IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 99 of 2012

BETWEEN: **YU-E-LI** also known as **LI YU-E** also known as **LEI LOK NGO** of Ravouvou Street, Lautoka, Businesswoman as Administratrix of the **ESTATE OF CHO TAT LAM** late of Ravouvou Street, Lautoka, Businessman.

Plaintiff

AND: **MERVIN FAZLEEN ALI** of Vesi Crescent, Lautoka, Student.

1st Defendant

AND: **VINOD KUMAR MUDALIAR** of Lovu, Lautoka, Businessman.

2nd Defendant

Before : Master U.L. Mohamed Azhar

Appearance: Ms. V. Lidise for the Plaintiff
Ms. N. Sukainavalu for the Defendants

Date of Decision: 23rd March 2023

DECISION

01. The deceased Cho Tat Lam was the Managing Director of New Star Aluminium City Limited situated at Ravouvou Street in Lautoka. On or about 01 August 2010, whilst Cho Tat Lam was opening the padlock of the gate to the New Star Aluminum City Limited workshop, the vehicle bearing registration number FC 386 driven by the first defendant veered off the road and struck him. Cho Tat Lam died instantly or soon thereafter as pleaded by the plaintiff in the statement of claim. The said vehicle belonged to the second defendant. The plaintiff – the widow and the administratrix of the Estate of the deceased sued the defendants claiming damages under Law Reforms (Miscellaneous Provisions) (Death and Interest) Act (Cap 27) and the Compensation to Relatives Act (Cap 29).

02. After the trial the judgment on liability was entered in favour of the plaintiff and the trial judge sent this matter to this court for assessment of damages and costs payable to the plaintiff. The plaintiff particularized her loss in paragraph 10 of her statement of claim as follows:

a. Funeral expenses in the sum of $ 10,000.
b. Legal expenses in the sum of $ 955 for extraction of Letter of Administration,
c. Loss of expectation of life and
d. Loss of earning and benefits.

03. The plaintiff prayed for following reliefs against the defendants:

a. Damages, including damages under the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act (Cap 27) and the Compensation to Relatives Act (Cap 29)
b. Judgment as per the loss particularized in paragraph 10 of the Statement of Claim,
c. General Damages,
d. Interest under Law Reforms (Miscellaneous Provisions) (Death and Interest) Act (Cap 27), and
e. Costs.

04. The plaintiff testified and called her eldest son and Forensic Pathologist Dr. James Kalougivaki to give evidence on her behalf. Only the second defendant was represented at the hearing. However, the counsel appeared for the second defendant decided not to cross examine the witnesses.

05. The plaintiff brought this action for the benefit of the Estate of deceased under the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act (Cap 27) and for and on behalf of herself and her three children under the Compensation to Relatives Act (Cap 29). It becomes important to briefly note both pieces of legislation and the consideration to be taken in assessing damages under the both legislations. Both the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act (hereinafter referred to as **LRM**) and Compensation to Relatives Act hereinafter referred to as **CTR**) were enacted for different purposes. The LRM provides (in section 2) as to how all causes of action, that were subsisting against or vested in a person, shall survive against or, as the case may be, for the benefit of, his or her estate after his or her death. Basically, the LRM gives cause of action for the benefit of the Estate of the deceased. On the other hand, the CTR relates to payment of compensation to the families of persons died in fatal accidents. The CTR

provides how the action is maintainable for the benefit of the deceased's family members mentioned in section 4, where the death is caused by neglect etc.

06. Accordingly, under the provisions of LRM, the Executor or the Administrator can bring the action for the benefit of the estate of deceased, if such causes of action were subsisting against or vested in the person at the time of his her death. However, under the CTR, both the Executor or Administrator and the beneficially interested persons can bring the action for the benefit of family members mentioned in section 4 (**Railala v Yuen Yin Hum** [2001] FJHC 44; Hbc0528D.1992s (13 July 2001). In other words, the plaintiff under the provisions of LRM should be an Executor or an Administrator. However, the plaintiff under the provisions of CTR should not necessarily be an Executor of an Administrator, but can be a person mentioned in section 4 as well [**Tanuku v Attorney-General** [2000] FJHC 13; Hbc0134d.95s (26 January 2000) and **Jamieson v Dominion Insurance Ltd** [2012] FJHC 15; HBC132.2009 (20 January 2012)].

