

PAUL PRAVEEN SHARMA

v.

THE ATTORNEY-GENERAL

and

DR. HUBERT ELLIOT

[High Court, 1993 (Byrne J), 27 August]

Civil Jurisdiction

Damages- personal injuries- 20 year old man- loss of leg following medical negligence.

The Plaintiff suffered a sporting injury to his right leg. Owing to negligent medical treatment the injury was exacerbated resulting in amputation. Liability not being disputed the High Court assessed the quantum of damages to be awarded.

Cases cited:

Madhukar Nath Sharma v. Vijendra Prasad (C.A. No. 40 of 1988)

Fletcher v. Autocar and Transporters Ltd. [1968] 2 Q.B. 322

Waldon v. War Office [1956] 1 W.L.R. 51

Assessment of damages by the High Court

S.M. Koya for the Plaintiff

Rt Joni Madraiwiwi for the Defendants

BYRNE J:

In this case the Plaintiff claims damages for personal injuries arising out of an accident on the 1st of August 1982 when he was playing soccer in Suva and suffered an injury to this right leg about 5cm above the ankle. He was taken to the Colonial War Memorial Hospital by a taxi and admitted to the Fracture Clinic at the hospital. He was there treated by the Second-named Defendant who applied a plaster of paris from his thigh to the base of his toes. His leg was very painful. After the plaster was applied he was given Panadol and asked to go home. At the time Dr. Elliot was the Surgical Registrar at the C.W.M. Hospital. When he arrived home he was still in pain so that later in the night his father became concerned and telephoned a Mr. D.D. Sharma a specialist surgeon for his opinion.

Mr. Sharma could not see him until about 7.00 p.m. the next day. He then rang Dr. Elliot at about 8.30 p.m. and as a result he was taken back to the hospital that evening in a taxi with his parents and again admitted to the Fracture Clinic. At the time of his injury the Plaintiff was nearly twenty years old.

Thereafter there began the unfortunate train of events which culminated in the

Plaintiff being removed from the C.W.M. Hospital on the 3rd of November 1982 and flown to Sydney on the 5th of November 1982 in a wheel chair with supporting leg base.

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He was met by relatives at Sydney Airport and rushed to The Prince Henry and The Prince of Wales Hospital where he remained until the 20th of January 1983 when he was taken to the Rehabilitation Unit of the hospital where he remained until the 3rd of March 1983.

B

During this time on the 6th of January 1983 he underwent operation for the amputation of his right leg below the knee. While he was in the hospital the evidence satisfies me that he attempted to commit suicide about two days after the amputation by taking an overdose of pain killing tablets. Fortunately, the patient next to him in the ward noticed he was vomiting and told a nurse. He received treatment for the overdose and was then visited by the Hospital psychiatrist every second day.

C

I shall describe in more detail shortly the Plaintiff's injuries and his unfortunate experience in the C.W.M. Hospital and his current condition.

D

With commendable sense the First-named Defendant admitted liability on the 12th September 1985 and on the 13th of September 1985 judgment was entered in favour of the Plaintiff against the Defendants for damages to be assessed together with costs of the action. The matter came before me for hearing on the 11th and 12th of July 1990 and thereafter I received written submissions from counsel for the parties. Judgment would have been delivered earlier but for the fact that two applications for interim payment of special damages were made to the Court after the hearing concluded and as a result the sum of \$71,041 has been paid out to the Plaintiff's solicitors by way of special damages leaving a balance of \$13,433.00 under this heading. Further delay ensued as a result of the attempts made by the solicitors for the Plaintiff and Defendants to obtain information for the Court about whether the Plaintiff who is now a resident of Australia would be entitled to claim medical expenses for the cost of replacing prostheses from either the Australian National Health Scheme, "Medicare" or some private Health Insurance Fund. It was only on the 1st of July this year that the Court received the relevant information and this has been communicated to the parties. I turn now to a description of the Plaintiff's injuries, and his current occupation and the events following his accident. The Plaintiff gave evidence that he resided in a suburb of Sydney, New South Wales, and is a Hospital Scientist by profession. He was born in Fiji and is the second son of four sons and a daughter born to his parents who live at Kinoya.

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When he was nineteen the Plaintiff did a Laboratory Technicians' Course at Suva in 1982, having passed his University Entrance Examination in Fiji, graduated as a Laboratory Technician at the Fiji Institute of Technology. He then went to Australia in March 1982 and enrolled at the University of New South Wales to do further studies in Pathology and a degree course of Bachelor

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of Science. He intended then to become a Pathologist. He had always been interested in soccer and in August 1982 returned to Fiji for two weeks university vacation.

