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IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 257 of 1979

000099

BETWEEN:

SAILASA CAKAU

Plaintiff

A N D :

CAUTATA BUS COMPANY

Defendant

Mr. S. Matawalu

Counsel for the Plaintiff

J U D G M E N T

This is a running down action in which the administrator of a deceased's estate sues under the Law Reform (Miscellaneous Provisions) Ordinance, Cap.20 for loss to the deceased's estate and for the benefit of dependent relatives under the Compensation to Relatives Ordinance Cap. 22.

The deceased belonged to Tailevu; the dependents and witnesses live at Tailevu and the defendant lives at Tailevu. By filing the action in Lautoka the plaintiff's advocate has caused everyone to travel here at maximum inconvenience instead of making a comparatively short trip to Suva where the action should have been filed.

No mention is made in the Statement of Claim in regard to a wife yet the deceased was a male Fijian who according to his birth certificate Ex. 3 was born on 5. 8.44 and he had 3 children.

P.W.1, a Fijian female says she is the mother of the deceased's 3 male children Vacolo Kulataudrau aged 10 years, Sainivalati Tuinabewa aged 9 years and Ilaisa Delatiri aged 3 years. Their 3 birth certificates are all marked Ex. 1 and each shows P.W.1, Vasiti Waqata as the mother. There is no indication of the father's name.

P.W.1 states in evidence that she was married to the deceased according to Fijian custom but the marriage was not registered. She says that she always lived with the deceased as husband and wife and that she has not lived with any other man and has borne no children to any other man.

P.W.2, father of the deceased, and administrator of the deceased's estate, corroborates P.W.1's evidence as to the marriage and children.

P.W.1 lived on the mataqali land along with the deceased and has continued to live there since his death.

P.W.2 had 10 children, seven including the deceased being males all of whom except one appear to live, as did the deceased, on the 130 acres of land held by the family. P.W.2 says that he inherited this land and it belongs to the family. P.W.2 has a farm; there are 5 farms on the land and the deceased also farms the land.

P.W.2 is 67 years of age and he would have me believe that only the deceased out of his 7 sons ever did anything to help the deceased and his wife. I find that statement very difficult to believe especially when the entire family live as a family unit.

P.W.1, the customary wife of the deceased says that he used to earn \$10 to \$40.00 per week from the sale of bananas, tapioca and the like. P.W.1 said that the deceased also looked after his brothers. It appears to me that the deceased would not be the eldest of the 10 brothers being born when his father (P.W.2) was 31 years of age. I seriously doubt that he looked after his brothers. In fact one of them works in the Sugar Mill at Lautoka. In fact P.W.1, speaking of life in the family following the deceased's death said,

"Now we all work together and pool our resources".

It is difficult to form an estimate of the income earned by the deceased. He obviously must have earned some money as well as providing food from farming.

I consider the P.W.1 to be a wife according to Fijian custom and dependent along with her 3 children upon the deceased. She says that he occasionally worked locally on the roads for the P.W.D. earning \$30-\$40.00 per week. Allowing for the deceased's own requirements in the way of pocket money, personal expenses and clothing I consider that his earning capacity would be about \$1500 per year. Allowing a multiplier of 13 having regard to his health and ages of his dependent "wife" and children that amounts to \$19,500. I also allow \$200.00 funeral expenses making \$19,700 in all.

The deceased had been run over by the defendant's motor bus and died from injuries to the skull and brain. Apparently he did not regain consciousness. Under the Law Reform Ordinance I allow \$1000.00 for pain and suffering and \$600 for loss of expectation of life, that is \$1600 in all. Since the persons who would inherit under intestacy are the dependent children there is little point in using the \$1600.00 in calculations.

Thus the total award is \$19,700.00.

I should perhaps mention that there was no claim for special damages other than the \$200.00 for funeral expenses.

In my view the deceased probably contributed towards the pool from which his parents drew a little support but they do have their own farm. Having

regard to the age of P.W.2, (the deceased's father), he is 67 years of age his dependency would not be likely to continue for long. I do not know the age of his (P.W.2's) wife. Probably it is somewhere near that of P.W.2.

I estimate their dependence upon the deceased at 3%.

The dependence of the wife I estimate at 12% and the remaining 85% represents the dependence of the three young children.

The two elder children are more likely to survive and I estimate their dependence at 30% each and 25% to the youngest.

Judgment for the plaintiff in the sum of \$19,700 with costs to be taxed.

It is Ordered that \$591.00 be paid to the plaintiff Sailasa Cakau for him and his wife plus \$200.00 for funeral expenses; that \$2,364.00 be paid to Vasiti Waqata wife of the deceased; that \$1,300 be paid to Vasiti Waqata to cover the maintenance of the three children from the date of death to 30th June 1981; that \$5,410 be allotted to each of the elder two children Vacolo Kalataudrau and Sainivalati Tuinabewa; that \$4,425 be allotted to the youngest child Vasiti Waqata.

It is further Ordered that the monies allotted to the children be paid to the Public Trustee to be invested for their benefit and that no payment out be made prior to 30/6/81.

From 1/7/81 the Public Trustee may pay \$20.00 per month in respect of each of the 3 said children to their mother Vasiti Waqata towards the cost of their maintenance and education.

No additional payment shall be made by the Public Trustee without the consent of the Court.

(sgd.)

J. T. Williams

JUDGE

LUFOKA,

30th May, 1980