

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL ORIGINAL JURISDICTION

CASE NUMBER: HBC 45 of 2015

BETWEEN: RIMPAL RONITA SINGH AS ADMINISTRATIX IN THE
ESTATE OF KAVINESH RAHUL CHAND

PLAINTIFF

AND: MOHAMMED IMTIAZ MUNIF

1st DEFENDANT

AND: THE PERMANENT SECRETARY FOR HEALTH

2nd DEFENDANT

Appearances: *Mr. R. Singh for the Plaintiff.*

Mr. Pickering for the Defendants.

Date/Place of Judgment: *Friday 15 June 2018 at Suva.*

Coram: *The Hon. Madam Justice Anjala Wati.*

JUDGMENT

A. Catchwords:

CIVIL LAW - PERSONAL INJURY – Death of child aged 12 years – cause of death in contention: was it due to motor vehicle accident or a medical condition that the child suffered – Negligence of driver of ambulance – Vicarious liability – Entitlement of estate to claim damages under the Compensation to Relatives Act for loss of future financial support and funeral expenses and damages under Law Reform Act for loss of expectation of life – claims under both Act can be maintained as the awards are different in nature and is not repetitive – whether interest is justified under the Compensation to Relatives Act in the circumstances of the case – costs.

B. Legislation:

1. *Compensation to Relatives Act 1920 ("CRA"): s.4; and 11.*
 2. *Law Reform (Miscellaneous Provisions) (Death and Interest) Act 1935 ("Law Reform Act"): s. 2; and 3.*
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Cause

1. Rimpal Ronita Singh ("**mother**") is the mother of Kavinesh Rahul Chand ("**Rahul**"). Rahul was born on 11 March 2002. He died on 21 May 2014. He was 12 years old at the time of his death.
2. On 16 May 2014, Rahul fell sick at home. He complained of fever and headache. The next day he complained to his father of the same symptoms. The father then took him to Dreketi Health Center. During this time, the mother was not at home. She was in Western Division.
3. After being checked by the Dreketi Health Centre staff nurse, it was recommended by the staff nurse that he be shifted to the Labasa Hospital via an ambulance.
4. Rahul was being transported to the Labasa Hospital in the ambulance vehicle registration number GN 990 driven by Mohammed Imtiaz Munif ("**Imtiaz**") and owned by the Ministry of Health ("**MOH**") when along the way at Korosomo Seaqaqa Road, the ambulance got involved in an accident. Rahul was then assisted to the hospital by a Water Authority of Fiji ("**WAF**") vehicle to the hospital.
5. Rahul was then being treated in the hospital since 17 May 2018. He later died after 5 days. The cause of death as noted by the pathologist were:
 - *Dislocation of 1st and 2nd Cervical (neck) Vertebra.*
 - *Compression of Medulla Oblongata (part of important brain compressed).*
 - *Hepatitis (Liver Infection).*

6. It is the mother's contention that her son Rahul died due to the injuries he sustained in the accident. She claims that the accident was caused solely by the negligence of the driver of GN 990. It is contended that the driver of GN 990 was:
- *Driving at an excessive speed in all the circumstances of the case.*
 - *Failing to keep a proper lookout in all the circumstances of the case.*
 - *Failing to slowdown, stop and/or maneuver the said vehicle so as to avoid the accident.*
 - *Failing to manage and/or control the said vehicle as was warranted and necessary having regard to all the circumstances.*
 - *Driving the vehicle without due care and attention.*
7. The mother claims that the 2nd defendant is vicariously liable for the negligent act of the driver as he was employed by the 2nd defendant and at all times acted on instructions of the 2nd defendant.
8. The mother therefore claims general damages under the CRA, general damages for loss of expectation of life under the Law Reform Act, special damages for funeral expenses in the sum of \$10,000, interest on the monetary awards, and costs on solicitor client indemnity basis.

Defence

9. The 1st defendant, the ambulance driver denies that the accident was due to his negligence. It is his position that he has been charged for dangerous driving causing death and since the case is pending in court, the plaintiff cannot pursue this claim. He asserts that he is innocent until he is proven guilty.
10. The 2nd defendant contends that the death of Rahul was not as a result of the accident but due to other medical conditions.