A

On the 1st of August 1982 he played soccer at Ram Lakhan Park in Suva and while playing had an injury to his right leg mentioned previously. I have earlier mentioned his second admission to the C.W.M. Hospital on the 2nd of August 1982. On this occasion Mr. Sharma discussed his injury with a Dr. Etika, a Consultant Surgeon at the hospital and with Dr. Elliot the Second-named Defendant. The Plaster of Paris was not removed that evening but was split open the next morning. He had been admitted to a Ward in the hospital on the night on the 2nd of August and stated that he felt very painful for which he was given two Panadol Tablets.

B

After the plaster was split open on the advice of Mr. Sharma it was not replaced and the Plaintiff was returned to his Ward. For almost the next three months the Plaintiff remained in the C.W.M. Hospital in great pain for which he was always given two Panadol tablets per day. For at least the first week he was not given any other treatment. He complained of losing the sense of touch on his toes but was told by Dr. Elliot and Dr. Satya Nandam that this was common with a fracture.

C

A few days later he was taken to the operating theatre by Dr. Nandam and given a general anaesthetic. He was told that he was being taken to the operating theatre because the fractured bone on his leg was exposed. He stated there was much pus and a very bad smell on his leg and he was told that this was to be cleaned.

D

When he regained consciousness he did not know where he was until the next day. He then realised that the original plaster had not been removed because, as the Plaintiff, said he could "tell by its dirty look".

E

He was again taken to the operating theatre to change the dressing on his leg and said that from the 3rd of August until he was discharged on the 3rd of November 1982 he was admitted to theatre a few times under general anaesthetic so that the pus could be cleaned. The same plaster was kept on his leg.

F

The evidence satisfies me that during this time the Plaintiff was given five general anaesthetics. He complained every day of pain and says that he was given two Panadol Tablets each night and occasionally some sleeping tablets.

After he was hospitalised for a few weeks surgeons visited him once a week and examined him but took no action.

G

By this time the infection was getting worse and his leg had become swollen. About two weeks after his admission he lost complete movement of his toes and the sense of touch on his injured foot. His toes turned bluish-black and were very cold.

A In October he returned to the theatre for another general anaesthetic and was told that the bone would be re-set and the leg cleaned and that he had a sinus in his bones due to infection. His dressings were changed in the operating theatre a few times and later in his Ward under local anaesthetic.

B By November it was obvious that he was not receiving correct treatment and his parents decided to send him to Australia for further treatment. He had been confined to his bed all the time until one week before his discharge. On the day of his discharge his brother took photographs of the Plaintiff's injured leg. They were tendered in evidence and are not a sight for the squeamish. The Plaintiff said that on the 3rd of November 1982 his leg was still very swollen, smelly and that pus was coming out of the leg near the ankle. He had no feeling in his toes which were still bluish-black and very cold. He said he was in an enormous amount of pain and lost about twenty kilograms in weight while he was in the hospital. He could see his broken bone which is visible in the photographs. Pus was absorbed in the surgical packing around the leg.

C From the time of his admission to discharge from the C.W.M. Hospital he was told that doctors had removed tissue from his leg because there was no life in it due to infection.

D On the 5th of November 1982 he was flown to Sydney from Nausori and, as I have said earlier, immediately admitted to The Prince Henry and the Prince of Wales Hospital.

E On arrival at that Hospital he was in much pain because his flight had not been completely smooth. He was admitted about 9.00 p.m. and was given Pethidine by injection and other strong pain killers. He was sweating and in much pain. He waited for about half an hour for the pain killing drug to take effect and was then examined and x-rayed after which, about mid-night, he was delivered to the Infectious Intensive Care Unit.

F The next morning he was examined by a Surgeon, Dr. Fullop who told him what he had previously been told the previous night by the Registrar that he would probably have to have his leg amputated. Initially he refused this because he believed there were alternative remedies. He said that he felt shattered when told about the need for amputation and became so upset that he was referred to a speech therapist who explained to him the consequences of not having amputation and advantages he would have by having the leg amputated. He still declined and therefore his doctors agreed to his request to have a graft done as a possible alternative. His doctors told him his chance were about 50/50 and this raised his hopes a little.

G About two weeks later he was told that the graft had failed and that because of the growth of infection he would have to have the leg amputated below the knee. He said in evidence that his pain was the most devastating experience he had ever had and still suffers from it daily varying from 5 - 10 minutes to

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hours. This is the condition known as phantom pain.

After he was admitted to hospital in Sydney his mother and father flew there to be with him and stayed with relatives and shared the rent with them. I will refer to this and other expenses shortly but will now mention the Plaintiff's current situation and future prospects. The Plaintiff states that because of his injuries he could not attend university because he lost two years' study. He stated that if he had finished his studies as planned he would have worked as a Science Graduate earning at first \$A35,000 per annum as a Hospital Scientist in Cyco Genetics, i.e. the study of human genetics. He worked at the Royal Alexandra Children's Hospital. He claims to have lost two full years' income at \$A25,000 per annum as a Science Graduate which is admitted by the Defendants. At the present time he states that compared with Pathologists he is losing \$5,000 per annum in his work as a Hospital Scientist. On the basis that he retires at fifty-five, at the time of trial he estimated he would lose this amount for the next twenty-seven years a total of \$135,000. He also stated that he needs two artificial limbs every eighteen months at the rate of \$1,200 for each replacement. He claims \$72,000 under this head. He states that his stump keeps on changing shape due to infection or sweating in summer which is the reason why he has to buy new limbs.

