

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBC 84 of 2014

Lila Wati
Plaintiff

v

Seru Maniyala Caquloa
First defendant

Kitione Raukue Kava
Second defendant

Counsel : Mr Kunal Singh for the plaintiff

The defendants absent and unrepresented

Date of hearing : 10th December,2020, and 26th February,2021

Date of Judgment: 2nd September,2022

Judgment

1. The plaintiff brings this claim for damages for compensation for injuries received by Parmanand Maharaj, her deceased husband. She sues as administratrix of his estate. She brings this action for her benefit and her son Nirendra Nand Sharma, who was born on 4th March,1975. She was born on 8th September,1953.
2. The amended statement of claim states that on 22nd March, 2011, the first defendant was driving vehicle bearing registration No. FS 641 towards Visama from Nausori town when he lost control of the vehicle. The vehicle went off the road to the left hand side, bumped her husband who was working on his vegetable farm near the road, dragged his body about

13 meters causing personal injuries and his death on the spot. The deceased. The plaintiff relies on the doctrine of “*res ipsa loquitur*” in that the first defendant lost control of the vehicle, drove off the road and hit her husband. The second defendant, the owner of the vehicle permitted the first defendant to drive the vehicle.

3. The particulars of negligence pleaded are as follows:

- (a) *Driving whilst intoxicated with liquor.*
- (b) *Dangerous driving.*
- (c) *Failing to take proper precaution not to drive by himself whilst being drunk.*
- (d) *Failing to keep proper lookout or to have any regard for other road users.*
- (e) *Failing to stop, or to slow down to swerve or in any way so to manage or to control his said vehicle as to avoid collision.*
- (f) *Failing to exercise such degree of care and control over his said vehicle as was warranted having regard to all the circumstances.*
- (g) *Falling asleep while driving the said vehicle.*
- (h) *Failing to see the bus shelter in sufficient time or at all to save the said accident.*
- (i) *Failing to act in sufficient time or at all to save the accident.*
- (j) *Failing to give any adequate warning of his approach.*
- (k) *Driving with an expired driving licence.*
- (l) *In the premises failing to drive with de care and attention.*

4. The plaintiff states that her husband was 65 years old at the time of his death. He was hardworking, active and in good health prior to the accident. He had a happy married life. He was a farmer earning \$200 per week immediately prior to his death. By his untimely death, he has been deprived of his normal expectation of life. His estate has suffered loss and damage and loss of prospective earnings. The deceased provided his entire salary for the benefit of the family. She claims loss of consortium, general damages, damages in terms of the Compensation to Relatives Act, the Law Reform (Misc. Provisions) (Death & Interest) Act and interest. Special damages are claimed for funeral expenses in a sum of \$4,000.00.

5. Service was effected on the defendants by substituted service. Notice of intention to defend was not filed.

The hearing

6. PW 1, (*Dr J. Kalounivaki, Pathologist, Head of Forensic Pathology, Fiji Police Force*) produced the Report of the Medical Officer of the post mortem examination of 23rd March, 2011. The Report states that death was due to shock and fracture of ribs, left tibia and fibula caused by a motor vehicle accident.

7. PW 2, (*the plaintiff*) produced her Marriage Certificate and letters of administration. Her neighbor informed her that the vehicle tumbled down to the area where her husband was farming. That area was away from the road. The first defendant was driving the vehicle. She produced a newspaper article containing a report of the accident and a photograph of the vehicle. The Police Inspector reported that the driver was intoxicated. PW2 produced the LTA record of the vehicle, which provided that the second defendant was the owner of the vehicle. She said that her husband was the sole breadwinner of the family. His weekly income was \$70 to \$80 approximately depending on the weather. He received \$20 when he performed rituals and \$100.00 a month from the Social Welfare Office. He had open heart surgery, but was certified fit for manual work by the Medical Officer from the Dept. of Social Welfare. She produced the Medical Report from that Dept.

8. PW3, (*Mohammed Khan, Traffic Officer, Nausori*) said that the accident involved a farmer working in a vegetable farm and a vehicle that went off the road and hit him causing his death. The first defendant, the driver was charged for two offences, viz, driving motor vehicle with the presence of alcohol concentration in excess of the prescribed limit and causing death by dangerous driving. He produced the Charge sheet filed in the Magistrates' Court and Summary of facts prepared by the Police. The Summary provides that the first defendant had lost control of the vehicle and the test revealed that he had "200.2 milligrams of alcohol in hundred millilitres of his blood". The first defendant admitted the charges in the caution interview. He was found guilty by the Magistrate. On 18th July, 2011, he was convicted of the offence of causing death by dangerous driving. He was sentenced to 2 years imprisonment and 18 months non parole imprisonment for drunken driving. He was fined \$ 300.00 and disqualified from holding and obtaining a driver's license for 6 months.

The determination

9. The plaintiff, as wife of the deceased and administratrix of his estate is entitled to bring this action, in terms of sections 3 and 4 of the Compensation to Relatives Act.