11. In respect of the claim for negligent driving, the 2nd defendant says that it does not hold any position.
12. The 2nd defendant also states that when Rahul was admitted to the Labasa Hospital following the accident, a CT scan was carried out on him which did not reveal any fracture in his body including the cervical vertebra.
13. When Rahul died, his father requested that he be transported to the Lautoka Hospital for post-mortem examination. Rahul was then referred to the police department as a police case. It was then the responsibility of the police department to escort the body of the deceased all the way to Lautoka Hospital.
14. It is contended by the second defendant that it is not sure whether the escort was done to a required level of standard and if this was not done then the body could be tampered with causing the dislocation.
15. The 2nd defendant says that the compression of the medulla oblongata was due to his blood being infected placing him at a risk of severe bleeding with the possibility of Intracranial Pressure. The deceased had fits and fever before the accident and that shows that his blood was infected.
16. Rahul had multiple organ dysfunctions which included his liver as well. This indicates that Rahul had Hepatitis.

Issues

17. The following issues need to be determined:
 1. *What caused the death of the Rahul? Is it due to the injuries that he sustained in the motor vehicle accident or due to a medical condition? If the death was due to the motor vehicle accident, then;*
 2. *Was the accident caused due to the negligent driving of the ambulance driver? If yes, then*
 3. *Is the second defendant vicariously liable for the actions of the ambulance driver?*

4. *Did Rahul suffer personal injuries as a result of the MV accident? What injuries did he sustain as a result of the accident?*
5. *Has Rahul's estate suffered any loss or damages? If yes, what is the extent of the damages for which an award should be made?*

Evidence/Law/Analysis

18. The most important issue that needs to be determined first is the cause of death of Rahul. Whether or not other issues need to be determined depends on the finding I arrive at on the cause of death.

A. Cause of Death

19. The plaintiff and the defendants have taken two contrary positions on what caused the death of the child. Whilst it is the contention of the plaintiff that the child died due to the motor vehicle injuries, the defendants refute that and assert that the child died due to the medical conditions he was suffering from for which he had to be transported to the hospital in an ambulance.
20. At the outset, I must mention that the defendants have only identified one specific medical condition that could have led to the death of the child and that is Hepatitis.
21. I will start off with the post-mortem report. The post mortem report notes the following as the cause of the death of the child:
 - ***Dislocation of 1st and 2nd Cervical Vertebra.***
 - ***Compression of Medulla Oblongata.***
 - ***Hepatitis.***
22. The father tendered the post mortem report which was admitted in evidence as *Exhibit 1*. The report in its material aspect reveals that the post mortem was carried out on 23 May 2014. This is 2 days after the death of the child.

23. The only medical evidence explaining the post-mortem report was that of Doctor Dharendra Lal ("**Dr. Lal**"). I must state that Dr. Lal's evidence on the cause of the death was uncontroverted. The defendant's counsel had also never put to the doctor an alternative cause of death for him to comment on despite that being the defence based on which the claim was defended.
24. Dr. Lal is a medical practitioner for 30 years. He informed the court that Dr. Goundar who had carried out the post-mortem is the most senior pathologist in Fiji. Dr. Goundar had been his tutor for 30 years.
25. Dr. Lal began his evidence by stating the pathologist's findings on the cause of the death. He first explained that vertebra is the neck bones. In human anatomy, the neck bones sit on top of each other. The 1st and 2nd vertebra are the bones counted from the top. If there is dislocation, it means that these bones have moved from its usual alignment.
26. According to Dr. Lal, this type of dislocation is normally caused by severe impact. He said that in his practice he has seen dislocation of vertebra due to motor vehicle accidents or severe trauma on cervical spine. As an example he said that such trauma can also be received whilst playing sports like rugby.
27. In respect of the pathologist's second finding on the compression of medulla oblongata, he first explained what the organ is. He stated that it is an anatomical structure that sits on the base of the brain next to cervical vertebra 1 and 2. Medulla oblongata controls important functions of brain like respiration and heart rates.
28. When a medulla oblongata is compressed, it means that it is squeezed from an external force where the squeezing mechanisms give away the functions of respiration and heart rate. In other words, the side effects of squeezing is that it no longer functions to normal capacity.
29. Compression occurs for various reasons. The three common reasons for compression are good impact injury on head or spine; brain tumor in brain putting pressure on brains; and dislocation of 1st and 2nd vertebra because injury to spine involves medulla oblongata.