In a letter recently from the Plaintiff and copied to the Defendant the Plaintiff states that he was a member of the Australian Hospitals Contribution Fund (H.C.F.) from 15th of May 1987 to 13th July 1991 which was only for basic cover and therefore did not pay for any prostheses which he required. Because of this he ceased membership of this fund.

He states that in order to receive up to eighty percent refund of his prostheses he has to be a member of the H.C.F. in at least Top Cover which would mean paying a premium of \$49.85 per annum and receiving one prosthesis per year. He provides this calculation which, in the absence of any denial by the Defendants I accept:

Premium one month	\$49.85	
Premium 18 months		\$881.00
Pay 20% cost of the Prostheses		\$240.00
TOTAL		\$1,121.00

He says that he has claimed \$1,200 for each prosthesis and therefore there is a difference of \$79.00 in these figures but states that the premium increases each year with inflation. Also he will be limited to one prosthesis a year which means that he will be losing money. For these reasons he has decided against joining any private Health Care Fund. Furthermore, he is compelled under the Australian Government Medicare Scheme to pay a levy of 1.25 per cent of his gross income which is directly deducted from his salary. He states if he spent more than \$1,000 for medicare expenses in a financial year then he could claim the extra amount in his income tax return. But the Plaintiff does not

qualify for this concession because he spent only \$800 for his artificial leg in a financial year.

A The only other option he has is to join the Medi Bank Private which operates exactly like the H.C.F. and Medical Benefit Funds under which he would have to pay a monthly premium. For these reasons he says, he claims the costs for his prostheses past and future.

B Returning now to the Plaintiff's medical treatment in Australia, the Plaintiff said that after he had requested alternative treatment to amputation when admitted to the Sydney Hospital he was taken to theatre a few times for general anaesthesia to have his bone re-set, the infection cleaned and a skin graft taken. In this, skin was taken from his left thigh. After he re-gained consciousness the site of the graft was very sore in addition to the injured leg. He had two skin grafts before the final amputation and after the last graft was told that he had no circulation in his foot and his infection was growing rapidly towards his thigh muscles. Dr. Fullop told him that if he did not make a decision on amputation the infection would spread to above his knee and he would end up losing his whole leg. By this time it was the end of December 1982 and after advice from a Physiotherapist, Psychiatrist and other doctors and discussion with his parents he agreed to have his leg amputated.

D After amputation he attempted suicide as I have said earlier and had lost another 5-7 kilograms in weight because he had lost appetite and was constipated. Thus the Plaintiff had lost about twenty-seven kilograms or nearly sixty pounds in weight as a result of his injury.

E On the 21st of January 1983 he was transferred to the Prince Henry's Rehabilitation Centre where he was seen by a Physiotherapist. He says that at that stage he was like a young child learning to walk again.

F In the hospital he had been in bed for four months and when he stood up he was very unstable. After much physiotherapy he was fitted with a temporary prosthesis but was still in much pain as his leg had not healed properly.

G He visited a physiotherapist every day and was still on Pethidine injection twice daily and a sleeping tablet at night. He had never been given any Pethidine while in hospital in Suva and only an occasional sleeping tablet whereas in The Prince Henry and The Prince of Wales Hospital he was given a sleeping tablet every night. Eventually he was fitted with a full prosthesis but had numerous infections due to blisters caused by the limb not fitting properly. He took anti-biotics for these.

He was finally discharged as an in-patient on the 3rd of March 1983 after which he became an out-patient at the Royal South Sydney Rehabilitation Centre for at least one year. He still visits this Centre whenever he gets blisters or infection or needs a replacement prosthesis.

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The Plaintiff says that he now does not suffer as much pain as previously but still suffers phantom pains.

On the question of loss of amenities of life, the Plaintiff says that at school he played soccer, tennis, athletics and swimming, but that after the accident he has not been able to do any of these things. He could not play any sports requiring the use of his legs. he has bought a specially fitted motor car and says that if he had to he could not hurry to catch public transport. He has difficulty in going up and down stairs, for example, if he wished to he could not travel in the upper deck of trains or Sydney Harbour Ferries. When visiting friends who live in an up-stairs flat he has to take his time. He lives in an apartment unit on the third floor and if the lifts are not working must use the stairs.

Since the accident he has lost 25cm of muscle on his right leg compared with the left leg and at the date of trial had still not put on any weight.