07. In the meantime, the section 2 (5) of the LRM provides that:

> (5) The rights conferred by this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependents of deceased persons by the Compensation to Relatives Act,.....

08. In interpreting the similar provisions of the English Law Reform (Miscellaneous Provisions) Act 1934 and the provisions of Fatal Accidents Acts which are similar to our CTR, the House of Lords held in **Davies & Another v. Powell Duffryn Associated Collieries Ltd** (1942) 1 All ER 657 that, all that this subsection does, according to the language used, is to provide that the rights shall co-exist (page 658). In that same case Lord Macmillan further elaborated at page 661 that:

> The rights conferred by the Law Reform Act for the benefit of the estates of deceased persons are the rights to maintain after the death of such deceased persons all causes of action vested in them. These rights are to be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Acts. This means, as I read the words, that on the death of a deceased person it shall be competent to maintain actions both under the Law Reform Act and under the Fatal Accidents Acts. The rights of action in the two cases are quite distinct and independent. Under the Law Reform Act the right of action is for the benefit of the deceased's dependants. Inasmuch as the basis of both causes of action may be the same – namely, negligence of a third party

> which has caused the deceased's death – it was natural to provide that the rights of action should be without prejudice the one to the other.

09. Accordingly, the causes of action under LRM and CTR are quite distinct and independent. As the result, an Administrator can bring the action for the benefit of the Estate of the deceased under the LRM and for the benefit of the family members who are entitled to receive compensation under the CTR as well. The plaintiff in this case sued the defendants for benefit of both the Estate and the family members of the deceased.

10. Even though the negligence of a third party gives rise to two causes of action for both the Estate and the dependants, the benefits received by the dependants under LRM are taken into account when awarding damages to them under the CTR. Accordingly, the damages awarded to each dependant under CTR to be assessed by balancing the loss and gain out of the death of the deceased. Lord Wright in the above case said at page 662 that:

> The actual pecuniary loss of each individual entitled to sue can only be ascertained by balancing on one hand the loss to him of the future pecuniary benefit, and on the other any pecuniary advantage which from whatever source comes to him by reason of death.

11. There are two main reasons for this this principle. The first is the general principle of the law that the compensation should, as nearly as possible, put the party who has suffered in the same position as he would have been in, if he had not sustained the wrong. Lord Blackburn in **Livingstone v. Rawyards Coal Co.** (1880) 5 AC 25, held at page 39:

> I do not think there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation.

12. The second reason is that, the tort-sufferer should not make a profit out of the wrong done to him. Hamilton LJ in **Harwood v. Wyken Colliery Company** [1913] 2 K.B 158 stated at pages 169 and 170 that:

> In assessing damages for injury caused to a plaintiff workman by the tortious negligence of the employer or his servants a jury would be directed that, their damages being a compensation once for all, they must

> consider not merely past injury, pain and suffering endured, expenses incurred and earnings lost, but also future loss. They would have to measure in money the future effects of permanent or continuing disablement, but they must consider also the possibility of future diminution or loss of earnings arising independently of the cause of action, from increasing age, from accident or illness in futuro, and so forth. They would be directed that they had to give solatium for suffering and compensation for disablement, but so that the tort-sufferer should not make a profit out of the wrong done him, the object being by the verdict to place him in as good a position as he was in before the wrong, but not in any wise in a better one.

13. The above principle laid down by House of Lords in **Davies** (supra) was initially followed in **Fiji in Public Trustee v. Parmanand** 10 FLR 187 and later followed in many cases like **Kissun v. Ulala** 26 FLR 61 and **Pal v. Hussain** [2011] FJHC 588; Civil Action 73.2007 (23 September 2011). It is therefore appropriate to apply the same principle in this matter as well, because the plaintiff brought this action, as mentioned above, for both the benefit of the Estate and benefit of the dependants of the deceased.