30. If impact to the medulla oblongata is very severe, usually death occurs at that point. If it is not that severe, it takes some time for swelling to come up and compress the organ when its function ceases and death occurs later.
31. Severe compression can also occur on a dead person because the tissue swells when the body does. It is hard to differentiate in post mortem when the compression occurs but if there is fresh bleeding than one can determine when the swelling occurred.
32. In respect of hepatitis, the doctor stated that it is a term used when there is inflammation of liver. It is a generalized term. Specifically speaking, the problem may occur due to viral or bacterial infection. Viral Hepatitis is A, B, C, D and E. This can be detected on blood examination.
33. Bacterial hepatitis is the second category. This is abscess formation in liver. He opined that in his 35 years, he has not seen a person dying of Hepatitis because it is a self-limiting disease. Hepatitis is also on the immunization schedule in Fiji.
34. According to the doctor, it is unlikely for a person to die of short illness due to Hepatitis. If acute complications happen, a person may feel weak, have jaundice, headache, fever, and have dark urine. Most patients recover well especially the children. They get a lifelong immunity from that disease although the hepatitis virus is always active in the body. As one grows old, it might cause damage to the liver and cause cirrhosis or cancer. Death is normally due to cirrhosis or cancer over a long term period.
35. In a child of 12 years old, the likely source of infection is contamination of food or water. Since the patient had clean source of water, it was unlikely that he had contamination by water. There was also no reported outbreak in that area. Hepatitis normally affects multiple people. It does not present a case alone. Lots of people are infected at one time.
36. Dr. Lal opined that the child could not have died of Hepatitis. He referred to the radiology report of 20 May 2014 which was taken a day before the death of the child and stated that the findings in the report were that *"the liver is normally positioned and has normal size and smooth borders and normal density"*. This means that the child did not have hepatitis

because if a patient has hepatitis which is so serious to cause his death, the scan results would pick up an enlarged liver which gets swollen. The density of the liver would not be normal.

37. The doctor however did say that the last line of the radiology report of 20 May 2014 reads that "*imaged portions of the lung show low-attenuation crescentic area at dependant regions bilaterally suggestive of pleural collections*" which means that the lung had fluid collections.
38. Dr. Lal said that in his opinion the death of the child was due to the motor vehicle accident.
39. I do not have any contrary medical evidence to find that the child was suffering from hepatitis which caused his death or that there was any other medical condition due to which he died. The doctors who gave evidence on behalf of the defendants did not give any evidence on this aspect that the child died due to hepatitis or any other medical condition.
40. In fact Dr. Laila Sauduadua ("**Dr. Laila**") who had been examining the child since 12.15am on 18 May 2014, a day after his admission at Labasa Hospital, gave evidence that she had ordered for Hepatitis tests to be carried out and the test results for Hepatitis A and B came negative. The test results for Hepatitis C was not available. Dr. Laila who appeared as the witness for the defendants could not provide any medical evidence which suggested that the child died due to Hepatitis.
41. Further, Dr. Laila's evidence was that the child's test result did not show that he had acute dengue infection. She did however qualify that that child had been sick for only two days and it takes 5 to 7 days for the body to make antibodies. If he had dengue, the result would not show up so fast as there was no antigen test in the year 2014.
42. Even if the child had dengue or hepatitis, he was already under medication. He was being administered antiviral drug which according to the doctors is the treatment for viral infection. The child was also treated for Dengue Shock Syndrome.
43. If the viral or bacterial infection caused the Hepatitis, then, I accept the evidence of Dr. Lal that the radiologist report of 20 May 2014 would not show that the liver was of normal size

and had normal density. An acute hepatitis patient would present with an enlarged liver. This is the medical evidence and I have no contrary evidence before me to disregard the same.