He is not married. At the time of his accident he was engaged to be married but his girl friend broke the engagement because of his pain and suffering. So far he has not met any other female friend. He is very conscious of his leg's appearance. He does not engage in the same activities as before his accident, for example he does not go to discos and parties so that he believes the chances of meeting a young woman with those interests are slim. He says that girls lose interest when they hear the word "amputation" and because they believe that he would not be able to perform his duties as a husband.

This claim is not disputed by the Defendant and it seems reasonable to accept it.

He claims that when he walks into an area where people do not know him he draws attention to himself because of his limb. People ask him how he came to get an artificial leg. When he tells them he becomes depressed and to avoid this he tries to avoid public places but is conscious of people looking at him when he walks on a street.

The Plaintiff is a Hindu and his father is a Hindu priest and he says that when Hindus get married at the ceremony they are supposed to squat and supposed not to wear any shoes or socks. He has found so far that this deters young women.

The Plaintiff says that he is able to stand from 10 - 15 minutes at a time without feeling pain and that fortunately in his present work he does not have to stand for long. He says when he is showering he has to use a shower chair with a plastic coating to prevent slipping on tiles. When the Plaintiff is showering he says he removes his limb. He has been told that he will most definitely need someone to look after him when he retires from work.

A In cross-examination the Plaintiff said that if he regained confidence he might go out again to public places and possibly marry; if he found a suitable partner this would help considerably. He said that the reason why he did not pursue his Pathology degree was because this would have taken five years whereas his hospital Science Degree took only three years. As a Hospital Scientist he does not have as much assignment work as a Pathologist. He said that his main reason for doing only the Science Degree was his inability to concentrate because of phantom pain. He agreed that he never uses public transport in Sydney but I comment here that there may come a time when he will have to.

The Medical Evidence

The Plaintiff called Mr. Deo Datt Sharma of Suva, Medical Practitioner holding the following degrees:

C M.B.B.S. 1967, F.R.C.S. (Eng.) 1973, F.R.C.S. (Edin.) 1973, F.R.A.C.S. 1977.

D Mr. Sharma stated that after various hospital appointments in New Zealand and England he became Senior Consultant Surgeon at the Colonial War Memorial Hospital in-charge of the Surgical Department. Since 1978 he has been in private practice. He tendered two medical reports on the Plaintiff the first dated 19th April 1983. In this Mr. Sharma said that the Plaintiff had fractured his right tibia and fibula on 1st of August 1982. At that time he had suffered pains since the previous night and in the morning had received analgesic injection from another doctor. The pain had continued in spite of this injection and tablets he had taken during the day. I shall not attempt to summarise any of the medical reports received and tendered by the Plaintiff but shall set them out in the order they were tendered. To a large extent they are self-explanatory and serve to indicate first the totally inadequate treatment the Plaintiff received during his sojourn in the C.W.M. Hospital and later the treatment he received in Sydney where all attempts were made to at least ameliorate the very serious condition into which the Plaintiff had deteriorated by the time he was admitted to The Prince Henry and The Prince of Wales Hospital.

F The report of Mr. Sharma of 19th April 1983 omitting formal parts reads thus:

“ PRAVEEN SHARMA f.n DAYA NAND SHARMA

G On examination his right leg was in a complete plaster of Paris cast from the thigh to the base of the toes. He was thrashing about and was obviously in great pain. The examination was done very gently and with difficulty as even the slightest of movement caused considerable pain. There was no action movement in his toes and the toes were numb with complete absence of sensations. The colour of the toes was pink but there was sluggish capillary circulation. A diagnosis of tight plaster with nerve damage due to ischaemia was made. As it was urgent that pressure due to the tight plaster of Paris be

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relieved soon I rang and made arrangement with the Surgical Registrar on call to cut the plaster. As there was delay in the hospital to do anything I was rung again at 8.30 p.m. When I reached the Orthopaedic Clinic the plaster was being cut by the Surgical Registrar. After the plaster had been cut I briefly saw the leg. The arterial pulsation in the foot was present and the colour was pink. The patient however still could not move his toes and there was no sensation in them. I saw him again later on about 4.8.82 at the request of the father at about 9 a.m. The toes and visible part of the foot was pale, there was no capillary circulation and the part was numb and no movements were present in the toes. I met Mr. Etika, a Consultant Surgeon, in the Ward and told him that there was no circulation in the foot, whereupon the Surgical Registrar agreed that he had noticed that on the morning rounds and was going to tell Mr. Nandam under whose care the patient was admitted. Upon instructions from Mr. Etika, the Registrar went and told Mr. Nandam who I believe instructed the patient to be brought to the Operation Theatre where the leg was decompressed, the various muscle septa in the leg divided for the purpose.

