

IN THE COURT OF APPEAL FIJI
[CIVIL APPELLATE JURISDICTION]

CIVIL APPEAL NO. ABU 0054 of 2014
(High Court Case No. HBC 055 of 2009)

BETWEEN : **FOUR R ELECTRICAL & GENERAL**
CONTRACTORS LIMITED *Appellant*

AND : **NILESH WILLIAM** *Respondent*

Coram : Basnayake, JA
Lecamwasam, JA
Amaratunga, JA

Counsel : Mr. V. Sharma with Mr. V. Chandra for the Appellant
Mr. R. P. Chaudhary for the Respondent

Date of Hearing : 9 November 2016

Date of Judgment : 29 November 2016

JUDGMENT

Basnayake, JA

1. I agree that this appeal should be dismissed with costs.

Lecamwasam, JA

2. This is an appeal filed by the Appellant (the original first defendant) against the ruling made by the Judge (Master) in the High Court of Fiji at Lautoka on the following grounds of appeal:

1. *That the learned Judge erred in law and in fact in placing heavy reliance on the statement of defence of the second defendant when in fact the said defence as per His Lordship's own decision was struck out and therefore he ought not to have relied on the same as in the quantum payable to the Respondent.*
2. *that the learned Judge erred in law and in fact in awarding excessive and disproportionate of \$45,000.00 for pain and suffering and loss of amenities to the Respondent.*
3. *that the learned Judge erred in law and in fact in awarding excessive damages of \$66,000.00 to the Respondent for loss of earning capacity.*
4. *That the learned Judge erred in law and in fact in awarding excessive damages of \$8,000.00 to the Respondent for medical costs and care when in fact in his own assessment, he held that there was no or insufficient evidence produced by the Respondent to support the claim for such award.*
5. *That the learned Judge erred in law and in fact in awarding special damages in the sum of \$905.00 when there was no or insufficient evidence produced to support such award and or the said award was made contrary to the established common law principles relating to awards for special damages.*
6. *That the learned Judge erred in law and in fact in awarding the excessive cost of \$1,500.00 to the Respondent.*
7. *That the learned Judge erred in law and in fact in awarding damages under various heads by failing to take into consideration that the Respondent had acted on his own frolic by travelling in a vehicle unsafe for travelling and was not a passenger vehicle and thus his injury was attributed to the serious and wilful misconduct of the Respondent and therefore not liable to be paid compensation.*
8. *That the Appellant reserves the rights to amend, vary and or add further grounds of appeal upon receipt of the court record.*

3. The facts of the case are recounted in detail in the judgment of the Judge, hence a repetition is redundant. However, if briefly stated, this was a claim for compensation for personal injuries resulting from a motor vehicle accident.

4. Having heard the case the learned Judge had made the following award in his ruling which runs thus:

“24. In the final, I make the following award:

Pain & Suffering	\$45,000.00
6% interest from date of accident to date of Judgment (ie. From 18 th February 2008 to 23 May 2014)	(i.e. \$2,700 x 6 = \$27,000 – but rounded off to \$16,200)
Loss of Earnings	\$66,924.00
Special Damages	\$950.00
Future Medical Costs and care	\$8,000.00
3% interest on special damages	(i.e. \$28.50 x 6 = \$171.00)
TOTAL	\$137,245.00
Plus Cost	\$1,500.00

25. Judgment entered accordingly against the defendants jointly and severally in the above sum of \$137,245.00 (one hundred and thirty seven thousand, two hundred and forty five dollars) plus costs which I summarily assesses at \$1,500.00 (One thousand and five hundred dollars)”.

5. Being aggrieved by the above Ruling the Appellant has filed the instant appeal. On a perusal of the copy record, I find that the trial had commenced before the Master and the relevant ruling had been given by the Judge after he was promoted as a High Court Judge. Ample proof of the above position is seen clearly in the sealed order dated 3rd day of June, 2014 which I reproduced below:

ORDER

BEFORE THE HONOURABLE MR. JUSTICE ANARE TUILEVUKA, ON FRIDAY 23rd DAY OF MAY, 2014

Upon the judgment for Damages, Costs and Interest to be assessed having been entered against the Defendants on the 21st day of July 2009 AND THIS ACTION having on the 20th day of May 2011 come for the hearing of the

Assessment for damages Costs and Interest before the Master of the High Court Mr Anare Tuilevuka at the High Court of Fiji at Lautoka and the said Master Tuilevuka (now Judge) having on the 23rd day of May 2014 ordered that Judgment as hereinafter provided be entered for the Plaintiff.