44. Dr. Lal also went through the radiologist report of 17 May 2014. That report also states that *"lungs are fully expanded and clear"*. If the child did not have a serious condition of viral or bacterial infection to affect his liver, then I do not find that there is any probability that he had hepatitis which was acute to cause his death.
45. Dr. Laila admitted that when the child was brought to the hospital, he was comfortable in bed and did not show any signs of distress. Dr. Apenisa Waqatabu who had received the child also confirmed that the child was clinically stable, showed no signs of distress and was conversing. His temperature, blood pressure, saturation and complete blood count were normal. Only his pulse was not normal.
46. Dr. Laila saw the child after 7 hours from when he was being brought in the hospital. She admitted that the child's condition deteriorated quickly which could be as a result of the accident.
47. Dr. Laila stated that the child was bleeding from the head and nose and that was significant of head injury. She stated that the child had a swelling of the brain and it is possible that the same was due to the motor vehicle accident.
48. In my findings there is no medical evidence to say that it was more probable for the child to have died of a medical condition rather than the conditions that were caused externally due to the motor vehicle accidents. The child was always treated for Hepatitis and Dengue and the evidence is that the child did not have Hepatitis. It is difficult to say that he had dengue but he was treated for the same. He was never treated for possible injuries arising out of the accident.
49. In fact, when the child arrived in the hospital, there was little concern that he was involved in a severe motor vehicle accident. It was never seriously noted and followed up that he had a severe accident involving his head. His head had been bumped when he landed on the

dashboard. I find that that caused his vertebra to dislocate. On a balance of probability, it is more probable that the medulla oblongata compressed due to the impact on the head and the injury to the vertebra.

50. The defendant's theory that the medulla oblongata could have compressed because the body may have been tempered with has not been supported by the medical evidence. I do accept as per the medical evidence that the compression can take place after the death as the body swells, but there is no explanation by the defendant's why the 1st and 2nd vertebra dislocated. The fact that the vertebra had dislocated and the medulla oblongata compressed indicates that that happened when the child was involved in the accident and not as a result of the corpse being tempered with.
51. The parents of the child were never alleged in the cross-examination that they had tempered with the corpse or that anyone else did temper with it or that some foreign element caused the body to be tempered with. I therefore find that the defence is nothing more than speculation.
52. Much was said and made about the fact that the child had fits in Dreketi Hospital and afterwards. Even if the child had fits or seizures, it is something that can be controlled as per the evidence of Dr. Lal. There was confusion and no clear evidence as to whether the child had seizures or fit. Dr. Waqatabu also said that what the child had could be classified as seizures. According to Doctor Lal's evidence, seizures could be due to many reasons which include high fever and overload from IV fluids.
53. It is not controverted that the child never had fits before in his life. I find that with that background, even if he fitted or had seizures that did not cause his death. The fitting could have been for various reasons but it not something that caused the vertebra to dislocate and the medulla oblongata to compress. If the child had a severe fall due to that fitting, there would be possibility why the cervical vertebra dislocated but in this case there is no such evidence.

54. The defendant's doctors have agreed that fitting and vomiting could be as a result of the head injury and hemorrhage. This indicates that the fitting or seizures could be due to multiple causes. The defendant cannot say that fitting indicated that the child had a medical condition which caused his death.
55. I find from the general demeanor of all the doctors and nurses who treated the child from Dreketi to Labasa Hospital that they speculate that the child had some medical condition due to which he died but none of them can establish medically what his condition was and what caused his death. They were all focused on the medical issues that the child might have had and they are only doing this because they did not ever cast their mind to the possibilities that the child had more serious condition arising out of the accident.
56. Given the medical evidence, and having examined the witnesses, I find that the child's death was caused by the motor vehicle accident. I make this finding on the balance of probability.

B. The Accident and the Injuries:

- (i) Can the accident be wholly or partially attributed to the negligence of the driver of GN 990?***

AND

- (ii) The Injuries Sustained by the Child.***

57. The first material witness who gave evidence on the aspect of what caused the accident was the child's father. He stated that the ambulance was arranged by the nurse at Dreketi Health Center. The ambulance had arrived at 3pm. He went inside the ambulance with Rahul.
58. The driver and a nurse named Leba Sauduadua ("***Leba***") were already inside the vehicle. His son had walked to the ambulance. He was made to lie on a stretcher inside the ambulance. There was no safety precaution that the child was clipped to the bed and the bed clipped to the vehicle.