Subsequently the leg got worse and needed many trips to the theatre to change plaster under general anaesthesia. For each of these trips he was starved practically whole day and the plaster was changed in the afternoons. The leg had become smelly and at times I prescribed antibiotics and tonics for this patient from my surgery. I had made suggestions to reduce the number of anaesthetics and periods of lengthy starvations to the Medical Officer in Charge but I do not think they were put in to effect till the last. His leg improved somewhat at the end of September 1982 but the question of the leg being amputated was still hanging in the balance. He was advised to go overseas for treatment. Even if he is lucky to keep the leg it would probably be subject to recurrent discharge from the infected bone and there would be no movements at the ankle and the leg would be numb from below to the knee.

COMMENT: This boy came to grief because he had a tight plaster which was complete (i.e. - encircling the limb). There was virtually no padding to allow for the limb swelling. In this case the swelling of the limb had occurred and compressed the nerve and the vessel causing ischaemia which in turn led to the muscle necrosis. It should be well known to anyone who is dealing with fractures that initially a back slab is applied or if a complete plaster of Paris cast is applied it is very well padded and split lengthwise to allow for any subsequent swelling.

The day following admission in hospital another plaster or back slab was applied. I do not know whether it was tight and had caused further damage. I understand the Consultant Surgeon in charge of the case had not seen the case till the patient was taken to theatre for surgery. The Surgical Registrar who saw the leg in the morning on the round should have informed his consultant of the precarious state of the leg in that it was pale and ischaemic so that something could be done about it urgently. Instead he was going about it

A casually and was prompted into action after I reminded Mr. Etika of the state of the leg. Later in the course of follow up treatment the patient had been starved so many times for change of dressing in theatre that he had become quite weak. In my opinion this patient had been subject of indifferent treatment amounting to negligence when the tight plaster was applied initially causing most of the damage and subsequently when the Consultant in charge failed to see the case in Hospital after admission and supervise proper treatment."

B Mr. Sharma's second report of the 9th of July 1990 again omitting formal parts reads thus:

C "This patient was seen by me initially on 2.8.1982 and regarding which I have submitted a report dated 19th April, 1983. He was seen by me again today. After going to Sydney in October 1982 his right leg had to be amputated from below the knee because it had been severely damaged and infected. I understand strenuous efforts were made in Sydney for about three months before the leg was amputated. He has been wearing artificial legs since then which had needed changing every year.

When seen today his problems resulting from the injury and subsequent amputation of the legs were:

D (1) Pain in the right leg: These pains are shooting pains and projected below the knee to where the leg would have been. These the "phantom limb" pains last from five to ten minutes to hours at times and come from once a day to alternate days. At times they are severe and he has to take strong pain killers like pethidine while other times it settled with lighter pain killers. In summer he tended to get blisters on the stump at which time the phantom limb pains got worse. He also had pains in the stump and the thigh due to direct pressure from the socket of the artificial limb. Because of these pains he misses work for about six weeks in a year.

E (2) Inability to Play sports and take part in athletics: He cannot run therefore he is unable to play soccer or cricket - both sports which he used to play regularly before. He also is unable to swim because he finds it hard to balance in water with one leg.

F (3) Work: He cannot stand for longer than 15-20 minutes and has to sit down because of pains in the stump and the thigh. He has been refused work a few times because of the amputation.

G (4) Daily Routine: He has difficulty in standing when showering and has to sit down on the shower chair. He has difficulty wearing trousers standing up for which also he needs to sit down. He also has difficulty in going up and down the stairs and has to take one step at a time. He also cannot use public transport because of difficulty in going up and down steps. he drives an automatic car.

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(5) Socially: He had at least one romance come to an end because of the amputation. He also cannot wear shorts because he is conscious of the artificial leg.

A

(6) The artificial leg is cumbersome to use in that he has to take it off and on at least twice a day.

On clinical examination he looked slightly depressed. There was no anaemia or enlarged nodes, etc. The pulse was 80/min regular, BP = 120/80. The right leg had been amputated from below the knee. The length of the stump was 15 cms from the joint line. The skin of the stump was very tender and there was a 18cm long scar at the anterior border of the stump. The right thigh muscle were wasted by 5cm. There was considerable weakness of the quadriceps muscles on the right. There was some crepitus of the knee joints, being more on the left side than the right. The reflexes were normal.

B

Comments and Conclusion: This patient has lost his right leg from below the knee after he fractured it and got treated at the CWM Hospital. The pain and distress after the leg became necrotic and infected and its amputation after five months later would have been considerable. He continues to suffer from pains, which would persist in future indefinitely. The phantom limb pains are difficult to cure and to date no satisfactory method of treatment has been found. This would cause his limitations to work and also mentally in that he could suffer from bouts of depression. He would not be able to take part in any active sports or athletics. On the personal level, he would not be able to do work requiring prolonged standing because of pains in the leg and also most probably be discriminated against for work during selection. He will also face problems in wearing clothes, bathing and for transport to and from work. He is also likely to develop arthritic changes sooner in the left knee than usual because of uneven stresses that it would be subjected to causing pain in future.

