

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA FIJI

CIVIL CASE NO.: HBC 10 of 2014

BETWEEN : **ABID HUSSAIN** of Korovuto, Nadi, Sales Assistant

PLAINTIFF

AND : **SUNBEAM TRANSPORT COMPANY** a limited liability company having its registered office at Level 8, Dominion House, Thompson Street, Suva.

FIRST DEFENDANT

AND : **MANJUR ALI** of Muanikoso Housing, Nasinu, Driver.

SECOND DEFENDANT

Appearances:

Plaintiff appears in Person
Mr A. K. Narayan (Jnr) for Defendants

J U D G M E N T

1.0 **Introduction**

1.1 The Plaintiff filed the Writ of Summons, and a Statement of Claim and sought the following reliefs from the Defendants in this matter.

The relief sought were :

- (a) General Damages,
- (b) Special Damages in the sum of \$130,000.00 for being value of motor vehicle.
- (c) Interest.
- (d) Costs on Solicitor/Client Indemnity basis.
- (e) Such other and further relief as the Court may deem just.

- 1.2 The Plaintiff claims the said relief, for the injuries suffered by him and damages caused to his Vehicle as a result of an accident which occurred while he was driving his vehicle on the Queens Road at Nawaicoba, Nadi on 7th November, 2010.
- 1.3 The Plaintiff states in his Statement of Claim that a bus owned by the first Defendant company driven by the Second Defendant collided with the Plaintiff's vehicle No. DJ234. It is stated further that as a result of the dangerous driving of the Second Defendant the Plaintiff suffered serious injuries.
- 1.4 The Defendants filed their Statement of Claim on 31st March, 2014 and sought the Plaintiff's claim be dismissed with cost on indemnity basis. They also sought a Judgment in the sum of \$7,123.50 with interest as a Counter-claim against the Plaintiff. The Defendants also pleads that the action occurred outside the limitation period as the accident occurred on 7th November, 2010 and the date of institution of proceeding being 23rd January, 2014. It is stated that the Plaintiffs' action is statute barred under Section 4 and 18 of the Limitation Act Cap 35 and he is not entitled to bring this action or to claim any relief.

2.0 **Trial of a Preliminary Issue**

- 2.1 On the 16th May, 2014 the Defendants filed Summons for Trial on a Preliminary Issue pursuant to Order 33 Rules 3, 4(2), 5 and 7 of the High Court Rules and the Inherent Jurisdiction of the Court.
- 2.2 The application is supported by Affidavits of Arvendra Kumar and Sanjay Dutt.
- 2.3 In their Summons the Defendants sought for the following Order:
- (i) That there be a trial of a Preliminary point on whether the Plaintiffs' action is statute barred under Section 4 of the Limitation Act and should be dismissed with costs on a Solicitor/Client indemnity basis.

3.0 **Hearing and Determination**

- 3.1 When this matter was taken up for hearing on 18th March, 2015 the Learned Counsel for the Defendants made oral submissions and tendered to Court relevant authorities in support of his submissions.

- 3.2 The Defendant who appeared in person at the hearing submitted a written submission with the leave of Court.
- 3.3 It is clear that this action is instituted outside the Limitation period of 3 years as alleged by the Defendants. The accident has occurred on 7th November, 2010 and the Plaintiff instituted these proceedings on 23rd January, 2014.
- 3.4 Section 4(1) of the Limitation Act imposes a three year limitation period in the case of actions for damages for negligence, nuisance or breach of duty.

Section 4(1) Proviso states that:

“Provided that-

- (i) *In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the Plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years; and....”*

- 3.5 Section 16(1) of the Limitation Act provides :

Extension of time limit for actions in respect of personal injuries

16(1)- The provisions of subsection (1) of section 4 shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which-

(a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and

(b) the requirements of subsection (3) are fulfilled.

(2)- This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under

any Act or independently of any contract or any such provision) where the damages claimed by the Plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the Plaintiff or any other person.

(3) - The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the Plaintiff until a date which-

(a) either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period; and

(b) in either case, was a date not earlier than twelve months before the date on which the action was brought.

(4)- For the purposes of subsection (3), reference to the three-year period relating to a cause of action means a reference to the period of three years from the date on which that cause of action accrued:

Provided that:-

(a)

(b)

(5)-

(a)

(b)

3.6 According to the above provisions of the Limitation Act a person who files any action for damages for negligence and Breach of Duty outside the Limitation period should obtain leave of Court to file the same before or after the commencement of action.

3.7 As averred in the Affidavit of Arvendra Kumar the Plaintiff has not obtain leave from

Court to institute the current action.

3.8 Section 17 of the Limitation Act provides :

Application for Leave of Court

- 17 (1) *Any application for the leave of the court for the purposes of section 16 shall be made ex parte, except in so far as rules of court may otherwise provide in relation to applications which are made after the commencement of a relevant action.*
- (2) *Where such an application is made before the commencement of any relevant action, the Court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the Plaintiff, it appears to the Court that, if such an action were brought forthwith and like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient-*
- (a) *To establish that cause of action, apart from any defence under subsection (1) of Section 4; and*
- (b) *To fulfil the requirements of subsection (3) of Section 16 in relation to that cause of action.*
- (3) *Where such an application is made after the commencement of a relevant action, the Court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the Plaintiff, it appears to the Court that, if the like evidence were adduced in that action, the evidence would, in the absence of any evidence to the contrary, be sufficient-*
- (a) *To establish that cause of action, apart from any defence under subsection (1) of Section 4; and*
- (b) *To fulfil the requirements of subsection (3) of Section 16 in relation to that cause of action.*

and it also appears to the Court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the Plaintiff that the matters constituting that cause of action had occurred on such a date as, apart from the last preceding section, to afford a defence under subsection (1) of Section 4.

(4) *In this section, "relevant action", in relation to an application for the leave of the Court, means any action in connection with which the leave sought by the application is required.*

3.9 In view of the above provision of the Limitation Act even if the Plaintiff makes an application for leave of Court to maintain this action the Plaintiff should satisfy the Court that until after the commencement of this action, it was outside his knowledge that the matter constituting the cause of action had occurred on such a date as to afford a defence under subsection (1) of Section 4.

3.10 In this matter the Plaintiff's Solicitor issued a Demand Notice to the Defendant in respect of the claim on 17th April, 2013. Therefore the Plaintiff cannot now say that he was not aware of all material facts of a decisive character prior to the time limited for instituting the current action.

3.11 Plaintiff's Affidavit in Reply to this application and the written submission filed by him does not address the issue of Limitation.

3.12 For the reasons set out above I hold that the Plaintiff's action should be dismissed.

3.13 The Learned Counsel for the Defendant in his oral Submission sought \$3000.00 costs summarily assessed to be paid to the Defendant by the Plaintiff. This amount in my view is excessive for a matter of this nature. The Plaintiff who is a victim of an accident is now left with no relief due to his claim being statute barred. Therefore I order costs summarily assessed in a sum of \$1000.00 to be paid to the Defendants in this matter.

4.00 **Final Order**

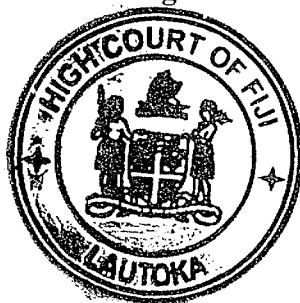
(i) The Plaintiff's Claim dismissed.

- (ii) The Plaintiff is ordered to pay cost summarily assessed in a sum of \$1,000.00 to the Defendants. (\$500.00 to each Defendant).



Lal S. Abeygunaratne

Judge



At Lautoka

4 May 2015