10. In *Daya Ram v Peni Cara & Ors*, CA No.59/82 Speight JA said that claims under the Compensation to Relatives Act are “*calculated by examining the amount of money which dependant relatives had been receiving in the past for their support and which they might legitimately have expected to have received in the future provided the deceased had had the means to make such payments and could have been expected to continue making them. This was a purely mathematical calculation of how much he would have been worth in money terms to his dependants for whatever was the expected period of dependency*”.

11. The facts disclose that the death of the plaintiff’s husband was caused due to the negligence of the first defendant. In my view, the act of the vehicle going off the road and tumbling on to the vegetable farm where the deceased was working is evidence of negligence, which has not been explained. The doctrine of “*res ipsa loquitur*” applies.

12. The first defendant was convicted of the offence of causing death by dangerous driving and sentenced.

13. Section 17(1) read with 17(3)(a) of the Civil Evidence Act, 2002, provides that a person convicted of an offence by a court in Fiji, is taken to have committed the offence, unless the contrary is proved.

14. The second defendant is the owner of the vehicle and is vicariously liable for the negligence of the first defendant.

15. I am satisfied that the plaintiff had a reasonable expectation of support from her husband, but not her son who was 36 years at the time the deceased befell the accident. There is no evidence before me that her son was unable to work and dependent on his deceased father.

16. The plaintiff said that her husband earned \$70.00 to \$ 80.00 a week depending on the weather. The deceased was fit for manual work according to the Medical Officer of the Dept of Social Welfare.
17. I assess his earnings at \$ 250.00 a month and his expenditure for farming and personal expenses at \$ 50 a month.
18. On the basis that the deceased could have worked from the age of 65 to 75 years and supported the plaintiff, I would adopt a multiplier of 7 taking into account the vicissitudes of life. \$ 200.00 per month year for 7 years makes a total of \$ 16800.00.
19. I award the plaintiff a sum of \$ 16800.00 under the Compensation to Relatives Act.
20. The plaintiff also claim damages under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act.
21. In *Moli v Bingwor*,(2003] FJHC 279; HBC0335.1998) Pathik J stated:

The award under this head is solely in regard to loss of expectation of life and is limited to a moderate sum in Fiji.

*In **Hari Pratap v Attorney General of Fiji** (Civil Appeal No. 14/92 F.C.A.) the Court of Appeal set the conventional sum for loss of expectations of life at \$2500. This sum was upheld on 18.10.01 by the Court of Appeal in **The Medical Superintendent & Attorney General of Fiji and Abdul Hafeez Ismail** (Civil Appeal No. 50/2000S). There the Court went to say at p4 of the judgment that applying the principle established in **Davies v Powell Duffryn Associated Collieries Ltd** [1942] A.C. 601, this was the benefit accruing to the dependants of the deceased and must therefore be deducted from the Cap. 29 award.*

Therefore in line with awards by the Courts, I award the sum of \$2500.00 under this head for loss of expectation of life AND as stated by Court of Appeal this sum will have to be deducted from Cap. 29 award.

22. I assess loss of expectation of life in the present case at \$ 2500.00.

23. In the result the sum of \$2500.00 awarded under the Law Reform (Miscellaneous Provisions Act) (Death and Interest) Act falls to be deducted from the sum of \$16800.00 awarded under the Compensation to Relatives Act.

Special damages

24. This claim relates to funeral expenses

25. Section 11 of the Compensation to Relatives Act provides that damages may be awarded in respect of the funeral expenses.

26. In *Moli v Bingwor*, (*supra*) Pathik J said:

We are all familiar with the customs of the various races in Fiji and in the context of funerals there are certain expectations and obligations which have to be fulfilled. It is only right that reasonable expenses ought to be allowed without requiring the plaintiff to produce receipts and proof of each item of expenditure as is required for the purposes of proving special damages.

In this case on the facts of this case for the reasons I have given the sum of \$3000.00 is reasonable for funeral expenses

27. I award the sum of \$ 4000.00 claimed by the plaintiff as funeral expenses.

28. The plaintiff has claimed interest. In the exercise of my discretion, I award interest at 6% per annum on \$14,300.00 from date of writ to date of trial and 3% per annum on special damages of \$ 4000.00 from 23rd March,2011, (date of accident) to date of trial.

29. Orders

The total sum awarded to the plaintiff as damages, is \$26973.00 made up as follows:

a.	Damages	14300.00
b.	Interest	7293.00
c.	Special damages	4000.00
d.	Interest on special damages	1380.00
	Total	26973.00

30. There will therefore be judgment for the plaintiff against the defendants in the sum of \$26973.00.00 and post judgment interest together with a sum of \$2000.00, as costs summarily assessed payable by the first and second defendants to the plaintiff.



A.L.B. Brito-Mutunayagam

A.L.B. Brito-Mutunayagam

Judge

2nd September, 2022