C

D

E

For selection as a life partner he also would suffer discrimination in that only the most broad minded and well educated would be able to appreciate his problems. He would also need to change his artificial leg yearly at the cost of about \$1200.00 yearly till age forty after which it may need to be changed at one and a half to two yearly intervals for the rest of his life. His life span would not be shortened by the amputation."

F

When he gave evidence Mr. Sharma stated that there were two matters which he had omitted from his second report:

G

- (1) The Plaintiff limped on walking.
- (2) He had increased pigmentation on the outer side of his left thigh 23 cm by 10 cm from where the skin graft had been taken. This will affect his cosmetic appearance when he wears shorts. It can also cause itch in hot weather.

A He stated that his phantom limb pains which have remained steady since 1983 are unlikely to diminish. If they were to have gone away he would have expected this to happen within two years at most of his amputation. He said he was likely to develop arthritic changes. He has crackling in his left knee joint so changes have already begun. The only way to prevent any further damage would be to avoid those stresses which would be very difficult for him. He now has to balance more on one side. As to the scar on the stump left by the amputation, Mr. Sharma said that this was reasonably good but it is fairly long at 18cm. The scar is the vulnerable part of the stump because it has the poor blood supply and Mr. Sharma's opinion was that it was therefore better to have a smaller scar.

B
C He said that the Plaintiff has callous formation at the lower end of patella and on the sides, and his stump was very very tender. He said that he was "jumpy" and even when not looking was frightened somebody was going to touch it. This could be related to past pain he had suffered. He said the Plaintiff has an abnormal perception of pain in his sensing organs.

D In answer to some questions by me Mr. Sharma said that giving the patient two Panadol Tablets each night in C.W.M. Hospital was equivalent to giving him no treatment at all. He said the Plaintiff would need strong analgesics to relieve him of pain and Mr. Sharma would have given him Pethidine and Fortral in adequate doses.

E He further said that even on his second day in the C.W.M. Hospital Mr. Sharma was fairly sure that amputation would be necessary. There would have been no complication if he had been treated properly from the beginning. He said the fracture suffered by the Plaintiff was very common. Doctors treat them every day and treatment is largely routine.

F In further answer to a question by counsel for the Defendant Mr. Sharma said that by the second day it was too late to prevent amputation. He said it is the golden rule in medicine that a leg can stand ischaemia i.e. loss of normal blood supply for one hour only and beyond that the chances of getting gangrene, i.e. death of the limb increase. He said in this case it did not seem to have registered with the medical staff at the C.W.M. Hospital that the Plaintiff was in grave danger. Finally he said that the hospital should have advised the Plaintiff to go overseas earlier and if so he might not have come to amputation although he would have an impaired leg.

G I set out hereunder the two medical reports on the Plaintiff received from The Prince Henry Hospital and the Rehabilitation Centre in Sydney dated 14th March 1983 and 6th March 1986 again, omitting formal parts:

"This patient was admitted to Prince of Wales Hospital on 5.11.82 with fractured midshafts of right tibia and fibula which were sustained in Fiji on 2.8.82 while playing football. Following application of a complete plaster cast on the same

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day he developed ischaemia of the anterior and lateral compartment muscles and decompressive fasciotomies were carried out at the Colonial War Memorial Hospital in Fiji.

A

On admission the patient was febrile and distressed. the right lower leg was shattered and in poor anatomical position with bone on view. There was a foul-smelling discharge from sloughing lateral aspect of the leg and heel.

The patient was commenced on Gentamycin, Penicillin and Cloxacillin intravenously following wound swabs.

B

Wound swabs revealed growth of Pseudomonas.

On 9.11.82 (under G.A.) lateral and post compartments of the right leg were debrided and medial sinus curetted, with application of Hoffman's external fixateur.

C

On 19.11.82 (under G.A.) further debridement of the right leg was performed with excision of fibia. A split skin graft from the left thigh was applied to several areas.

On 6.1.83 (under G.A.) the patient underwent below knee amputation. Post-operative complications were discharging sinus on stump on the suture line, which was treated with normal saline dressings, and painful stump requiring Pethidine.

D

The patient was transferred to Prince Henry Hospital Rehabilitation Unit on 21.1.83.

He appeared quite depressed and pre-occupied with painful, discharging stump.

E

Over the next few days his depression lessened, his stump would improved and he needed analgesia for pain.

Funding for his prosthesis was undertaken by his relatives. He was walking well with the aid of a stick and a temporary below knee prosthesis at the time of discharge on 4.2.83. He had also returned to his studies at the Technical Institute.

F

He was given a prescription for a below knee PTB standard prosthesis to be cast when the stump had sufficiently stabilised.

