

**SEFANAIA RIKA v TRUSTEES OF METHODIST CHURCH OF FIJI,
PRINCIPAL OF LELEAN MEMORIAL SCHOOL (HBC0229 of 2009S)**

HIGH COURT — CIVIL JURISDICTION

5 HETTIARACHCHI J

6, 6 July 2012

10 **Negligence — duty of care — death due to electrocution — boarding school student — existence of duty of care — whether breach of duty of care — foreseeability — reasonable steps to prevent foreseeable injury — contributory negligence — supervision at boarding school — assessment of damages — loss of expectation of life — loss of future earnings — interest — costs — Law Reform (Miscellaneous Provisions) (Death and Interest) Act s 3; — Occupier’s Liability Act ss 3, 4, 5.**

15 The plaintiff, the father of the deceased, brought an action for negligence against the defendants. The deceased was a boarding school student and died due to electrocution while she was walking within the school compound. The plaintiff sought damages.

Held –

20 (1) The defendants owed a duty of care to its students and others who travelled on the feeder road. It was reasonably foreseeable that a member of the public, in particular children of the deceased’s age group, would come into contact with the broken live wire and get injured or killed. The area was not prohibited to the students. Had the electrical line been regularly or routinely inspected and maintained, the rotten wooden arm of the pole could have easily been detected and attended to. Further, there was no evidence to
25 support a finding of contributory negligence.

(2) In assessing damages for loss of future earnings, the Court has to consider the socio-economic pattern of the country, in particular, the availability of employment opportunities and also the fact that life is beset with contingencies, uncertainties and vicissitudes.

30 Action decided in favour of Plaintiff. Damages awarded.

Cases referred to

Commonwealth v Introvigne (1982) 150 CLR 258, applied.

British Transport Commission v Gourley (Gourley’s Case) [1956] AC 185;

35 *Richards v Victoria* [1969] VR 136; *Williams v Eady* (1893) 10 TLR 41; *Yorkshire Electricity Board v Naylor* [1967] 2 AER 6, considered.

Petrograde Inc v Texaco Ltd [2001] 4 AER 853, followed.

Daniel Singh for the Plaintiff.

40 *L. Vaurasi* for the Defendants.

[1] **Hettiarachchi J.** This action was brought by the plaintiff as the administrator of the estate of his late daughter Sera Nairusa Rika (the deceased) who died due to electrocution on 24.11.2006 at Lelean Memorial School, Davuilevu, Nausori. The alleged incident occurred while the deceased was
45 walking within the school compound.

[2] The plaintiff alleges that the said incident took place due to the negligence or breach of statutory duty on the part of the defendants and/or their servants and agents.

50 [3] It is further alleged that the defendants failed to discharge their common duty of care to the deceased in breach of ss 3, 4 and 5 of the Occupier’s Liability Act.

[4] The plaintiff claims inter alia special damages, damages for loss of expectation of life, Damages under the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act for loss of prospective earnings, damages for shock, anxiety and distress, interest and costs.

5 [5] Admittedly, the 1st defendant was the principal of the school where the deceased studied, and stayed while the 2nd defendant is the trustee of the Methodist Church of Fiji who owned the school.

[6] The following facts were admitted to by all parties at the Pre-trial conference.

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The deceased was a boarding student at Lelean Memorial School.
She died due to electrocution on 24.09.2006

[7] The plaintiff and the Chief Installation Inspector of FEA gave evidence on behalf of the plaintiff. The defendants called 4 witnesses namely, Aisea Rorokoliwa, Vila R Masi, Osea Koli and Susana Watisivo.

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[8] Asesela Kamikamica the Chief Installation Inspector of FEA who inspected the scene of incident stated that due to the poor maintenance of the electrical pole by the School Authorities the cross arm of the pole had broken. He further stated that had it been properly maintained the accident could have been avoided.

