

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

Civil Appeal No. Misc 21/06
(High Court Civil Action No. HBC 243/02 & 88/06L)

BETWEEN:

EDDIE McCAIG

Applicant

AND

ABHI MANU

Respondent

S. Sharma for the Applicant

A. Kumar for the Respondent

DECISION

- [1] This is an application for leave to appeal out of time against an assessment of damages by the High Court delivered on 12 May 2006.
- [2] The High Court's Order was not sealed until 1 June 2006 and, owing to oversight and in breach of RHC O42 r8 (LN 47/05) a copy of the sealed order was not served by the Respondent's solicitors on the Applicant's solicitors until 20 October 2006. The Applicant does however concede that notice of the delivery of

the assessment of damages by the High Court was given and received.

[3] On the basis that time for appealing runs from the date of the service of the sealed order, Mr. Sharma pointed out that the six week period expired a mere three days before the present application was filed. I am not however persuaded that failure to comply with Order 42 r8 either prevents time running or provides an excuse for failure to file a Notice of Appeal within time when the party wishing to appeal has in fact had notice of the delivery of the judgment or order against which it wishes to appeal. If the Applicant's solicitors had complied with the notice and attended court to take delivery of the assessment then they would have had six weeks from the date of the delivery in which to appeal. The fact that Order 42 r8 had not been complied with would not have prevented an appeal being filed within time.

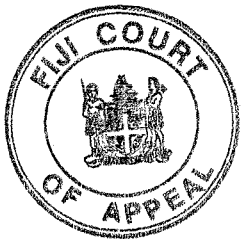
[4] In his helpful oral submissions Mr. Sharma suggested that the award of damages was manifestly excessive and that the judge had incorrectly applied the discounted present value method of assessing damages with erroneous consequences amounting in value to over \$350,000. Mr. Sharma also suggested that counsel should have been given an opportunity to make further submissions and present further evidence before the damages were assessed and after the appeal against dismissal of liability by the High Court had been allowed and the matter remitted by the Court of Appeal.


[5] It is relevant that the Applicant has filed a petition for special leave to appeal to the Supreme Court against the decision of the Court of Appeal. That application is still pending.

[6] The total amount awarded to the Respondent by the High Court was \$701,000 which includes a sum of \$630,000 for loss of earning capacity. It is not in doubt that the discounted present value method of assessing damages is somewhat unusual in Fiji and in my view there is some force in Mr. Sharma's suggestion that the judge may have erred in at least part of his approach to that assessment. I also consider that counsel should have been given an opportunity to make further representations to the court before the assessment of damages took place. In view of the undisposed of petition to the Supreme Court the proceedings are still pending. While the delay prior to filing the present application is regrettable I take the view that it would be in the interests of justice to allow the appeal to be filed.

RESULT

1. Application allowed.
2. No order as to costs.




M.D. Scott
Resident Justice of Appeal

20 April 2007