59. The father said that he sat in the front passenger seat of the ambulance with the driver. The nurse sat at the back with the son.
60. The weather condition was bad. It was raining very heavily and the road was slippery. The driver was driving very fast. The father said that he told the driver twice to drive slowly. The first was at Matasawa junction past Dreketi and the second at Seaqaqa junction.
61. He said that he saw the speed of the vehicle which was 140km per hour. He said that since Rahul was talking to the nurse, he told the driver that the son is not so serious and for him to drive slowly to which the driver responded "*that is the speed of an ambulance*".
62. When the driver approached Korosomo, he applied the brake and the vehicle spun three times. The driver lost control and the vehicle went in the drain which was about 70 – 80km away from the road.
63. The driver had applied the brake when he was approaching the hill. This was a two way road where the accident happened. No other vehicle was approaching from the other side at the time of the accident.
64. When the vehicle went inside the drain, the driver tried to save himself by steering. The nurse held onto the seat. His son Rahul flew from the back and hit the dash board. Rahul's head hit the dash board. Rahul was about to go out of the windscreen but he grabbed him and stopped him from flying outside. The impact on the dashboard was hard. The dashboard made a sound due to the impact. The father said that he held the son with force as a result of which his hand and chest was injured. He still has the pain till today.
65. The neighbours helped take the son out of the ambulance vehicle. The son was lifted and taken inside the WAF vehicle which took them to Labasa Hospital. The son was put at the rear seat. He also sat beside the child. The nurse sat on the other side at the back and so the son was in the middle.
66. They arrived at the Labasa Hospital where some of the school teachers who know him took the son out of the vehicle and carried him inside the hospital.

67. A report from the Land Transport Authority ("**LTA**") was also tendered by the father and admitted as evidence. The evidence was marked as *Exhibit 5*. The report was prepared by one Iliesa Bolatini. The report was prepared 2 days after the accident. The vehicle was examined after the accident.
68. The report notes the damages sustained to the vehicle. The damages are noted on the bonnet, front right lights frame, bumper, windscreen and the radiator which had shifted back.
69. The report states that "*a road test was carried out to test all the components for steering, brake, and suspension system. All the components for the steering, brake and suspension were in good operative condition and there (sic) were evident during our inspection*".
70. The left rear tyre was noted to be plain but the rest were in order. The headlights, tail, stop and red reflectors, turn signals, warning device, windscreen wipers were fitted and were in good condition.
71. The report includes the opinion of the vehicle examiner. His opinion as noted in the report was that the driver could not control the steering and the brake causing the brake to have uneven adjustment due to which the accident happened.
72. The police officer PC 4820 Petero from Labasa Police Station had visited the scene of the accident. He was the one who assisted another officer to draw up the sketch plan. He testified that there was a 13 meter brake mark and the driver had lost control of the vehicle for 18.4 meters. 18.4 meters is a long distance and that indicates that the driver had lost control of the vehicle due to speeding. He had found the vehicle lying in the drain.
73. The police officer's evidence was not contradicted or challenged. He was not cross-examined.
74. Staff nurse Leba who was in the vehicle initially stated that the vehicle was not being driven fast as the weather condition was not good. The vehicle was driven at about 70 to 80km

per hour. She admitted in cross-examination that she did not know the speed when the accident happened.