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[9] Explaining the nature of the pole and its structure, the witness stated that there were two base conductors which carried 240 V. According to the witness, the purpose of the cross arm was to hold the cables in place and keep it in required height. The cross arm was made of hard wood. The witness had inspected the cross arm and had found that it was rotten and was in a very poor condition.

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[10] The witness further explained the location of the electric pole. It was within the perimeter of the church; and, the school is a part of that. The church and the school are situated within the same premises

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[11] According to the witness, the portion which held the live conductor had fallen on the ground; and, the height of the arm from the ground was 12 inches. The deceased had come into contact with the line of the broken arm and was electrocuted.

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[12] The witness having inspected the scene of the accident prepared a report which was marked as Exhibit No 1. The defence counsel tried to challenge the witness's expertise and suggested that he had no expert knowledge on wooden items and therefore his opinion that the cross arm broke and fell on the ground due to its rotten condition could not be accepted. It must be noted that the witness very clearly observed that the cross arm was rotten. The witness has a wealth of experience with regard to the electrical poles and its maintenance. One needs not possess any expertise to observe that a piece of wood is broken due to its rotten status.

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[13] Further, no other evidence could be found to form any opinion contrary to that. Hence, I see no merit in the defendants' argument on that and also see no reason to disbelieve the evidence given by the Plaintiff's witness.

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[14] The plaintiff in his examination in chief stated that he had 5 other children and had expected the deceased to look after him, his wife and his siblings He further explained the expenses incurred on him after the death of the deceased including funeral expenses.

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[15] In cross examination, the plaintiff admitted that he did not pay for the coffin and transportation of the body from Suva to his village.

[16] According to the plaintiff his wife was never employed. The plaintiff is the sole breadwinner of the family. He further stated that the deceased had told him that she wanted to become a nurse.

5 [17] The 1st witness for the defendants was Aisea, the principal of Lelean Memorial School. According to her evidence, the body of the deceased was found in the feeder road which leads to the Bible School. It is within the church premises.

10 [18] In cross examination, she admitted that Lelean School, Young Boys Department and Davuilevu Theological College are located within the same premises but there is no fence separating each of the institutions. The witness further admitted that there was no teacher on duty at night, although there were around 90 students.

15 [19] The 2nd witness for the defendants was Mrs Vika R Masi, a retired teacher. She was the co-ordinator for the girls' hostel in 2006. At the time of the incident, she was at home. The witness also stressed the fact that if a student wants to leave the hostel she has to seek the consent of the authority, the deceased never came to seek permission to leave the hostel and a girl came to see her and informed the incident.

20 [20] The next witness called by the defence was Osea Koli, also a teacher from Lelean School. According to him he was the teacher in charge of the hostel during the relevant period. He further stated that on the day of incident the students were preparing to go home and they had a party. Explaining the daily routine of the hostel the witness stated that he used to go to the Bures and see that everybody was inside. The prefects inside the dormitory lock the doors.

25 [21] In cross examination, he stated that he never received any report that there was a broken power line. He further admitted that the deceased was a school prefect and was selected out of 200 students.

30 [22] The final witness for the defendants was Susana Watisivo who was a student of Lelean School and was also staying in the girls' hostel. According to her evidence, on the day of incident, the students had dinner at the hostel and thereafter attended to the hostel party.

35 [23] She further stated that at about 7.00pm, they returned to the hostel and the deceased came to the witness's dormitory and later went to her dormitory. The deceased whispered to her that she wanted to go to the town. The witness advised the deceased not to go but she left and the witness also followed her walking behind.

40 [24] Further, according to the witness, both of them walked up to Baker Hall. The witness then came back. The deceased was going along a feeder road. There was no light. Thereafter the witness saw the deceased lying gasping. She ran back to the dormitory and returned to the scene, and tried to pull the deceased but they were thrown away. Then they went to the Davuilevu Theological School and sought help from boys.

45 [25] It is important to note that according to this witness's evidence when the incident occurred, some of their friends had already left for town. Further, when she left with the deceased she neither saw the matron nor the teacher in charge of the hostel.