AND UPON READING the Writ of Summons dated and filed herein, on the 30th day of March 2009.

AND UPON hearing Rajendra Pal Chaudhary Counsel appearing for the Plaintiff and there being no appearance by or on behalf of the two named Defendants.

IT IS ORDERED

i) That Judgment is entered accordingly for the Plaintiff against the named Defendants jointly and severally in the sum of \$137,245 (One hundred and Thirty Seven Thousand and Two hundred and forty five dollars) plus costs summarily assessed at \$1,500.00 (One Thousand Five Hundred dollars).

Sealed this 3rd day of June, 2014.

(signed)

Deputy Registrar.

6. Therefore it is manifestly clear that the Judge had commenced hearing the matter as Master of the High Court and delivered the Ruling after he was elevated to the High Court. However, in essence this is an order of the Master. This position is clearly augmented by the journal entries of the proceedings too. According to the journal entries the hearing had commenced on the 20th of May and the relevant journal entry reads as follows:

**BEFORE THE HON. MASTER OF THE HIGH COURT. MR. TUILEVUKA
ON THE 20TH DAY OF MAY 2011 AT 08.30 OCLOCK IN THE FORENOON**

Albeit the ruling was made by Anare Tuilevuka as “**Judge**”.

7. In view of this situation, I find there is a preliminary question relating to jurisdiction that arises in this case. High Court Rules Order 59 r8.1 states thus:
*“PART II – APPEAL FROM THE MASTER
Appeal from Master’s decision (O.59, r.8)
8. (1) An appeal shall lie from a final order or judgment of the Master to a single Judge of the High Court”.*
8. Therefore it is manifestly apparent that this Court has no jurisdiction to entertain this appeal.
9. I am fortified by the observations made by Justice Calanchini, P in **I Taukei Land Trust Board v Shanti Lal & Apisai and Bansi**; ABU 6 of 2015 (14 May 2015), where His Lordship observed thus: “However both Section 21 B (2) of the High Court Act Cap.13 and Order 59 Part II of the High Court Rules clearly give a right of appeal from a Master’s decision to a single Judge of the High Court. In my view that right cannot be lost after the hearing of the matter before the Master simply because the Master has, after hearing but before judgment, been appointed a Judge. In the event that the Master had been appointed to the court of Appeal it could surely not be suggested that his decision would have been that of a Justice of Appeal...”
10. In view of the above position, I do not wish to delve into facts of the case and as the appellant has filed this appeal before the wrong court subject to a cost of \$4,000.00 being paid to the respondent. I dismiss the appeal.
11. I caution the counsel to closely follow the latest developments in legal sphere before filing appeals. Not only must counsel be more vigilant but the presiding officers of the original courts must also be humble enough to clearly state their correct official position, as to their office in their judgments. That will help to avert such a situation as is currently before us, not to let litigants be at the receiving end of the brunt of legal blunders.

Amaratunga, JA

12. When the issue of jurisdiction was raised by the Court, the learned counsel for the Respondent quite rightly, said it was an issue for Appellant to address and he did not wish to make any submission. Though the Respondent had filed a Notice to Appeal, if the appeal is struck off for want of jurisdiction the Notice to Appeal will not have *locus standi* in this Appeal.
13. I had the opportunity of reading the decision of Lecamwasam JA. I regret that I could not agree with the reasoning that the Court of Appeal lacked jurisdiction to deal an appeal from a final decision of Master in an assessment of damages. Section 12 (1)(a) of the Court of Appeal Act (Cap 12) states that **any decision of High Court** can be appealed to the Court of Appeal. The exception to this is contained in Section 12(2) of Court of Appeal Act (Cap12) and this does not apply to this appeal. I would deal with these provisions later, in more detail.
14. I would not deal with merits of the appeal in dissenting opinion and would only deal with the issue of jurisdiction for obvious reasons.
15. This is an appeal from the ruling regarding the assessment of damages against the both defendants. The hearing of the assessment of damage proceeded before the Master on 20th May, 2011. Both Defendants did not appear before the hearing before the Master at the hearing of assessment of damages. The Ruling was delivered on 23rd May, 2014 and by that time the Master who heard the matter had assumed the duties as a judge. The Ruling delivered on 23rd March, 2014 should be considered as a decision of Master irrespective of his promotion subsequently.
16. There is a right of appeal to a single judge in terms of Section 21 B(2) of the High Court Act (Cap 13) from any judgment of Master.

