

IN THE COURT OF APPEAL FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI ISLANDS

CIVIL APPEAL NO. ABU0047/99S
(High Court Civil Action No. HBC 556 of 1997)

BETWEEN: **THE ATTORNEY-GENERAL** *Appellant*

AND: 1. **JOFESA MATAU** }
 2. **SHIU NARAYAN** } *Respondents*
 3. **MANJULESH DEVI** }

Coram: The Rt Hon Sir Maurice Casey, Presiding Judge
 The Hon Sir Mari Kapi, Justice of Appeal
 The Hon Justice K.R. Handley, Justice of Appeal

Hearing: 8 November 2000

Counsel: Mr S. Kumar for the Appellant
 Mr M.B. Patel for the 1st Respondent
 Mr V. Maharaj for the 2nd and 3rd Respondents

Date of Judgment: 17 November 2000

JUDGMENT OF THE COURT

On 6 September 1999 Shameem J. delivered a judgment in the High Court at Suva holding the appellant vicariously liable for the admitted negligence of Josefa

Matau, the first-named respondent, with agreed damages of \$48,733.00 payable to the other respondents. This appeal by the Attorney-General is against that holding of vicarious liability.

Mr Matau was a Civil Servant employed as a Divisional Planning Officer and was authorised to drive a Government car which was garaged at his home. On Saturday 17 December 1994 he attended an office Christmas party and consumed alcohol. He decided about 7 pm to visit two projects for which he was responsible to investigate delays, and while driving there he was involved in the accident giving rise to these proceedings.

There was a conflict of evidence about whether he had been forbidden to drive by his superior officer. On the evidence the learned trial Judge expressed herself as satisfied that while Mr Matau had general authority to drive the car, on that occasion he had been forbidden to do so, and accordingly had no authority to use it on the site visits he intended. It was not disputed that these were included among his official responsibilities, and that he was expected to work after official hours. Her Ladyship concluded that he was acting within the scope of his employment in visiting the sites, and that it was his mode of conducting this work that was prohibited, and not the work itself.

She cited decisions establishing that an employer is vicariously liable for employees' torts committed in the course of employment, in spite of prohibitions dealing with conduct within its course. Among them were Plumb v Cobden Flour Mills Co Ltd [1914] AC 62; Bugge v Brown (1919) 26 CLR 110; Canadian Pacific Railway v Lockhart [1942] AC 591 and London County Council v Cattermoles (Garages) Ltd [1953] 2 All ER 582. There is no need for us to refer to passages from them to emphasize this principle of vicarious employer's liability, which is now so firmly established and widely known. In the light of Her Ladyship's findings on the evidence, the appeal against her decision on vicarious liability could not possibly succeed, and we did not find it necessary to call on the respondents.

The same can be said for Mr Kumar's other ground based on deficiencies he saw in the pleading of the claim against the Attorney-General, who was referred to in the Statement of Claim as "the nominal defendant". We think this term not inapt to describe his status as a representative of the Government Department by which Mr Matau was employed, indicating that he was not being sued in a personal capacity. The character of the proceedings as one involving a claim based on vicarious liability was obvious from the pleadings, and it was accepted by all parties that this was the only issue for determination in the trial. If there had been any deficiency, they can be taken as having been amended to accord with the unanimous agreement of the parties to proceed with the trial on that single point.

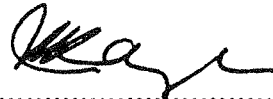
However, we are satisfied there was no defect in the pleadings, which clearly spelt out all the ingredients of the action against the Attorney-General based on vicarious liability, and he joined issue specifically with that claim in his statement of defence.

Result

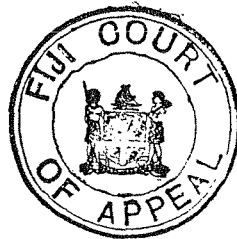
The appeal is dismissed with costs to the second and third named respondents against the appellant of \$750, together with disbursements.



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Sir Maurice Casey
Presiding Judge



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Sir Mari Kapi
Justice of Appeal




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Justice K.R. Handley
Justice of Appeal

Solicitors:

Office of the Attorney-General's Chambers, Suva for the Appellant
 Messrs M.B. Patel & Associates, Suva for the 1st Respondent
 Messrs Maharaj Chandra & Associates, Suva for the 2nd and 3rd Respondents