50 [26] In this matter, the defendants attempted to show that the deceased had violated the hostel rules and left the dormitory at night without permission from the school authority. In other words it was the defence contention that since the

deceased left the dormitory on her own without obtaining the permission from the matron, the school authorities are not liable to breach of duty of care.

5 [27] Further, the defence made an unsuccessful effort to demonstrate that the deceased by going along the path, voluntarily assumed the risk that she would be electrocuted.

Relevant legal principles:

[28] In order to prove an action in negligence in a case of personal injury or death of a person, the plaintiff must prove three factors namely;

- 10 a. The existence of a duty of care, which is owed by the defendants to the plaintiff;
- b. The failure to attain that standard of care, prescribed by law, thereby committing a breach of that duty; and,
- 15 c. Damage.

[29] While students are in school premises, school authority and teachers owe them a duty of care of general supervision concerning their physical safety. In addition to that school authority should be meticulous about ensuring that the environment is a danger free one. School grounds and buildings should be properly maintained; safety check regularly carried-out and be free of dangerous objects.

[30] In other words, there exists a paramount duty on the school authority to ensure that the school environment is totally free of danger. This duty is non delegable.

25 [31] In *Commonwealth v Introvigne* (1982) 150 CLR 258, Mason J stressed the importance of the school authority's duty and its non delegable nature as follows:

30 *'It proceeds on the footing that the duty is not discharged by merely appointing competent teaching staff to take appropriate steps for the care of the children. It is a duty to ensure that reasonable steps are taken for the safety of the children, a duty the performance of which cannot be delegated.'*

[32] In the same case, **Murphy J** also went on to explain the nature of the duty cast upon the school authority in respect of students as follows:

- 35 i *To take all reasonable care to provide suitable and safe premises. The standard of care must take into account the well known mischievous propensities of children, especially in relation to attractions and lures with obvious or latent hazards.*
- 40 ii. *To take all reasonable care to provide an adequate system to ensure that no child is exposed to any unnecessary risk of injury; and to take all reasonable care to see that the system is carried out.*

[33] The reason for this duty was discussed by **Winneke J.** in *Richards v Victoria* [1969] VR 136 at 138 (FC) as follows:

45 *'The reason underlying the imposition of the duty would appear to be the need of immature age for protection against the conduct of others, or indeed of himself, which may cause him injury coupled with the fact that, during school hours the child is beyond the control and protection of his parent and is placed under the control of the schoolmaster who is in a position to exercise authority over him, in the exercise of reasonable care, protection from injury.'*

50 [34] **Lord Esher** in *Williams v Eady* (1893) 10 TLR 41 at 42 presented a classic formulation of the duty owed by a schoolmaster to a student as follows:

‘...It was correctly laid down by the learned Judge, that the schoolmaster was bound to take such care of his boys as a careful father would take of his boys, and there could not be a better definition of the duty of a schoolmaster.’

5 [35] In the instant case, there is no doubt as to the defendants’ duty of care owed to the students. The issue of paramount importance is whether the school authorities took such steps as were reasonably necessary to prevent foreseeable injury to children in the school premises.

10 [36] It was proved that the Davuilevu Theological School, Lelean School and Young Boy’s Department, are located in the same premises. The evidence of Susana confirmed that on the day of incident some of the students had already left for town and also she saw some boys were going towards the girls’ dormitory which shows that no proper supervision was exercised by the school authority with regard to the security and safety of the hostellers.

15 [37] The deceased died due to electrocution. The electrical lines were located in the school premises. Therefore, court has to decide who was responsible for maintaining the electricity line and whose failure to exercise due care had caused the death of the deceased. The principal of the school A.Rarokoliva admitted in evidence that the maintenance of the electrical system was the responsibility of the school management.

20 [38] There are dangers inherent in electricity and therefore a very high degree of standard of care is required from a person who maintains electricity. The evidence before me clearly established that the responsibility of maintaining the electricity line lay with the defendants and therefore, the standard of duty of care owed by the defendants to keep the electrical lines is a high one.

