

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No: HBC 102 of 2013A

BETWEEN: PRADEEP SINGH

PLAINTIFF

AND: ALFRED JOHN PENE

1ST DEFENDANT

AND: POLO'S RENTAL

2ND DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr D. Singh for the Plaintiff
Mr V. Sharma for the Defendants

Date of Hearing : 2 March 2017

Date of Judgment : 9 March 2017

JUDGMENT

1. The Statement of Claim avers the Plaintiff was involved in a motor vehicle accident on 11 January 2013 (MVA) involving motor vehicle No. DA 795 driven by him and motor vehicle No. LR 2467 driven by the first Defendant, of which vehicle the second Defendant was the registered owner.

2. The Plaintiff contends that as a consequence of the said accident he suffered personal injuries loss and damage.
3. The Statement of Defense is exclusively one of a general denial of all contentions in the Statement of Claim save that it is admitted the Plaintiff was the driver of motor vehicle No. DA 795 and that the first Defendant was charged with dangerous driving.
4. The Minutes of the Pre – Trial Conference record the agreed matters and those in issue. I do not consider it is expedient that I should reproduce these in this judgment.
5. At the outset of the hearing both Counsel informed the Court that the parties consent to liability against both Defendants being admitted. Subsequently they agreed the total of all special damages at \$3,000.
6. The Plaintiff's first witness was Dr. Vueta Scott Buadromo (PW1), a surgical registrar at Colonial War Memorial Hospital (CWMH), who has been in government service for 6 years. He had examined the Plaintiff on 19 January 2017 and Exhibit P1 is his Medical report. He examined him for injuries sustained in the MVA; and said the Plaintiff had enough time to heal from his injuries. The only thing left from 2013 to 2017 was the pain to the left hand. He was right hand dominant. The left hand had reduced range of movements which would affect him for the rest of his life. He gave the Plaintiff a whole person impairment of 9% (WP1).
7. Under cross – examination PW1 said he first met the Plaintiff on 19 January 2017. The only thing PW1 knew about the 2013 – 2017 period was what is recorded in the medical folder. The discharge summary is the diagnosis at the time of presentation after the accident. There is no mention there of injuries to the hand and wrist and no abnormality was detected. It is possible that the injury to the wrist was sustained after 2013. The WP1 of 9% is only for the wrist.

8. The Plaintiff was the next witness (PW2). He was admitted to hospital for 4 days. His injuries were: head injury, cheek bone injury, left wrist sprained and 3 teeth fell out.
9. Under cross – examination, PW2 said he did complain of very severe pain to the wrist.
10. With that the Plaintiff closed his case and his Counsel made his oral submission. Counsel said general damages for pain and suffering should be \$50,000 and costs \$2,500.
11. Counsel for the Defendants submitted there was no medical report showing injuries other than the 3 teeth. There is no future injury and no complaint of pain in the teeth. In fact the Plaintiff is wearing dentures. He should be awarded \$5,000 for the loss of 3 teeth while costs should \$1,000.
12. At the end of the arguments, I said I would take time to consider my decision. Having done so, I now deliver my judgment.
13. I have only to assess the general damages for pain and suffering and loss of amenities for this 60 year old Plaintiff.
14. The discharge summary and the 2 medical reports and the one dental report give the Court the full medical and dental picture of the Plaintiff. I do not need to reproduce them in extenso. Suffice it to say, I am satisfied that the major injuries suffered by the Plaintiff were the 3 teeth extracted, mild head injury and nasal bone fracture.
15. There is no mention of any injury to the left hand / wrist. Therefore based on the medical evidence, I am not prepared to hold that any injury to the left hand is due to the MVA. On the contrary, it can equally be contended that this is due to some incident completely detached from and unconnected to the MVA. Consequently there can be no award for the hand injury.

16. The authorities cited for the assessment of general damages serve only as a guide to show the trend of judicial awards for similar injuries. A court has to make an award that is apposite to the claim before it.
17. In my opinion a sum of \$20,000 would be the proper award for the proven pain and suffering and loss of amenities sustained by the Plaintiff as the result of the MVA.
18. In the result I order the first and second Defendants to pay the Plaintiff:
 - (1) \$20,000 as general damages together with interest thereon at the rate of 6% per annum from the date of service of the writ to the date of judgment.
 - (2) Special Damages of \$3,000 together with interest thereon at the rate of 3% per annum from the date of accident to the date of judgment.
 - (3) Interest at the rate of 4% per annum on the judgment sum (\$23,000) from the date of judgment to the date of realization.
 - (4) Costs summarily assessed at \$2,500.

Delivered at Suva this 9th day of March, 2017.



A handwritten signature in black ink, appearing to read "D Alfred", written over a dotted line.

David Alfred
JUDGE of the High Court, Fiji.