as to the damages to the vehicle. If there were serious damages, a quotation from agent of the make of the vehicle or receipts of such payment for vehicle to for \$2,800 should be available and disclosed to parties at the stage of discovery for Defendants to agree to them or provide evidence to rebut them.
34. Plaintiff had pleaded such special damages at paragraph 11 of statement of claim stating that particulars would be provided at discovery. This had not happened and no list of document to the proof of such repair were included in the list of documents.
35. There were no documents produced regarding ownership of the vehicle IJ 231 hence no special damages can be awarded for the damage to said vehicle.
36. As first Plaintiff was using it, special damage for loss of vehicle during alleged time of repair, for over three months granted. (for 94 day at \$50.00 per day. ***(\$50.00 x 94 days = \$4,700 loss of use)***)

### **General Damages**

37. First Plaintiff suffered no neurological damage <sup>2</sup> and the injuries were ‘soft tissue injuries’<sup>3</sup> and they were ‘expected to heal’ in one to two weeks’ time.
38. There was tenderness over the stratum, at the site of impact of the steering wheel. Her left knee was also tender and had pain on movement. However, there were no cuts, bleedings or swelling noted.’<sup>4</sup>
39. From the events that happened prior to the accident and her own evidence that vehicle was not travelling faster than 50 km per hour and she was approaching junction and the impact was from the side, this reduces inertia of the impact. Both vehicles were passenger vehicles and IP 163 was also moving from stationary position, also greatly reduces force of the impact, unlike in a collision where both vehicles were travelling in opposite directions.
40. The type of injuries recorded in the hospital shortly after accident and conclusion of the medical officer who had examined first Plaintiff indicated that injuries from accident were not severe, and only ‘soft tissue injuries’ hence they were expected to heal in one to two weeks’ time.
41. Plaintiffs’ counsel submitted cases where severe serious injuries cases where severe pain due to such injuries were assessed. In every road accident, or every injury to Plaintiff, The pain which is subjective, needs to be assessed in accordance with the injury. Certain amount of exaggeration of pain, on any particular incident is unavoidable in order to obtain a higher monetary value
42. So the injuries were not severe as to cause any permanent impairment or disability. Dr. Talonga had examined first Plaintiff and had opined that there was no causal link with the complaints of first Plaintiff to the accident.
43. In the analysis of evidence it is proved on balance of probability that first Plaintiff’s injuries were minor, and body had the ability to heal such minor injuries within two weeks’ time period.
44. A permanent impairment assessment, was produced by Defendant and this was produced by an expert in the field of medicine. Which party obtained expert report as to assessment is irrelevant, as the expert opinion can be accepted on the available evidence.
45. Plaintiffs have both voluntarily submitted themselves for medical examination by a consultant orthopedic surgeon. The report of impairment assessment was done in a professional manner. It is a professional opinion and it is based on facts and science. A

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<sup>2</sup> Document marked P3

<sup>3</sup> P1 – summary and conclusions

<sup>4</sup> ibid

court may accept or reject in to assess the opinion on the available evidence.

46. Plaintiff's counsel cross examined the expert and emphasized the need to examine medical folder of first Plaintiff. He was submitted a Medical Report marked P3 by Dr. Rishaal Sharma
47. Professionals are required to provide opinion on certain facts, and this evidence, may not be accepted by court in the assessment of evidence in the analysis.
48. Plaintiffs did not obtain any medical report and or assessment of their present condition and relate that to the accident. This is vital link when the injuries are not serious as in this case. As such Plaintiff's expert evidence is speculative and considering the nature of the injuries and circumstances cannot be accepted as regards to permanent impairment of Plaintiffs.
49. Not every road accident, always result in permanent impairment or disability. Most of the minor injuries heal due to the adaptability of human body to injuries
50. The injuries to first and second Plaintiff can be summarized as:

#### **1<sup>st</sup> Plaintiff**

- Tenderness over the sternum area.
- Left knee was Tender
- Pain on movement
- Later noted to have chest pain and joint pain
- Abrasions and lacerations in the chest area

#### **2<sup>nd</sup> Plaintiff**

- The plaintiff sustained soft tissue injuries to his right leg.
  - Swelling noted on Right Arteries upper aspects of leg about 10cm below knee.
  - Mild 2 x 2cm abrasion noted at region of swelling.
  - The plaintiff visited numerous occasions to the Labasa Hospital for treatment of the injuries sustained to his right leg which became infected.
51. Considering above injuries which were not severe for the pain and suffering of first Plaintiff \$20,000 and for second Plaintiff \$25,000 is granted. Both injuries were not severe but injuries to second Plaintiff had lasted a longer time hence a higher assessment.
  52. Awarding compensation is based on the principle of *restitutio at integrum*. In personal injury (*including fatal accident*) claims, the application of this principle is attributed to **Lord Blackburn's** judgment in ***Livingstone v Ram Yards Coal***

*Co.* (1885) App. Case 25 at 39 in which His Lordship said that "compensation should as nearly as possible put the party who has suffered injury in the same position as he would have been if he had not sustained the wrong. This principle is now better understood as the **compensatory principle**. Almost 80 years later, *Lord Scarman* in confirming the existence of the principal, added that "**the damages awarded should be such that the ordinary sensible man would not instinctively think as either mean or extravagant but consider them to be sensible and fair.**" *Fletcher v. Autocare and Transporters Ltd.* [1969] 1 ALL E.R. 726-780. In 1982 Chief Justice Gibbs in the Australian High Court succinctly summarized the under mentioned governing principles of assessment of damages in personal injury claims:-

- (a) Lord Blackburn's compensatory principle.
- (b) Damages for a cause of action must be recovered "*once and forever*."
- (c) The plaintiff is free to use the sum awarded in the manner he chooses, without it being a concern for the court or appellant.
- (d) Respondent has the burden of proof.

53. Plaintiff relied on **Vimla Wati v Permanent Secretary of Health [2016] FJCA 72; ABU0002.2014 (27 May 2016)**. The Court of Appeal increased the award of general damages from \$15,000 to \$70,000. This was a case of medical negligence where the victim suffered severe pain and suffering compared with minor injuries from the road accident. This case can be easily distinguishable as there were evidence of severe pain and suffering in that case.
54. The medical report relied by Plaintiffs was not prepared by physical examination of the victims it was prepared after reviewing the relevant folder of the plaintiffs and findings made by their treating doctors and from the nurses notes. The above was verified by the testimony of Doctor Ravuama Raqisi. He said that the pain could be by reasons of torn ligaments and crushed muscles. This doctor said that the plaintiffs would have suffered pain in the high end. This is completely in contrast with the type of injuries suffered and evidence of doctor who assessed permanent impairment.
55. In **Nasese Bus Company Limited -v- Muni Chand Civil Appeal No. ABU 40 of 2011** Honourable Justice Hettiarachchi awarded a sum of \$65,000.00. This amount was increased to \$90,000.00 by Honourable Justice Calanchini for a communitated fracture with 14% total permanent disability who quoted the following: -

*"In the absence of any legislation in Fiji providing guidance for assessing or setting limits on the award of non-pecuniary damages in personal injury actions, the observations of the Court of Appeal, in my judgment, can be regarded as an endorsement of the statement made by Lawton LJ in*



Cunningham -v- Harrison (1973) QB 942 at page 956:

*"....if judges do not adjust their awards to changing conditions and rising standards of living, their assessments of damages will have even less contact with reality than they have had in the recent past or at the present time".*