25 [39] Hence, it is the defendants’ duty and responsibility to keep the electricity line harmless and safe not only to the students but also to the others who use the feeder road. According to the Chief Installation Officer of FEA, the cross arm which held the live wire was made out of wood and it was rotten.

30 [40] Given the dangerous nature of the electricity and also it was located in the school premises, the defendants should have conducted routine inspections of the line to detect any faults caused by whatever reasons. Had there been a routine inspection the rotten wooden arm of the pole could have been detected easily.

35 [41] According to the defendants’ evidence there are four domes in the girls’ hostel and each dome had two prefects in addition to the teacher on duty. However, according to Mr Osea Koli’s evidence he was not in the hostel but at home when the incident occurred.

40 [42] The evidence shows that the teacher in charge had checked the doors at 10.30pm. If it is so, he had not noticed that some of the students were not in their domes because the evidence of Suasana clearly confirmed that some of the students had already left for Nausori town at the time of the incident.

45 [43] The evidence before me clearly shows that the school authorities had paid little or no attention to the safety and security of the students. It appears that only protection offered by the school authorities to the students was the code of conduct or hostel rules and a few prefects, which, in my view, is highly inadequate given the location of the school and the age of the students who were in the hostel.

50 [44] The defendants made an unsuccessful attempt to establish that the deceased, by leaving the hostel at night voluntarily assumed the risk. In other words, the defence tried to establish that deceased was electrocuted due to her own conduct.

[45] However, in my view, it is unrealistic even to postulate that a 17 year old school girl who exited from the dormitory at night and then went along the feeder road voluntarily assumed the risk that she would be electrocuted.

5 [46] On the question of foreseeability of the injury to the plaintiff, I find that this being a school premises in which the students are expected to walk for whatever reasons, the injury to any student including the deceased was reasonably foreseeable.

10 [47] The defendants owed a duty of care to its students and others who travelled on this feeder road. Further, it was reasonably foreseeable that a member of the public in particular children of the deceased age group would come into contact with the broken live wire and get injured or killed. The area was not prohibited to the students. Had the electrical line been regularly or routinely inspected and maintained, the rotten wooden arm of the pole could have
15 easily been detected and attended to. The FEA witness clearly stated that the cross arm was broken since it was rotten and the live wires were lying 12 inches above the ground.

20 [48] Merely because there existed a code of conduct in the hostel, the school authority cannot shrink from their responsibility of ensuring the safety of the students. The evidence of the defendants' own witness Susana Watisivo established the fact that some of the hostellers had already left for town at the time of the accident which further demonstrates the inadequacy of the security provided for the students by the school authority.

25 [49] It further shows that neither the teacher in charge of the hostel nor the coordinator for the hostel had proper control or supervision over the students during the night time. Had there been a proper control and supervision, the students could not have left the hostel during night.

30 [50] It is true that leaving the hostel during night by the deceased was a violation of hostel rules but that does not absolve the school authority from not taking necessary steps to make the school environment safe for the students. The evidence of the Chief Installation Officer from the FEA amply demonstrates that the cross arm holding the two live wires of the electricity pole was broken due to its rotten state and as a result the live conductor was fallen on the ground. The
35 deceased while walking along the feeder road had come in contact with the live conductor which was hanging 12 inches above the ground.

[51] Further, the evidence shows that there was a electrician in the school. Regrettably, the defendants without realising their duty to ensure the safety of the students made an attempt to put the blame on the deceased for walking along the
40 feeder road at night. What if the students were made to vacate the hostel building at night due to a fire or any emergency situation? The result could have been the same or even worst had any of them come in contact with the live wire.

