

## IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Civil Jurisdiction

Action No. 165 of 1977

Between : SHIU PRASAD s/o Kalpi Plaintiff  
A n d : ASHOK KUMAR DWIVEDI Defendant  
s/o Suruj Kumar

Mr. M.T. Khan Counsel for the Plaintiff  
Mr. G.P. Shankar Counsel for the Defendant

J U D G M E N T

This is a running down action in which the male plaintiff received fractures of the left tibia and fibula. Liability is admitted and the issue before me is as to the quantum of damages.

The accident occurred at Tavua on 30th January, 1977 and the plaintiff after being taken to Tavua hospital was removed to Lautoka hospital and was discharged on 3/2/77.

The evidence of Dr. McNamara shows that the plaintiff had his left leg in plaster for about 4 months and he attended hospital as an outpatient until 2/11/77 when he was finally discharged. He stated that the injury would be painful and that the plaintiff was given sedatives for 3 days.

I have no doubt that the plaintiff must have suffered considerable pain for several days and he was hampered by a plaster cast for 4 months and for a further 6 months he attended as an out-patient. There is no evidence as to the plaintiff's hobbies and recreations in relation to loss of specific amenities but Dr. McNamara stated that in his view the extent of disablement would be 12%. At first he had put it as low as 5% but he amended that opinion later.

Dr. Deo Sharma expressed the disability at 18%. Although there has been a good union of the fractures they are somewhat out of alignment. The plaintiff showed me the site of the injury and as a layman I observed only a slight deformity above the left ankle.

There was a claim for \$500.00 for medical treatment and travelling expenses plus further special damages of \$400.00. per month loss of earnings for 20 months until the injury had healed. The total was \$8,500.00. However, I was informed that the total claim for special damages had been agreed at \$960, but there was no indication as to how this figure had been arrived at.

The plaintiff is 48 years of age and a cane farmer. He appears to be in good health.

The Statement of Claim does not allege that the plaintiff is unable to follow his occupation as a cane farmer. He says he cannot farm in the manner he used to because the strain makes his ankle ache. I am prepared to accept that statement but note that it is not put forward to support any allegation of a loss of earning capacity and income. It was obtained from him in cross-examination that he can climb stairs and that he goes out walking with his family.

Assessment of damages for pain and suffering and loss of amenities is always a difficult matter. In Civil Action 267/76, Bijay Harak v. Prem Prasad, the plaintiff received somewhat similar injuries in nature to his left leg but they were more serious; he was 23 years, and had to cease playing soccer. I awarded him \$5000.00 general damages under that head in November 1979. Also in November 1979 the Fiji Court of Appeal in Civil Appeal 41/79, Udhan v. Gyan Singh and Others, approved my award of \$3,500 for fractured left tibia and fibula and degloving of the left foot with necessary skin-grafting. He was incapacitated from March 1976

to April 1977 but he was 63 years of age at the date of the accident.

The plaintiff's age falls between the ages on the two cases I have quoted and his injuries were scarcely worse than theirs on the face of it. One cannot rely too much on such examples because of various differentials such as age, family, health, physique, employment, among others.

It seems to me that an award of \$4,500 would be fair under this head.

There is no claim for loss of actual earnings or for loss of earning capacity. It is specifically limited to special damages and general damages for pain and suffering.

The total award is  $\$(4,500 + 960) = \$5,460$  plus costs.

LAUTOKA  
22nd May, 1980

sgd.  
(J.T. Williams)  
JUDGE