17. The Section 21B of the High Court Act (Cap13) states as follows:

‘Exercise of jurisdiction by Master

21B.-(1) For the purposes of the exercise of jurisdiction conferred on the Master by the Rules of Court, this Act has effect, subject to this section, as if the Court consisted of the judges and the Master.

(2) *A person who is dissatisfied with a judgment of the Master may appeal, as prescribed by the Rules of Court, to the Court constituted by a single judge, but nothing in this subsection prevents the Chief Justice from constituting a Full Court to hear the appeal if the Chief Justice considers it appropriate.*

(3) On an appeal under subsection (2), the Court -
(a) shall have regard to the evidence given in the proceedings out of which the appeal arose; and
(b) has power -
(i) to draw inferences of fact; and
(ii) in its discretion, to receive further evidence.

(4) On an appeal under subsection (2), the Court may affirm, vary or set aside the judgment of the Master and may make such order as in all the circumstances it considers just”.(emphasis added)

18. So, according to the Section 21 B of the High Court Act (Cap 13) a decision of a Master may be appealed to a single judge of the High Court as prescribed by the rules. The rules of High Court are made by the Chief Justice, in terms of Section 25 of the High Court Act (Cap 13). Presently High Court Rules of 1988 as amended from time to time are applicable and High Court Order 59 rule 8 (1) deals with the Appeals from the decisions of the Master.

19. High Court Order 59 rule 8(1) of High Court Rules of 1988 states as follows

“8(1) An appeal shall lie from a final order or judgment of the Master to a single judge of the High Court”

20. High Court Order 59 rule 9 of High Court Rules of 1988 deals with the mode of appeal and Order 59 rule 9(a) states that within 21 days from the delivery of order of judgment an appeal shall be filed and served. If the Master's decision was an interlocutory order or judgment then the time period for appeal is 7 days.
21. I agree with the decision of Lecomwasam JA that decision appealed was a decision of Master. There was no evidence of any extension of jurisdiction in terms of Order 59 rule 2(1). It is assumed that the Master had not exercised any extension of jurisdiction while delivering the said ruling. So, when the Master had heard the matter he cannot deliver it other than as a decision of Master.
22. So looking at the provision of Section 21B of the High Court Act (Cap 13) and the High Court Rules of 1988 (Order 59) the jurisdiction for any Appeal from a final decision of the Master is conferred to a single judge of the High Court. There is also provision to appoint a full court by the Chief Justice and that provision has no application in this case as there was no such appointment.
23. There are provisions in the Court of Appeal Act (Cap 12) which deals with Appeals from High Court. It should be borne in mind neither Court of Appeal Act (Cap 12) nor High Court Act (Cap 13) defines the 'High Court'. The word 'High Court' includes a Master in terms of the Section 100(1) Constitution of the Republic of Fiji. The Section 100(2) of the Constitution of Republic of Fiji, states that jurisdiction and powers of Master would be prescribed by 'written law'. The interpretation Section of the Constitution of the Republic of Fiji (Section 163) defines the word 'written law'. Any 'subordinate law made under Acts' is included in the definition. So High Court Rules of 1988 is a subordinate law made under the High Court Act (Cap 13) which assigns the jurisdiction to a Master. The Order 59 rule 2 of High Court Rules of 1988 states that '*Master shall have and exercise all the power, authority and jurisdiction which may be exercised by a judge*'.