75. Nurse Leba did not mention about the vehicle spinning in her examination in chief. She just stated that the driver braked then the child moved to the dashboard. She said the vehicle landed in the drain when it veered off. In cross-examination, she admitted that the vehicle spun twice and it made two full circles.
76. Again in cross-examination she admitted that the driver took half the time it normally takes to reach Labasa and that he was at a high speed.
77. She further admitted in cross-examination that the child did not move to the dashboard but “flew” on the dashboard as per her statement to the police. The child flew about 1 ½ meters in distance before he hit the dashboard.
78. The driver Mohammed Imtiaz Munif stated in his evidence in chief that the ambulance was in a proper driving condition when he left to pick the child from Dreketi. He was travelling at about 70-80Km per hour.
79. The driver further stated in chief that he did not travel fast at all. He said when he was about to ascend the hill, the brakes locked and the vehicle pulled towards his right and slipped into the drain. He vehemently denied that the vehicle had spun at all.
80. He refuted in his evidence in chief that the child ever hit the dashboard or the windscreen. He blamed the father that he told him to drive at a speed and that he was never reminded to keep within the limit by the child’s father.
81. In cross-examination, the driver admitted that it is his duty to see that the vehicle is in a roadworthy condition and safe to be driven on the road.
82. He also admitted that he knew that one tyre was defective and needed change. He again stated in cross-examination that as he was ascending the hill, the vehicle made a sound and the sound was as if something broke. He thought to park the vehicle and when he braked,

it got locked and dragged to one side. The breaking sound came from outside of the vehicle and it was from the rear. The break was of a metal sound.

83. He stated in cross-examination that he applied the brakes because of the metallic sound. He attempted to justify that he did tell the police all this but that was not recorded. He then gave another inconsistent statement that the police actually recorded what he wrote.

84. He again gave an inconsistent statement that the vehicle did not drag for 1 meter before landing in the drain but would have dragged for about 18 meters. He admitted it was a serious accident.

85. Another inconsistency in the driver's evidence was when he stated that he was driving at a speed of 70-80km and refuted that the vehicle ever spun. He later admitted after denying in cross-examination that the vehicle did spin twice and that he was driving at an excessive speed due to the emergency situation but he qualified that the speed was not beyond 100 km per hour. He admitted that the plain tyre also contributed to the vehicle jogging off the road.

86. He clarified in the evidence that he was so shocked that he did not see the child landing on the dashboard at any time.

87. The evidence of the father of the child, the police officer, nurse Leba and the driver himself all indicate that the vehicle was being driven at an excessive speed. Evidently the evidence of nurse Leba and driver Imtiaz is compromised. They both asserted that the vehicle was driven at 70-80km an hour but they later changed and said that the vehicle was speeding. This shows that both the witnesses had concocted the evidence to reflect consistency but they could not maintain their evidence. I do not find them to be credible witnesses since their motive is to avoid any blame on the driver to have caused the accident.

88. If the driver was not driving at an excessive speed limit the vehicle would not have spun two or three times making full circles before landing in the drain. It was being dragged for about 18.4 meters before coming to a halt in the drain. The spinning incident, the brake marks and the dragging marks all indicate that the vehicle was at an excessive speed due to which

the driver lost control of the vehicle. It is possible that the plain rear left tyre contributed to the problem.

89. I do not accept the driver's evidence that when he heard the metallic sound, he tried to brake and that the brakes locked due to which the vehicle dragged and landed in the drain. The dragging marks are 18.4 meters long. The brakes marks are 13 meters long. This indicates that the vehicle started to drag before the driver applied the brakes. This points to the fact that the vehicle dragged because of the speed at which it was being driven due to which the driver lost control of the steering. When he saw the vehicle being pulled he applied the brakes but the dragging continued.
90. Further, the vehicle examiners report does not show that any mechanical defect occurred during the driving. All the damages noted in the vehicle are as a result of the accident. If a metal had broken at the rear tyre(s), such damage would have been noted in the report. In absence of such evidence, the driver's explanation does not support his contention.
91. It was the duty of the ambulance driver to transport the passenger safely and quickly to the hospital. If he was driving beyond the normal speed limit, it was his duty to ensure that he had control of the vehicle at all times and not to cause any harm or injury to patients and the passengers in the vehicle.
92. What is the point of transporting a patient in an ambulance if the drivers had the unbridled licence to drive at a speed which would not be safe and proper in the circumstances to ensure a safe transit to the hospital?
93. I also find that the driver was further negligent in not driving a fully equipped vehicle in order to carry a patient safely to the hospital from such a long distance. It was his duty to ensure that the child was strapped to the bed and the bed to the vehicle to avoid an incident of the kind that occurred. If there were safety belts, the child would not have flown to the dashboard and land at a speed which caused him spinal and brain injuries leading to his death.