14. The plaintiff particularized the funeral expenses in her statement of the claim and claimed a sum of $ 10,000 for the same. It is settled that, the special damages have to be pleaded and proved (Lord Goddard in **British Transport Commission v Gourley** [1956] AC 185). The specific damages are accrued and ascertained financial loss which the plaintiff had incurred. Unless agreed by the parties, special damages should be expressly pleaded; they must be claimed specifically and proved strictly (per: Edmond David LJ in **Cutler v Vauxhall Motors** [1971] 1 QB 418).

15. Bowen L.J. in **Ratcliffe v Evans** [1892] 2 Q.B. 524 at pages 532 and 533 held that.

> The necessity of alleging and proving actual temporal loss with certainty and precision in all cases of the sort has been insisted upon for centuries: Lowe v.Harewood W.Jones.196; Cane v. Golding Sty.176; Tasburgh v. Day Cro.Jac. 484; Evans v. Harlow 5 Q.B.624.But it is an ancient and established rule of pleading that the question of generality of pleading must depend on the general subject-matter: Janson v. Stuart 1 T.R.754; Lord Arlington v Merricke 2 Saund. 412, n.4; Grey v. Friar 15 Q.B.907; see Co.litt 303d.Westwood v. Cowne 1 Stark. 172; Iveson v. Moore 1 Ld.Raym. 486. In all actions accordingly on the case where the damage actually done is the gist of the action, the character of the acts themselves which produce the damage, and the circumstances under which these acts

> are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.

16. There should be certainty and particularity both on the pleading of special damages and proof and they should be reasonable in all circumstances. The first witness – the son of the deceased testified on the funeral expenses. He stated that, they are Buddhists and it costed $ 8000 to bring the father's relatives to Fiji in order to perform the funeral rites according Buddhism. When explaining the source of fund for the airfares for those relatives, the witness stated that, the company funded it (page 21 of The Transcript). However, no proof of payment either by the company or the dependants was tendered at hearing. The witness continued to answer the questions and at one point he was asked about the cost of the coffin used to bury the body of his father. The witness replied that *"the coffin box at the time was we spent close to about $ 2000 for everything"* (page 22 of The Transcript). It appears that, the claim for $ 10000 under the head of funeral expenses includes the amount paid for airfare and the other funeral expenses connecting with burial.

17. It is also evident from the evidence of the first witness that the airfare to bring the relatives for the funeral was paid by the company in which the deceased was the Managing Director; and only a sum of $ 2000 or close to it was spent for funeral expenses for coffin and other things. The funeral expenses are generally awarded to the Estate, but paid to the relatives or the dependants as they directly incur such expenses. In this case, the airfare of the relatives was paid by the company and not by the dependants. There is nothing to show that the dependants returned the said amount to the company or the Estate of the deceased owes that amount to the company. The deceased was the founder and managing director of the company and it is probable that the company which is the distinct entity could have borne the said costs for the demised director. Therefore, neither the Estate of the deceased nor the dependants are entitled for the amount (approximately $ 8000) claimed to have been spent for air tickets of relatives who attended the funeral.

18. On the other hand, the witness did not even produce any proof for the funeral expenses of $ 2000 which he claimed to have been spent by him for the last rituals for his late father. The counsel in her legal submission referred to the decision of Justice Tuilevuka in **Denarau v Commander of the Republic of Fiji Military Forces** [2019] FJHC 542;

HBC08.2016 (27 May 2019). Justice Tuilevuka awarded $ 3500 for funeral expenses in the absence of specific supporting evidence in that matter. In awarding the said amount, Justice Tuilevuka relied on the approach of Justice Pathik in **Jona Moli -v- Dr Frances Bingwor & Others** Suva High Court Civil Action No. HBC 335/1998. Justice Pathik observed that:

> We are all familiar with the customs of the various races in Fiji and in the context of funeral 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 items of expenditure as is required for the purposes of proving special damages."