He will be followed up in the Amputee Clinic by Prof. Jones."

G

6th March 1986

"Mr. Paul Sharma was seen in the Rehabilitation Centre on 8/2/83. He had a history of fracturing his leg playing soccer in Fiji. After multiple surgical procedures he underwent a below knee amputation on 6/1/83 at the Prince of Wales Hospital. He attended the Royal South Sydney Hospital for prosthetic

A training and fitting. he learned to walk well with a prosthesis and only attends for review when he has prosthetic problems. He has been fitted with five prostheses since February of 1983. The reason for the number of prostheses is stump shrinkage. This has stabilised to some extent. He has only required one leg in the last twelve months.

B Paul will in the long term continue to require prostheses annually for the rest of his life. If needed, medical care will basically be associated with supervision of these."

The only witness called by the Defendants was Dr. V. Etika who examined the Plaintiff on the 10th of July 1990 for the purpose of giving evidence. Mr. Etika's report of the 11th of July 1990 is set out hereunder.

C "He attended on 10/7/90, as your referred, for review of his amputated right leg.

He has had an amputation of his right leg below the knee leaving a stump of 16 ½ cms long and end girdle of 28 cms. There is sign of skin pressure changes close to the knee and the stump is conical in form and slightly more sensitive.

D The knee active extension is free, its active flexion is about 95, passive flexion is full. He is ambulant without aid in a limb prosthesis with some limp.

The permanent incapacity provided in the Workmen's Compensation Act, Cap. 94, schedule-section 8 for the loss of leg below the level of the knee is made as 45%."

E When he gave evidence Mr. Etika disagreed with Mr. Sharma as to the prospects of arthritis developing in the Plaintiff's leg. He said that although there could be a risk of arthritis of the knee joint, because of the Plaintiff's age he would say this was not high. He would have better prospects of regeneration than if he were older. He said that his use of the artificial leg meant that the skin of the stump was subject to sores.

F He admitted that the Plaintiff had permanent incapacity of loss of function of leg amounting to 45%.

Assessment of Damages

G It is obvious from the foregoing recitation of the Plaintiff's injuries and treatment that he suffered most serious but to some extent avoidable consequences of the injury he sustained when playing soccer. I have been referred by both counsel, the late Mr. Koya in his usual most comprehensive fashion, and to a lesser extent by counsel for the Defendants, to a large number of cases dealing with awards of damages for personal injuries. I have read all these cases together with a decision of the then Acting Chief Registrar Mr. D. Pathik in Civil Action No. 40 of 1988, Madhukar Nath Sharma v. Vijendra Prasad. In many ways

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this latter case has similarities to the instant case in that the Plaintiff suffered a compound fracture wound of his right forearm, a compound fracture wound of the right thigh and a badly lacerated and comminuted compound fracture of the right tibia and fibula together with bad crushing of nerves and deprivation of blood supply to the end of his leg.

A

The Plaintiff Sharma was admitted to hospital but within three days it became evident that the right leg was beyond salvage and thus amputation below the knee was carried out. Recovery was uneventful but rehabilitation took time. He also had a skin graft to the amputated tibial stump. He was re-admitted to hospital nearly four years later because of pain for further amputation of the injured leg. He had spent about fifteen months in hospital before being discharged. He was married with two children and his wife was forced to work in a factory to make ends meet. He had incurred special damages of \$17,500.50 with loss of prospective earnings of \$47,349.

B

C

Mr. Pathik awarded the Plaintiff a total of \$99,899.00 of which \$35,000.00 represented general damages.

Whilst it was agreed by both counsel correctly that the numerous citation of cases can be confusing to a judge trying a particular case, because no two cases are alike, nevertheless some assistance can be obtained from a reading of other decisions. As Singleton L.J. said in Waldon v. War Office [1956] 1 W.L.R. 51 at p. 55:

D

"A judge in assessing damages draws upon his own experience. Where does he get that experience? From knowledge of other judges' decisions as to amount; from knowledge of what is said in this court and in the House of Lords; and from his ordinary experience in life."

E

Later he said:

"The judge realises that his task is to assess damages in the particular case before him, and upon the evidence before him and upon nothing else. If he can get help from decisions of other judges, or from this court, I am inclined to think that in his discretion he might well accept it. It is for him to judge."

F

In another case Fletcher v. Autocar and Transporters Ltd. [1968] 2 Q.B. 322, Salmon L.J. said at pp 363 - 364"

G

"On the other hand, the full amount of perfect compensation manifestly cannot be given for pain and suffering or loss of amenities for the simple reason that, in the nature of things, there can be no perfect compensation in relation to such matters To my mind the damages awarded should be such that the ordinary sensible man would not instinctively regard them

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as either mean or extravagant, but would consider them to be sensible and fair in all the circumstances."