24. The Section 12(1)(a) of the Court of Appeal Act (Cap12) states that there is a right of appeal from

'any decision of the High Court sitting in first instance including any decision of a judge in chamber.' (emphasis added)

25. So without giving any strained meaning to the Section 12(1)(a) of the Court of Appeal Act (Cap12) any decision of the 'High Court' irrespective of whether it is by Master or judge in chamber can be appealed to the Court of Appeal, as it will be a decision of 'High Court'.

26. The later part of the Section 12(1)(a) of the Court of Appeal Act (Cap 12) specifically includes a decision of a judge in chamber. The use of word 'including' does not restrict the word 'any decision' but only further describe it and defines the word 'any decision' in an inclusive manner as opposed to exclusive manner. This is to avoid any doubt when it relate to decisions of chamber matters when dealt by a judge. The chamber matters can be dealt by a Judge or Master subject to restrictions contained in Order 59 of the High Court Rules of 1988. When a Master deals with the chamber matter the Master exercises 'all the power, authority and jurisdiction which may be exercised by a judge'(see Order 59 rule 2 of High Court Rules of 1988). So the exercise of the jurisdiction of the Master is delegation or duplication of certain powers of 'High Court'. Both Master and judge are part of the High Court and any exercise of such power conferred by Master is an exercise of power of the High Court. The decision regarding assessment of damages whether it is done by a judge or Master is a decision of 'High Court' for the purpose of Section 12(1)(a) of the Court of Appeal Act (Cap 12).

27. When the Section 12(1) (a) of the Court of Appeal Act (Cap12) refers to 'any decision of High Court' it would invariably include the final decisions of Master, dealing with assessment of damages.

28. While the Court of Appeal Act 12(1)(a) conferred jurisdiction to the Court of Appeal regarding any decision of the High Court sitting in first instance the insertion to Section 21 B of the High Court Act which came in to operation on 27th July, 1998 dealt with specific jurisdiction of the exercise of the jurisdiction of the Master. In my judgment the Section 21 B of the High Court Act (Cap 13) introduced by High Court (Amendment) Act 1998 by Act No 27 of 1998 cannot be considered as amending the jurisdiction of Section 12(1)(a) of the Court of Appeal Act (Cap 12).
29. The Section 12 (1)(a) of the Court of Appeal Act (Cap 12) states ‘...an appeal **shall lie** under this part... to the Court of Appeal’. While this provision was operative Section 21(B) was inserted to the High Court Act (Cap 13) conferring jurisdiction to the single judge of High Court regarding decisions of the Master. The words used in Section 21 B (2) the High Court Act (Cap 13) are ‘A person who is dissatisfied with a judgment of Master may appeal...’. In my judgment the words ‘*may appeal*’ will not exclude the jurisdiction of the Section 12(1) of the Court of Appeal Act (Cap12). As the literal meaning would indicate a party ‘may’ appeal to the single judge, without limiting the jurisdiction of the Court of Appeal under Court of Appeal Act (Cap 12).
30. The Court of Appeal Rules 26(3) states as follows:
*‘(3) Wherever **under these Rules** an application may be made either to the Court below or to the Court of Appeal it shall be made in the first instance to the Court below.’(emphasis added)*
31. This provision cannot be applied for the present scenario for two reasons. Firstly, the Court of Appeal Rules did not create any concurrent jurisdiction. The Court of Appeal Rule 26(3) deals with situation where there is concurrent jurisdiction created under said Rules, not by the Court of Appeal Act (Cap 12). Since the Court of Appeal Rules are made in terms of Section 39 of the Court of Appeal Act (Cap12) the said rules cannot restrict or alter the jurisdiction conferred in the Section 12(1)(a) of the Court of Appeal Act (Cap 12).