94. I find that the driver of the vehicle is wholly responsible for the accident that occurred injuring the child to an extent that his vertebra had dislocated and the medulla compressed leading to the fatality.

95. I further find that since the driver was at all material times acting on instructions and in the course of employment of the 2nd defendant, the 2nd defendant is vicariously liable for the actions of the driver. The 2nd defendant has not challenged that the driver was acting in the course of the employment. Any liability shall thus be joint and several.

C. Did the Estate Suffer any Loss or Damages?

What is the Extent of the Loss and Damages for which An Award should be made?

96. The father's evidence in respect of his child's performance was that Rahul was performing well academically. He used to come first in class and was also the Deputy Head Boy of the school.

97. According to the father, Rahul was a well-disciplined, energetic, reliable and hard-working child. He wanted to become a pilot. The father said that Rahul used to ask him to save some money so that he can use that to study and become a pilot. He was also a good soccer player. He felt very proud when Rahul told him that he wanted to become a pilot. It is his view that Rahul would have become a pilot because of his good personality and hard work. He has lost a great child.

98. The father said that Rahul used to take part in oratory. He was in the Scouts team. He used to give speeches in school, preach about religion in the community and the club.

99. The father also tendered in evidence the school report for his child which was admitted as *Exhibit 6*. The school report shows that Rahul was a very bright student. He used to get "A" grades in his academic work.

100. The father testified that Rahul's funeral took place in Nadi. He claims \$10,000 for all expenses that includes the airfares from Labasa to Nadi for his post-mortem. He does not

have receipts because at the time he was not in his right state of mind and very depressed. He did not collect any receipts for the expenses.

101. He is also claiming general damages because he is sure that if Rahul became a pilot he would have supported him financially. Due to his death he is deprived of that support now. Rahul used to listen to the directions given by him and he was very close to him. He would have definitely provided and assisted him from the income he earned.

102. The mother of the child also confirmed about the child being excellent academically and his desire to become a pilot. She said that the child would definitely had supported the family and would have taken them trips overseas.

103. The first claim by the estate is for special damages for funeral expenses in the sum of \$10,000. Although the plaintiff did not provide any receipts, I will allow reasonable expenses under this head.

104. S. 11 of the CRA allows for damages to be recovered for funeral expenses. It states:

"In an action brought under the provisions of this Act damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought".

105. The defendants have not refuted that the plaintiff spent about \$10,000 for the funeral which includes airfares as well.

106. I accept that when the child was admitted to Labasa Hospital for 5 days including the day of his death, his parents had been travelling to and from the hospital to visit him. Dreketi is almost 1 ½ hours' drive to Labasa. The parents would have paid fare to come to the hospital.

107. With that expense the father paid aircraft fare for himself, his wife and elder child and the levy for the corpse to bring him to Lautoka for post-mortem. That would be about close to two thousand dollars in the least, although no specific evidence was given to this effect.

108. The parents and the elder sibling of the deceased also needed to go back after the funeral. They again had to pay for the costs of the aircraft. That would amount to close to another one thousand dollars.

109. I also give account for the fact that they had to stay in Nadi and organize the funeral. It is not easy to stay away from home and organize funeral for someone close. One needs to buy everything to ensure that final rites of the child are done properly.

110. I accept that the funeral would have cost more than \$5,000 and if I include all the other expenses it is not unreasonable to award the plaintiff a sum of \$10,000 under this head.

111. The plaintiff is entitled to interest from the date of the death to the date of the trial. The child died on 21 May 2014 and the trial was completed on 20 June 2017. I will fix interest at the rate of 3 per cent which is normally the rate that is awarded for special damages. The interest is calculated as follows:

- 21 May 2014 to 21 May 2017 (3 years) - $3/100 \times 10,000 \times 3 = \900
- 22 May 2017 to 20 June 2017 (30 days or 1 month) - \$25

112. The total award for funeral expenses is **\$10,925**.

113. The next head of damages is damages under the Law Reform Act. S. 2(2) (c) and s. 2 (5) are relevant in deciding whether damages should be awarded under this legislation. The two sections read as follows:

S. 2(2) (c)

"Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person –

(c) Where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death except that a sum in respect of funeral expenses may be included"

- 19 and 20 June 2017 (2 days) - \$0.82 rounded off to \$1.00

119. The total award with interest under the provisions of the Law Reform Act is **\$2,726**.

120. The third and the last head under which the plaintiff has sought damages is under the CRA. Section 4 of the Act allows for parents to make a claim as dependents.