19. Having considered the above decisions I am of the view that, a sum of $ 2000 is reasonable in all the circumstances of this case even in the absence of specific evidence. As a result a sum of $ 2000 is awarded for the funeral expenses.

20. The plaintiff claimed a sum of $ 955 as the legal expenses for the extraction of Letter of Administration. The first witness in his testimony referred to the Financial Statement of New Star Aluminium City Limited for the year ended 31 December 2011 where it is stated under the heading "Legal Fees" on the second sheet after page 17 that, *"Paid to Young & Associates for legal proceeding against Mervin Fazleen Ali and Vinod Kuma Mudaliar (Case regarding Late Cho Tat Lam – Director)"*. The corresponding amount is $ 830. The said Financial Statement is annexed as Tab 6 in the Plaintiff's Supplementary Bundle of Documents which is marked as Exhibit 1 and tended in evidence by the first witness. The counsel in her legal submission stated that, the court should take judicial notice of the fees paid for extraction of Letter of Administration and together with the $ 830 narrated in the Exhibit 1 and a sum of $ 955 should be awarded for legal expenses.

21. In fact, the plaintiff claims the costs she incurred especially the amount paid to her solicitors in this case. The courts from early time till now have drawn distinction between the damages and the costs. This court reiterated this principle in **Munshi v Munaf** [2019] FJHC 213; Civil Action 8 of 2009 (15 March 2019). As a matter of principle the successful plaintiff cannot obtain, in the guise of damages, any costs, even though the defendant's wrongful act caused the plaintiff to incur those costs. Any cost sought under guise of damages is disallowed by the taxing master. There are ample authorities which establish this principle and **Cockburn v Edwards** (1881) 18 Ch.D 449 was the oldest case which set this principle. In that case Jessel MR held at page 459 that:

> The most important point is as to the costs as between solicitor and client. I am of opinion that it is not according to law to give to a party by way of damages the costs as between solicitor and client of the litigation in which the damages are recovered. The law gives a successful litigant his costs as between party and party, and he cannot be said to sustain damage by not getting them as between solicitor and client.

22. The decision of Jessel MR In **Cockburn v Edwards** (supra) was later followed and affirmed by Chancery Division again in **Ross v Caunters** (1980) Ch. D 297 where Sir Robert Megarry V.C., held at page 324:

> It also seems to me that there is ample authority for saying that a successful plaintiff cannot obtain, in the guise of damages, any costs which, on a party and party taxation of costs, are disallowed by the taxing master. It is not enough for the plaintiff to claim that such costs were incurred by him as a result of the defendants' negligence. I think that this is sufficiently established by Cockburn v. Edwards (1881) 18 Ch. D. 449. I am saying nothing about damages which fall outside the particular form in which they are claimed in this case, namely, the legal expenses of investigating the plaintiff's claim up to the date of the issue of the writ. It seems to me that both on authority and on principle those legal expenses can be recovered by the plaintiff only as costs, and not in the form of damages. In so far as the plaintiff can persuade the taxing master that the items incurred should be allowed as costs on a party and party taxation, then the plaintiff can recover them; but so far as they are not allowed by the taxing master, then I think that they cannot be recovered in the shape of damages.
>
> Accordingly, on the inquiry as to damages which counsel agree should be ordered, no head of damage for the legal expenses of investigating the plaintiff's claim up to the date of the issue of the writ will be allowable as damages:

23. The Federal Court of Australia in **Gray v Sirtex Medical Limited** [2011] FCAFC 40 followed the above mentioned two leading English decisions in **Cockburn v Edwards** (supra) and **Ross v Caunters** (supra) and affirmed the distinction between the damages and the costs. The court further held that, the a plaintiff's ability to recover its costs of the proceedings from a defendant depends instead upon the exercise of a judicial discretion: and the amount (if any) that the plaintiff recovers is not assessed in the same way as damages, but "taxed" according to the applicable rules of Court. The paragraph 15 of the judgment is as follows:

> A distinction has long been drawn between damages and legal costs, such that a successful plaintiff cannot recover its costs of the proceedings from the defendant as damages, even though the defendants wrongful act caused the plaintiff to incur those costs: Cockburn v Edwards (1881) 18 Ch D 449 per Jessel MR at 459, per Brett LJ at 462 and per Cotton LJ at 463; Ross v Caunters [1980] 1 Ch 297 at 324E-G: Hobartville Stud Pty Ltd v Union Insurance Co Ltd (1991) 25 NSWLR 358 at 365F-366B: Seavision Investments S.A. v Evennett & Clarkson Puckle Ltd (The "Tiburon") [1992] 2 Lloyd's rep 26 at 34; Queanbeyan Leagues Club Ltd v Poldune Pty Ltd [2000] NSWSC 1100 at [45] and [46]; McGregor on Damages, 18th ed (Sweet & Maxwell, London, 2009) at [17-003]. A plaintiff's ability to recover its costs of the proceedings from a defendant depends instead upon the exercise of a judicial discretion; and the amount (if any) that the plaintiff recovers is not assessed in the same way as damages, but "taxed" according to the applicable rules of Court.

24. The Supreme Court of Tasmania too in **Johnstone, Megee & Gandy Pty Ltd v Hockey Tasmania Incorporated** [2012] TASSC 12 affirmed the same principle and held at paragraph 20 of its judgment that:

> It is clear that a successful plaintiff cannot recover its costs of the proceedings from the defendant as damages, even when the defendant's wrongful act has caused the plaintiff to incur those costs": Cockburn v Edwards (1881) 18 Ch D 449 at 459, 463; Hobartville Stud Pty Ltd v Union Insurance Co Ltd (1991) 25 NSWLR 358; Queanbeyan Leagues Club Ltd v Poldune Pty Ltd [2000] NSWSC 1100 at par[45]; Gray v Sirtex Medical Ltd (2011) 193 FCR 1 at par[15].

25. The above decisions of various courts, starting from early times to recent past, have clearly laid down the principle that, the damages are different from the costs and that a successful plaintiff cannot recover its costs of the proceedings from the defendant as damages, even though the defendant's wrongful act caused the plaintiff to incur those costs. Thus, a plaintiff's ability to recover the costs of the proceedings from a defendant rests upon the exercise of a judicial discretion. And the quantum of costs recoverable, if any, by a successful plaintiff is not assessed in the same way as damages, but 'taxed' according to the applicable rules of court. For the above reasons, the plaintiff's claim for $ 995 which was the legal cost paid to Young & Associates fails and it is disallowed.

26. The plaintiff claims a sum of $ 2,500 for loss of expectation of life. The loss of expectation of life is awarded for loss of prospective happiness of life resulting from

reduction of life expectancy. The consideration should be given to the prospect of predominantly happy life and not the prospect of length of days. Viscount Simon L.C in **Benham v. Gambling** (1941) 1 All ER 7 stated at page 12 that:

> I would rather say that, before damages are awarded in respect of the shortened life of a given individual under this head, it is necessary for the court to be satisfied that the circumstances of the individual life were calculated to lead, on balance, to a positive measure of happiness, of which the victim has been deprived by the defendant's negligence. If the character or habits of the individual were calculated to lead him to a future of unhappiness or despondency, that would be circumstance justifying a smaller award.

27. The first witness explained how the death of his father affected the mother (the plaintiff) and his siblings. The plaintiff in her testimony described their married life as 'very good and it was on 'very good condition' as per her (page 48 of the transcript). This evidence suggests that, the deceased had a happy life with the plaintiff (wife) and the children. In any event, a moderate amount is awarded under this head (loss of expectation of life). The plaintiff's claim of $ 2,500 is in line with the amount generally awarded by the courts. I allow the same in this case. Since this award is under the LRM, it should be deducted from the financial benefits received by the plaintiff and her children under the CTR.