- A There have been many similar statements in the judgments of the Courts here and overseas over the last forty years. What is the proper award for the Plaintiff in this case? The first thing that must be said is that the award I make will be in Australian dollars because it is clear that the Plaintiff intends to live and work in Australia for the remainder of his life. He said in evidence that he was now a permanent resident in Australia and on the permanent staff of the Australian Hospital in Sydney. Despite the criticisms levelled at the balance of the Plaintiff's special damages by the Defendants I see no reason why I should not accept the amounts claimed. These are \$25.00 to the C.W.M. Hospital which it is suggested I should disregard because the Plaintiff could not produce a receipt of this sum. I find that the sum is due and must be paid by the Defendants.

- C A similar criticism is made of the balance of \$3,358.00 said to be owing to the Prince of Wales and The Prince Henry Hospital but again I accept the Plaintiff's evidence that this amount is due.

- D Likewise I allow the sum of \$50.00 for the purchase by the Plaintiff of vitamins and health food recommended by his doctors while he was at the C.W.M. Hospital although the Plaintiff could not produce any receipt.

Likewise, despite the absence of receipts I accept the Plaintiff's claim for \$100.00 and \$50.00 respectively for stump socks and plastic shower chairs.

- E The Defendants argue that I should disallow the claim of \$3,994 being the balance of the Plaintiff's parents' return air fares to Sydney when he was hospitalised there on the ground that the Plaintiff has not produced any other receipt apart from \$800 to substantiate this amount.

- F I reject this submission. I believe that these expenses were reasonably incurred and that it was only natural and by no means extravagant or unreasonable for the Plaintiff's parents to be with their son while he was undergoing treatment in Sydney.

As to the particular headings under the amended particulars of general damages submitted by the Plaintiff I make the following awards:

- | | | |
|---|---|--------------|
| G | Loss of future earnings using a multiplier of 20,
20 x \$5,000.00 | \$100,000.00 |
| | Future cost of purchasing artificial limbs again
using the same multiplier 20 x \$1,200.00 | \$ 24,000.00 |
| | Pain and suffering and loss of amenities of life | \$ 50,000.00 |

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Estimated cost of future care \$ 10,000.00

TOTAL \$184,000.00

A

Before adding interest to these damages I make the following comments on them: I have chosen a multiplier of 20 for the first two headings to make reasonable allowances for the contingencies and vicissitudes of life. As to pain and suffering and loss of amenities, in my judgment an award higher than made by the Acting Chief Registrar in Madhukar Nath Sharma's case is warranted. In that case the Plaintiff was treated correctly from the beginning although after further deterioration some years later he had to undergo additional surgery.

B

In the present case the Plaintiff was treated initially, but as it transpired wrongly, by his doctors at the C.W.M. Hospital until after four months of what I find to have been generally unnecessary pain and inconvenience was he able to obtain proper medical treatment which unfortunately came too late to save his right leg. Then there are his experiences in the Prince Henry and The Prince of Wales Hospital in Sydney where naturally he hoped to avoid amputation of his leg and clung to what Mr. Sharma regarded as a most unlikely hope that amputation could be avoided. So great was his pain and I have no doubt his mental distress that he attempted to suicide. Fortunately for the Defendants and himself because of proper and good counselling in Sydney he is now able to cope with his life. But he is still greatly disadvantaged as the medical evidence shows.

C

D

All these factors are comprised in the term "pain and suffering and loss of amenities of life" and there can be no doubt in the Plaintiff's case they are very real.

E

As to future care it is impossible to speculate with any accuracy on how much this will eventually cost the Plaintiff. I have chosen a figure of \$10,000.00 as being a reasonable sum which the Plaintiff can invest if not in Australia then in some suitable place elsewhere to give him some return and capital to meet the cost of such expenses.

F

He is entitled to interest at 4 percent on the proven special damages of \$84,474.00 which I have rounded off to \$84,500.00 to the 31st of July 1984 when the Writ was issued until the date of assessment, the 10th of July 1990. This amounts to \$20,200.00.

G

He is also entitled to interest at 10 percent from the date of the issue of Writ until the date of judgment, the 27th of August 1993 for nine years at \$18,400.00 a total of \$165,600.00.

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His award will therefore be as follows:

A	General damages as set out above	\$184,000.00
	Interest thereon	\$165,600.00
	Interest on special damages	<u>\$ 20,000.00</u>
B	This gives a total award	<u>\$369,800.00</u>

There will be judgment for the Plaintiff against the Defendants in the sum of A\$369,800.00 together with costs to be taxed if not agreed.

C *(Damages assessed and awarded)*

(Editor's Note : an appeal to the Fiji Court of Appeal was partly allowed on 12 August 1994 (FCA Reps 94/351) while an application for leave to appeal out of time to the Supreme Court was dismissed on 17 May 1995 (FCA Reps 95/100)).

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