32. Secondly, if an appeal is preferred to a single judge of the High Court from a decision of Master, there is a restriction contained in the Section 12(1)(c) of the Court of Appeal Act (Cap 12) and the second appeal to the Court of Appeal will be limited to a question of law only. The Court of Appeal Rule 26(3) only states that first appeal should be to court below, so the second appeal is directly to Court of Appeal. If that is applied there will be another right of appeal directly to the Court of Appeal without any restriction as to question of law. This would directly conflict with the jurisdiction granted in Section 12(1)(c) of the Court of Appeal.
33. The plain language of Section 12(1)(a) of the Court of Appeal Act (Cap 12) grants jurisdiction to the Court of Appeal regarding any decision of High Court. In the absence of express exclusion a decision of a Master cannot be excluded as a decision of High Court. It should also be noted that Order 59 rule 2 of the High Court Rules of 1988 expressly confer *'the Master shall have and exercise all the power, authority and jurisdiction which may be exercised by a judge in relation to the following causes and matters'*. So when the Master is exercising the jurisdiction it is an exercise of jurisdiction on behalf of a judge hence in my judgment any decision of the Master is a decision of High Court. This position is further affirmed by Section 21 B (1) of High Court Act (Cap 13).
34. A decision of a Master exercising the jurisdiction conferred in accordance with law is a decision of the High Court in terms of Section 12(1)(a) of the Court of Appeal Act (Cap 12). This Appeal cannot be dismissed for want of jurisdiction, on a preliminary point of law.
35. Lord Diplock in House of Lords in *Duport Steels v Sirs* [1980] 1 WLR 142, [1980] 1 All ER 529 at 541-542 stated

'Parliament makes the laws, the judiciary interprets them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law

enacted by existing statutes or the unwritten common law as it has been expounded by the judges in decided cases), the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. **Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning** because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral.....

A statute passed to remedy what is perceived by Parliament to be a defect in the existing law may in actual operation turn out to have injurious consequences that Parliament did not anticipate at the time the statute was passed; if it had, it would have made some provision in the Act in order to prevent them....'

...But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts, and if so, what are the precise limits that ought to be imposed on the immunity from liability for torts committed in the course of taking industrial action. These are matters on which there is a wide legislative choice, the exercise of which is likely to be influenced by the political complexion of the government and the state of public opinion at the time amending legislation is under consideration.

*It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, **if judges, under the guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest.**'(emphasis added)*

36. The Respondent did not object to the Appeal being made directly to the Court of Appeal and matter was listed for hearing in Full Court of the Appeal and it was heard by Full Court. In House of Lords decision ***Jones vs. DPP*** [1962] AC 635, at 662 Lord Reid stated,

*'That question can only be answered by taking the words which Parliament has used and applying to them the ordinary methods of construction of modern statutes. **It is a cardinal principle applicable to all kinds of statutes that you may reason attach to statutory provision a meaning which the words of the provision cannot reasonably bear.***

.... If certain authorities have adopted some other method which produces a meaning which the words of the statute cannot reasonably bear, then in my judgment, this House ought not to approve them' (emphasis added).

37. The majority decision in this appeal had solely relied on a decision of a single judge of this court. In my judgment the meaning of ‘any decision of High Court’ cannot reasonably exclude the assessment of damages by a Master, as I have discussed earlier.

38. The text ‘Maxwell on the Interpretation of Statutes (12th Edi) at p 28 states

‘The first and most elementary rule of construction is that it to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the rules of grammar. “The length and detail of modern legislation,” wrote Lord Evershed M.R. has undoubtedly reinforced the claim of literal construction as the only safe rule. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. “The safer and more correct course of dealing with a question of construction is to take the words themselves and arrive if possible at their meaning without, in the first instance reference to cases.”’¹

39.. The ‘any decision of High Court...’ in the Section 12(1)(a) of Court of Appeal Act (Cap12), in my judgment cannot exclude final determination of assessment of damages by a Master hence, this appeal cannot be dismissed for want of jurisdiction. In view of majority decision, I do not wish to deal with merits of appeal and Respondent Notice as it may prejudice any future redress by the parties, based on majority decision.

The Orders of the Court are:

1. *Appeal is dismissed.*
2. *Appellant to pay \$4,000.00 to the Respondent.*

¹ Foot notes deleted. Emphasis added



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Hon. Mr. Justice E. L. Basnayake
JUSTICE OF APPEAL



.....
Hon. Mr. Justice S. Lecamwasam
JUSTICE OF APPEAL



.....
Hon. Mr. Justice G. Amaratunga
JUSTICE OF APPEAL