28. The plaintiff claimed a sum of $ 30,000 for pain and suffering. The damages to pain and suffering have been main head of damages in tort and awarded for the physical and mental distress caused to the victim as the result of the injury. This includes the pre-trial and future pain and suffering. The compensation for pain and suffering is concerned with the subjective feelings of the victim or plaintiff. Since the pain and suffering is a subjective loss, the awards under this head depend on plaintiff's or victim's awareness of suffering. Accordingly, it is the general principle that, a permanently unconscious plaintiff or victim, who can have no feeling of pain or suffering, will not be entitled for damages under this head (**Wise v. Kaye** [1962] 1 All ER 257; **H West & Son Ltd v. Shephard** [1963] 2 All ER 625; **Lim Poh Choo v. Camden and Islington Area Health Authority** [1979] 2 All ER 910. Lord Morris in **H West & Son Ltd v. Shephard** (supra) stated at page 633 that:

> An unconscious person will be spared pain and suffering and will not experience the mental anguish which may result from knowledge of what has in life been lost or from knowledge that life has been shortened. The fact of unconsciousness is therefore relevant in respect of and will

> eliminate those heads or elements of damage which can only exist by being felt or thought or experienced. The fact of unconsciousness does not, however, eliminate the actuality of the deprivations of the ordinary experiences and amenities of life which may be the inevitable result of some physical injury.

29. The plaintiff called Doctor James Kalougivaki to give evidence regarding the autopsy and the cause of death of the deceased, as the Doctor who conducted the autopsy of the deceased in this matter was not available in the country. The doctor tendered the Autopsy Report of the deceased - Lum Cho Tat. It is marked as Tab 31 in the Agreed Bundle of Documents filed by the plaintiff. The cause of death, according to that report, was multiple injuries sustained due to the motor vehicle accident. Answering the question regarding the amount pain that the deceased would have felt, the Doctor stated that, with severe injuries sustained in this accident, the deceased would not have been able to feel it in unconscious state (page 59 of the Transcript). The Autopsy Report also suggests that, the deceased died immediately as per the witness. The general principle laid down by the above decisions applies in this matter and no damages could be awarded as the deceased went into unconscious state immediately after the accident and died.

30. However, the counsel for the plaintiff cited a recent decision of Court of Appeal in **Narayan v Roshan** [2019] FJCA 211; ABU0024.2018 (4 October 2019) and submitted that, the Court of Appeal took a progressive approach and awarded a sum of $ 30,000 for pain and suffering. The pertinent question is whether the Court of Appeal deviated from the general principle established by the above decisions that, unconscious person does not suffer at all and does not get award under the head of 'pain and suffering'? In that case, the trial judge concluded that the deceased died without gaining conscience few hours later and he did not award damages under this head (see: paragraph 51 of the decision of the High Court in that matter). On contrary, the Court of Appeal concluded that, 'on a close consideration of the evidence, it was not open to the learned judge to conclude either; that the deceased was rendered unconscious immediately upon the collision, or that death was instantaneous and that therefore the deceased suffered no pain'(paragraph 64 of the Court of Appeal Judgment). It appears that, the Court of Appeal did not deviate from the general principle of awarding damages to only conscious persons who can suffer, but it concluded that, the consciousness of the deceased in that case could not have been excluded. However, in this case before me the Doctor clearly stated that, the deceased would not have been able to feel the pain due to unconsciousness resulted by multiple and serious injuries. As a result, the decision of Court of Appeal in **Narayan v Roshan** (supra) is distinguished.

31. The counsel for the plaintiff also cited the decision of Stuart J in **Prasad v. Prakash** [2020] FJHC 18; HBC 58 of 2005(30 January 2020) in support of her contention that, damages should be awarded for pain and suffering in this case. Stuart J in that case discussed various decisions including the decision of Court of Appeal in **Narayan v Roshan** (supra) and finally concluded, based on the evidence, that, he was ant unwilling to conclude that the deceased Prashantika in that case was, in addition to being helpless and dependent, completely unaware of her situation (paragraph 54). In that case the deceased Prashantika survived for nearly a year after the accident in a completely dependent and uncommunicative state. However, the in the case before me, the deceased died instantly as per the Autopsy report. I again distinguish the decision of Stuart J. As a result, no damages are awarded in the case before me under head of 'pain and suffering'.