56. Honourable Justice Calanchini increased the award of a commuted fracture with 14% total permanent disability to \$90,000.00 on appeal. The judge has also dealt on issue of assessing future loss of earnings.
57. The type of injuries in that case was severe hence can be distinguishable clearly.
58. In Vijma Wati -v- Faiyaz Iqbal Ali HBC 37 of 2015, Honourable Justice Kumar (as his lordship then was) awarded a sum of \$25,000.00 for pain and suffering where the plaintiff only suffered swelling of both eyelids, nasal bridge and forehead when she was hit by a falling sugarcane. His lordship held "*The Fiji Court of Appeal in Chand & Anor -v- Amin; Civil Appeal No. ABU 0031 of 2012 cited at paragraph 23(ii) stated as to how damage is to be assessed for pain and suffering in very simple terms which is as follows:-*

*"The assessment of damages under this head depends upon the consequences to the individual plaintiff (Bresatz -v- Przibilla (1962) 108 CLR 541 at 548 cited in Law of Torts by Balkin Davis 5<sup>th</sup> ed. At 11.28). In Hail -v- Rankin (2001) QB 272 the English Court of Appeal had acknowledged monetary inflation to be considered while making the awards. However, the amounts decided on in previous cases can be considered no more than as a guide, and any particular determination must depend on such factors as the intensity of the pain felt by the plaintiff and its likely duration (Balkin & Davis (supra) at 11.28)".*

*Whilst judicial comity requires that compensation for pain and suffering for particular types of injuries be in conformity, it must be understood that each particular case needs to be assessed on its merit and circumstances surrounding the particular case". (Emphasis added)*

59. **SPECIAL DAMAGES** - **Special Damages** — out of pocket expenses, and loss of actual Income and other benefits to the date of assessment which is normally capable of an arithmetic calculation.
60. The special damages claimed by the plaintiffs are as follows:-

**PARTICULARS OF DAMAGES AND LOSS OF USE OF MOTOR VEHICLE**

Loss of use of motor vehicle registration no. IJ 231 for 94 day at \$50.00 per day. ( $\$50.00 \times 94 \text{ days} = \$4,700 \text{ loss of use}$ )

Loss of use of motor vehicle	\$4,700.00
<b>TOTAL</b>	<b><u>\$4,700.00</u></b>
<b><u>PARTICULARS OF SPECIAL DAMAGES (INJURIES)</u></b>	
Transport	\$4,000.00
Medicines	\$2,000.00
<b>TOTAL</b>	<b><u>\$6,000.00</u></b>

61. Plaintiff is allowed 3% interest on special damages and 6% on general damages.

**CALCULATION**

**SUMMARY OF DAMAGES CLAIMED**

a) Special Damages	<b><u>\$10,700.00</u></b>
Interest at the rate of 3% from 2/2/17 22/1/21 i.e 1451 days	-\$1,276.08
b) Pain and Suffering	
1 <sup>st</sup> Plaintiff – \$20,000.00	
2 <sup>nd</sup> Plaintiff - \$25,000.00	<b><u>45,000.00</u></b>
Interest at the rate of 6% from 2/2/17 22/1/21 i.e 1451 days	<b><u>\$10,733.42</u></b>
<b>Total Damages</b>	<b><u>\$67,709.50</u></b>

**CONCLUSION**

62. The accident happened due to the negligence of first Defendant and second Defendant was also in the vehicle at the time of accident. She was the owner had allowed vehicle to be driven by first Defendant who was the spouse at that time. Defendants are jointly and severally liable for a sum of \$ 67,709.50 Cost of this action is summarily assessed at \$ 6,000 considering the length of days of trial and circumstances.

**FINAL ORDERS**

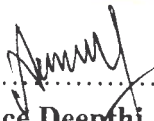
a. Plaintiffs are awarded damages for \$ 67,709.50 against Defendants jointly and or

severally.

- b. Cost of this action is summarily assessed at \$6,000 to be paid by Defendants.

Dated at Suva this 4<sup>th</sup> day of August, 2022.



  
.....  
**Justice Deepthi Amaratunga**  
**High Court, Suva**