121. For a claim to succeed under this head the plaintiff must show actual financial loss or loss of support of the child. A claim can also succeed if the plaintiff can show that there was probability that she would have received some financial support in future from the child if he had lived.

122. The plaintiff and the child's father did not give evidence of any actual dependence on the child at the time of or before his death. They also did not give any evidence of how the child supported them in any other way.

123. The material evidence was in regards the future support. The uncontroverted evidence of the parents was that the child was a very well-disciplined child and that he loved them. He would have become a pilot and would have assisted them financially.

124. There was no evidence on the extent to which they would have received the support. There was also no evidence on what a pilot's income would be per annum. I am bereft of that evidence. The best I can do in the circumstances is to make a finding on what an average person would earn yearly.

125. The child Rahul undoubtedly was a very bright student and if he continued in the way he did he definitely would have started earning. In this era I do not think that Rahul would have earned anything less than \$15,000 per annum.

126. To what extent Rahul would have supported his parents from the income he would have received is not clear from the evidence. I consider the fact that Rahul's parents were school teachers and that they would not have been totally dependent on Rahul for day to day support. The parents would have their own income but that does not discount that their income would have been topped up by assistance from Rahul.

127. I find that Rahul would have at least supported his parents to the extent of 1/3 of his income from the age of 23 when he would have started working. This is 5 years post leaving the High School. I give allowance to the fact that it might take Rahul 5 years to attain an undergraduate course to be able to earn money.

128. I expect that Rahul would have provided for his parents until such time he was married and had family of his own. I think it is fair to say that his support would have continued for at least 7 years until he attained 30 years and started a family of his own when his commitments would have increased and support channeled to his own family. I am not saying that Rahul would completely not assist his parents after marriage. He would as a child provide occasional help and assist whenever he can but in absence of any evidence I cannot hold that the support would be lifelong especially when he has educated parents who hold work as civil servants and have the potential to earn for their living.

129. There was no evidence that Rahul's support to the family would have continued indefinitely despite his marriage and having children. Based on the evidence alone, I find that damages under the CRA, at a rate of \$5,000 per annum for 7 years, is a reasonable sum that should be awarded.

130. I find that an appropriate award under this head is \$35,000. An award for interest is not justified under this head as this is an award in lieu of future support that the plaintiff would have had from the child. Any interest under this head is not justified.

D. Costs

131. The plaintiff has asked for indemnity costs in this case on the basis that this was not a case which ought to have been defended. I disagree on the basis that until the evidence was heard, it would be difficult for such an assertion to be made.

132. This is a case where summary assessment of costs is justified. The plaintiff had to call a doctor to give evidence from the Western Division. Counsel for the plaintiff also had to travel from the Western Division to Labasa and Suva both to complete the trial. She had

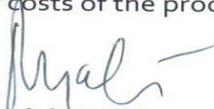
incurred expenses for a two day trial. With all that, costs was involved in filing the pleading and preparing for the trial. It is reasonable that a sum be fixed at \$6,500.

Final Orders

133. In the final analysis I find that the deceased Rahul died as a result of the motor vehicle accident caused by the 1st defendant due to his negligent driving and that the 2nd defendant is vicariously liable for the actions of the employee.

134. The defendants are liable to pay damages to the estate in the sum **\$48,651**.

135. The defendants are further liable to pay costs of the proceedings in the sum of \$6,500.


Anjala Wati
Judge
15.06.2018



To:

1. *Messrs Patel & Sharma, Solicitors, Nadi*
2. *Attorney - General's Chambers.*
3. *File: Labasa HBC 45 of 2015.*