[52] The evidence in this case shows that the system which prevailed at this school, and the degree of supervision which was exercised, was insufficient and
45 inadequate, having regard to all the circumstances of the case. On the issue of contributory negligence, there is no evidence to support such findings. Merely because the deceased had left the hostel without the permission and got electrocuted does not permit the defendants to escape from their failure to exercise due care. Falling of the cross arm from the electrical pole and the
50 electrocution of the deceased occurred solely due to the poor maintenance of the electricity line by the school authorities. It has no connection whatsoever with the

exit of the deceased from the hostel. Even if she had exited from the hostel with the permission still she could have met with the same fate.

[53] For these reasons, judgment in liability is entered for the plaintiff against the 1st and 2nd defendant jointly and severally. I will now proceed to assess
5 damages.

[54] The plaintiff claims special damages as follows:

Cost of obtaining medical report- \$5
 Cost of obtaining probate \$500
 Cost of obtaining FEA report \$25
 10 Expenses to travel to Suva from Savusavu to pursue claim \$700
 Expenses to travel to Suva for hearing of claim \$400

[55] The plaintiff produced 2 receipts marked as exhibit 4 and 5 for obtaining FEA report and cost for obtaining probate report. I find no difficulty of awarding
15 the same.

[56] The plaintiff also claims \$ 3000.00 for funeral expenses. The evidence shows that the coffin, hearse and transport costs were met by the school authorities. However, other expenses such as food, beverages etc would have
20 afforded by the plaintiff. Considering the traditions and customs prevailing in Fiji, I am inclined to award \$ 3000.00.

[57] It was further submitted that the plaintiff is entitled to have travelling expenses. However, the plaintiff never pleaded any travelling expenses in his amended statement of claim. It is trite law that special damage has to be specially
25 pleaded and proved.

In *British Transport Commission v Gourley (Gourley's Case)* [1956] AC 185 Lord Goddard said:

“Special damage has to be specially pleaded and proved. This consist of out of pocket expenses and loss of earnings incurred down to the date of trial, and is generally
30 capable of substantially exact calculation.”

[58] Time and again, court has stressed the requirement and importance of making correct pleadings but regrettably only a very few comply with it. Since the plaintiff has not pleaded for special damages, for travelling expenses I have
35 no option but to disallow the claim for travelling expenses.

General damages:

Loss of expectation of life:

[59] The plaintiff claims damages for loss of expectation of life. Damage for loss of expectation of life is allowed under the Law Reform (Miscellaneous
40 Provisions) (Death and Interest) Act though the sum assessed are relatively low. The award under this head is exclusively in regard to loss of expectation of life. In Fiji, the courts usually award damages for loss of expectation of life at \$2500.00 and I also award the same in this case.

Loss of future earnings:

[60] The plaintiff also claimed damages under the **Law Reform (Miscellaneous Provisions) (Death and Interest) Act**. In assessing damages under this head, the following extract from the judgment of Lord Morris in
45 *Yorkshire Electricity Board v Naylor* [1967] 2 AER 6 is very pertinent.

50 “Though it is said that his death was instantaneous, the appellants have not sought to dispute that a valid cause of action vested in him by reason of the provisions of the

5 *Law Reform (Miscellaneous Provisions) Act, 1934, that cause of action survived for the benefit of his estate. The judge has to decide what sum of damages should reasonably be awarded in respect of the deceased's cause of action. He lost what is usually called his expectation of life. The loss was something personal to himself. No one knows what life would in fact have held for him had he lived. No one will ever know. No one could ever know the changes. The chances and vicissitudes of life are in the future. he will not know them. No surmise can with any measure of confidence be made whether by his untimely death he was denied happiness or was spared unhappiness. The task of 'equating incommensurables' is one that can be never be satisfactorily achieved.'*

10 [61] The plaintiff in his evidence stated that the deceased had told him that she wanted to become a nurse. However, the defendants contended that since the deceased had not passed the relevant exams with adequate marks, chances were very remote that she could have become a nurse.

