

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No: HBC 389 of 2011.**

**BETWEEN:**    **TEBARA TRANSPORT LIMITED** a limited liability company having its registered office at Sea Lark Hill, Edinburgh Drive. G.P.O Box 985 Suva.

**PLAINTIFF**

**AND:**            **DAWASAMU TRANSPORT LIMITED** a limited liability company having its registered office at Auckland Street Verata, Nausori P.O.Box 79. Tailevu.

**DEFENDANT**

**BEFORE        :**    **Justice Deepthi Amaratunga**

**COUNSEL      :**    **Mr. O. Driscoll** for the Plaintiff  
                         **Mr. Vosarogo V.** for the Defendant

**Date of Hearing    :**    **11<sup>th</sup> March, 2013**

**Date of Decision  :**    **15<sup>th</sup> April, 2013**

**DECISION**

**A.    INTRODUCTION**

1.    The Plaintiff had obtained a default judgment and the matter proceeded for the assessment of damages for the breach of contract by Defendant. Plaintiff and Defendant entered in to a sale and purchase agreement with regard to sale of Route Licence for the bus routes stated in the contract.

## **B. ANALYSIS**

2. A Director cum CEO of the Plaintiff, Mr. Arvinda Maharaj stated that Plaintiff and Defendant entered in to an agreement marked as No 2 in the bundle of documents submitted by the Plaintiff. This document was admitted by the Defendant. The content of the document is not in dispute and the Plaintiff is required to prove the damage due to non compliance by the Defendant.
3. The Page 11 of the contract between the Plaintiff and Defendant for the sale of Route Licence contained a Schedule I which describes the Route Licence No 12/7/24, which was contracted to sell by the Defendant to the Plaintiff. The details of the said schedule I is not in dispute. There are two Route Nos and they are Route no 98 for Suva /Nausori and Route No 85 for Baulevu /Nausori /Suva. The Route 98 makes 28 trips per week according to the schedule.
4. The CEO of the Plaintiff stated that the bus fare for Suva to Nausori is FJ\$1.60 which is depicted in the Exhibit 1. The said marked document contained New Bus Fares with effect from August, 2009 and the bus fare is also admitted.
5. The only issue that was in dispute at the cross examination of the witness is the number of passengers, which will be the multiplier of the bus fare to obtain an estimated income from one trip. The Plaintiff did not submit any estimate for the number of passengers. No feasibility study or other materials supporting the number of passengers for a trip was presented, but the CEO of the Plaintiff in his oral evidence stated that in average they were expecting 50 passengers for a trip. The Defendant cross examined the Plaintiff's only witness as to the said number. When the court inquired from the witness he stated the busses could accommodate 60-65 passengers. The Defendant suggested that the said time table indicate non-office or school time hence the buss cannot have an average capacity of 50 passengers, and should be less.
6. The Plaintiff's witness flatly denied the said contention and said that since the route is always full due to commercial activities. But considering the maximum number of passengers that can be accommodated in a bus which can vary 60-65 the average number cannot be as high as 50. This is obviously an over

optimistic assumption and unless I was given some evidence to support such a contention it seems that using 50 as the average number of passengers is over optimistic. Neither side produce evidence to support an exact number. The burden of proof is with the Plaintiff to prove average number of passengers in a bus in the said route. The oral evidence of the CEO of the Plaintiff state that it is 50 but not substantiated by documentary or other evidence. It is admitted that the arrival time to Suva indicate a time after the commencement of offices and schools and in the absence of any supporting evidence I cannot accept such an over optimistic number as suggested by the Plaintiff. Though no supporting evidence is presented, the fact that the Defendant refused to transfer the route to the Plaintiff can draw an inference that the route is profitable for the Defendant and that was the reason for not complying with the contract. Since there is no reason given for the breach, this inference is reasonable considering the mindset of reasonable business person in transport business. So considering the circumstances of the case I think 40 passengers is a reasonable average in the said route for all the trips. The profit from the revenue is given as 10% of the turnover and this is not contested and I will assume this as an industry standard, in the absence of any challenge.

7. The Clause 7.2 of the Contract between the Plaintiff and Defendant states the date of commencement of the operation of buss service on the routes stated in the schedule as 2<sup>nd</sup> October, 2009 referred to as possession date.

**C. THE CALCULATION OF DAMAGES**

The Bus Fare	1.60
No of passengers (average)	40
No of trips per week	28
Estimated Profit for a Week $28 \times 40 \times \text{FJ\$}1.60 \times 10\% = \text{FJ\$}179.2$	
No of weeks from 2 <sup>nd</sup> October, 2009 to date of assessment= $[365 \times 3 + 4(31) + 28 + 30] / 7$	
Total of Profits Loss = $\text{FJ\$}32,691$ (approx.)	

8. The Plaintiff should also receive legal interest for this amount from the date of judgment till final settlement. The cost of this application is assessed summarily at \$1,000.

**D. FINAL ORDERS**

- a. The Plaintiff is granted a damage for breach of contract in the sum of FJ\$32,691.
- b. The Plaintiff is also granted legal interest from the date of judgment.
- c. The cost of this application is summarily assessed at \$1,000.

Dated at **Suva** this **15<sup>th</sup> day** of **April, 2013**.

.....  
**Justice Deepthi Amaratunga**  
**High Court, Suva**