32. The compensation for lost years is determined in three steps. Firstly the court has to ascertain the net earnings of the deceased. Secondly, deduction to be made from the net earnings for the personal expenses. Generally this determined based on the ordinary expenses for the usual needs and wants. Finally, the balance amount is multiplied by actual number of lost years which is to be ascertained by taking into account the contingencies and vicissitudes of life. The deceased was 54 years at the time of his death. The first witness – the son stated that, his grandfather died at the age of 72 and the grandmother died at the age of 98. The witness further stated that, his father received the salary of $ 15,000 per annum. Based on this evidence, the counsel for the plaintiff submitted that, the 30% deduction for his personal expenses and multiplier of 10 are reasonable. Accordingly, the amount suggested by the counsel for lost years is $ 100,500 (10,500 after deducting 30% from 15,000 and multiplied by 10 years). I can agree on the 30% deduction for personal expenses and multiplier of 10 given the age of the father and mother of the deceased at their death and healthy life the deceased had.

33. However, I am not agreeable to consider the annual income as $ 15,000 at the time of the death of the deceased. The reason is that, the deceased was paid only $ 8680 as the Director's Salary in the Financial Year ended 31.12.2010, in which he died (he died on 01.08.2010). This is evident from both Tabs 4 and 6 annexed in the Exhibit 1. The Tab 4 is the Financial Statement of New Star Aluminium City Limited ended 31.12.2010 and the Tab 6 is for the Financial Year ended 31.12.2011. Both statements show the salary of the deceased for the year 2010 and it was $ 8680. The deceased was paid $ 15,000 in years 2009 and before. He was not paid $ 15,000 in year 2010. The witness – the son stated that, it was due to his death in year 2010. This explanation is not satisfactory, because the company paid only $ 8680 for the whole year 2010. I take this amount for calculating the lost years. After deduction of 30%, the balance is $ 6,076 and it is multiplied by 10. The final amount is $ 60,760 and I award the same.

34. The first witness also stated that, the company obtained loan from ANZ bank and the interest rate fluctuated from 11% to 11.7% per annum. The counsel in her submission sought the same interest from filling the Writ in this matter till and the date of judgment for the interest paid to the ANZ bank. The Tab 4 in Exhibit 1 is shown as evidence of loan from the ANZ bank. On perusal of the said Tab it reveals that, the New Star Aluminium City Company Limited obtained secured loans from the ANZ bank. The deceased was the director of the said company, which is a separate legal entity. Therefore, the company is liable for repayment of loan with the interest. The said liability does not fall on the Estate of the deceased who was the director of the company. Accordingly, neither the Estate nor the relatives of the deceased are entitled to claim interest from the defendant for the loan obtained by the company. No interest is awarded as claimed.

35. However, the section 3 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act provides discretion to the court to award interest on the damages awarded from the date the cause of action arose till date of the judgment. Furthermore, the section 4 of the same Act provides to award interest at the rate of 4% from the date of order till it is satisfied.

36. In the result, I make the following orders as to award of damages:

a. A sum of $ 2000 for funeral expenses,

b. A sum of $ 2,500 for loss of expectation of life under Law Reforms (Miscellaneous Provisions) (Death and Interest) Act.

c. A sum of $ 58,260 ($60,760 - $ 2500) for lost years,

d. Interest at the rate of 6% on $ 60,260 (amount under (a) and (c) above) from 01.08.2010 till 14.11.2016 – the date of judgment).

e. Interest at the rate of 4% on said total sum of $ 60,260 from today till it is fully paid and settled, and

f. Cost in sum of $ 5,000 to be paid within a month.

HIGH COURT OF FIJI
LAUTOKA

U.L Mohamed Azhar
Master of the High Court

At Lautoka
23.03.2023