15 [62] The deceased was 17 years old at the time of her untimely death. Apart from her parents, she had 5 siblings. Undoubtedly, when she grew up and started earning she would help her parents and siblings. However, it is difficult if not impossible to suggest the extent to which the deceased could have helped her parents and siblings. In any event, it is not unreasonable to expect that she would
20 have spent at least half of her earnings to look after her parents and siblings.

[63] The defendants submitted that since the deceased had not excelled in her studies most probably she would have stayed at home after leaving the school. Merely because the deceased had not excelled in her studies, it is impossible to
25 propose that the deceased would not have earned anything after leaving the school.

[64] It is indeed a difficult task to assess damages under this head. Therefore, it is my view that in assessing damages under this head, court has to consider the socio economic pattern of the country in particular the availability of
30 employment opportunities and also the fact that one's life is beset with contingencies uncertainties and vicissitudes. Accordingly, I am working it at a minimal scale.

[65] Although there is no adequate evidence to conclude that the deceased
35 would have become a nurse, I am of the view that the deceased would have earned at least \$100.00 per week given the nature of jobs available in Fiji.

[66] Generally, in this type of cases multiplier of 20 is suitable, but I wish to reduce it to 15 considering the uncertainties and vicissitudes of life in particular the fact that she would have married and had a family of her own.

40 [67] Therefore, I calculate the amount that the deceased would have spent on her parents as \$200.00 per month. Accordingly, I award \$ 36000.00 for damages under this head.

[68] The pleading contained a claim for interest and for this the plaintiff is
45 entitled to under **section 3** of the *Law Reform (Miscellaneous Provisions) (Death and Interest) Act* which provides as follows:

*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 for which judgment is given interest at such rate as it thinks fit on the whole or any part of the
50 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:*

[69] The above act was amended by the **Law Reform (Miscellaneous Provisions)(death and Interest)(Amendment) Decree 2011**. Consequent to the amendment the interest rate on judgment debt shall be 4% per annum from time of entering the judgment until the same shall be satisfied.

5 [70] I would therefore award interest on general damages at the rate of 4% per annum on \$ 36000.00.00 from 30th July 2009 (date of filing of writ) to 06.07.2012 (the date of judgment) which amounts to \$ 4320.00.

[71] I would also award interest on special damages at the rate of 4% per annum on \$ 3530.00 from 30.07.2009 to 06.07.2012 which amounts to \$ 424.00.

10 **Costs:**

[72] This case could have easily been settled out of court in considering the facts and circumstances of the action. The trial was concluded on 01.05.2012, where the plaintiff and the defendants called two and four witnesses respectively.

15 In considering the issue of costs following passage by **Lord Woolf** in *Petrograde Inc v Texaco Ltd [2001] 4 AER 853* at 856 is of much relevance.

20 *'the ability of the court to award costs on an indemnity basis and interest at an enhanced rate should not be regarded as penal because orders for costs, even when made on an indemnity basis, never actually compensate a claimant for having to come to court to bring proceedings. The very process of being involved in court proceedings inevitably has an impact on a claimant, whether he is a private individual or a multi-national corporation. A claimant would be better off had he not become involved in court proceedings. Part of the culture of the CPR is to encourage parties to avoid proceedings unless it is reasonable for them to do otherwise. In the case of an individual, proceedings necessarily involve inconvenience and frequently involve anxiety and distress. These are not taken into account when assessing costs on the normal basis.*

[73] Therefore, I assess costs in the sum of \$ 5000.

30 **Summary of awards:**

[74] The summary of awards and costs are as follows:

- 35 a. A Special damages: \$3530
 b. General damages: \$36000
 c. Loss of expectation of life: \$2500
 d. Interest on special damages: \$424
 e. Interest on general damages: \$4320
 f. Costs: \$5000
Total payable \$ 51774

40 **Orders:**

1. The action is decided in favour of the plaintiff in the sum of \$ 51774.
2. The 1st, 2nd defendants are jointly and severally liable to pay the plaintiff the abovementioned sum of \$ 51774.

45 *Damages awarded.*

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