

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

**Civil Action No. HBC 83 of 2010**

**BETWEEN** : Ratu Luke Matanababa

**Plaintiff**

**AND** : Narseys Plastic Industries Limited

**Defendant**

**BEFORE** : The Hon. Mr Justice David Alfred

**Counsel** : Mr D Singh for the Plaintiff  
Ms M Rakai for the Defendant

**Dates of Hearing** : 22 and 23 June 2015

**Date of Judgment** : 4 December 2015

**JUDGMENT**

1. According to the Statement of Claim the plaintiff was employed by the defendant as an industrial attachment/apprentice at the defendant's factory at Suva. On 13 August 2008, the plaintiff was checking a cutting machine when its blade severed 2 fingers and cut 2 other fingers of his right hand. It is contended that the injury was caused by the defendant's breach of statutory duty and/or by the negligence of the defendant and/or its servants and/or agents. The plaintiff is right handed and was awarded 10% incapacity under the Workmen's Compensation Act. The plaintiff is claiming general damages, special damages, interest and costs.

2. The Statement of Defence admits the plaintiff was employed by it as he contends; that he was checking the said machine; and that he was injured. However, the defendant denies liability and contends that the plaintiff caused or contributed to his injury by his own negligence, and denies his claims.
3. An Agreed Bundle (AB) was provided to the Court at the commencement of the hearing.
4. The Minutes of the Pre-Trial Conference held on 15 September 2014 record:
  - (A) **The Agreed Matters:**
    - (i) At all material times the plaintiff was employed by the defendant as an industrial attachment/apprentice.
    - (ii) On 13 August 2008, the plaintiff got injured while checking a plastic cutting machine in the course of his employment with the defendant.
  - (B) **Amongst the Matters in Dispute:**
    - (i) Whether the said accident was caused by the sole and/or contributory negligence of the plaintiff.
    - (ii) Whether the plaintiff is entitled to special damages, loss of future earnings, costs of future care and interest and costs.
5. The plaintiff called as his first witness, Dr Semesa Matanaicake (PW1) who stated he was a surgeon in the Colonial War Memorial Hospital. He gave his medical qualifications and experience. He said AB page 2, a medical report on the plaintiff was written by him. The injuries were amputation of 2 fingers. He was not aware of the injuries to the other 2 fingers as he was not the primary physician. He concluded the plaintiff is able to write but with reduced power; he will have difficulty in using tools but he can adapt; the younger the person, the greater the ability to adapt.

6. Under cross examination, PW1 said the plaintiff presented his ring and middle fingers and that was all PW1 had to assess his workmen's compensation incapacity (at 10%).
7. The plaintiff's next witness was Zoheb Shaheer Hussein (PW2) a co-worker. He said the plaintiff was sent by the supervisor to fix the machine but the supervisor did not go with him. They were paging on the intercom for Raphael, the supervisor, to attend to the breakdown but he did not go. PW2 did not look at the machine where the plaintiff was injured.
8. Under cross examination PW2 said he heard Raphael tell the plaintiff to fix the machine. He did not see the particular incident.
9. The final witness was the plaintiff (PW3) himself. He said he had a Diploma in Mechanical Engineering from the Fiji Institute of Technology (F.I.T). On the day of the accident he was assisting 2 Taiwanese technicians on a colour printing machine. Raphael came to him and said go and fix the machine in the cutting section. Raphael is the 2<sup>nd</sup> in charge of the mechanical section and the maintenance department. Raphael was his superior on that day. When he was adjusting the blade, it fell on his fingers.
10. In answer to the Court, he said he had then been working for 7 months but had never fixed a machine before. No one had warned him not to put his fingers inside the machine. There were no warning signs not to touch the machine. Another operator had run up and switched off the entire machine. He was then taken to hospital, where a doctor attended to him. He did not return to work at the defendant's because he had to continue with his studies at F.I.T and his work contract with the defendant on an attachment basis ended in January 2009. Now he could not grip tools. He said he had spent \$200.00 on medical expenses and \$600.00 on transport expenses to attend hospital.

11. Under cross examination, PW3 said he is a production operator at Paradise Beverages for the past 6 months. After the accident he graduated with 2 diplomas. He was now earning \$7.00 per hour working 40 hours per week plus overtime.
12. In re-examination, PW3 said if he did not listen to Raphael, his contract could be terminated. With this the plaintiff closed his case.
13. The defendant commenced its case by calling Ms Letila Vaturogo (DW1). She was working with the defendant as a machine operator. She recalled calling for the maintenance as her mould was not punching properly. She paged for Raphael but the plaintiff turned up. She told him to call Raphael and not to touch the machine. She switched on the machine and saw the plaintiff in front of it. She heard a scream and the plaintiff was shouting. She checked the machine and saw blood.
14. Under cross examination, DW1 said she paged for Raphael and after 5 minutes, the plaintiff came. She did not switch off the machine. She told him what was wrong with the machine. She showed him what the problem was. She pointed out to him which blade was not cutting. She showed him how the blade could be adjusted. The machine was switched on when the plaintiff was fixing the machine. One Indian lady switched off the machine. She could not switch off the machine if there is no breakdown. This is from her supervisor. Raphael was the plaintiff's boss on that day.
15. The defendant's next witness was Raphael Datuin (DW2), currently working with the defendant as an electro mechanical technician. His job was to maintain the machines throughout the entire factory. He worked with apprentices or work attachees. The plaintiff was the attachee in the mechanical section.
16. DW2 was paged once when he was checking the 6 colour machines. He could not go so he asked the plaintiff to go to the cutting section, ask the operator what was the problem and come back. After 10 minutes he (DW2) went up but could

not see the plaintiff and was informed by the operators that he had been rushed to hospital. An apprentice is not allowed to touch any machine unless he (DW2) was there. He did not tell the plaintiff to fix the machine.

17. In cross examination, DW2 said he considered the plaintiff as a competent and reliable apprentice. The machines had a quota to finish and if one broke down it would have an effect on production. Its repair depends on his availability. He would classify the machine as dangerous. This was the first time he sent the plaintiff alone to check the machine. He said it is a better practice to accompany the trainees than to send them alone.
18. The final witness for the Defendant was Ajit Narsey (DW3) the IT Administrator and company secretary of the defendant. He said at the material time, the plaintiff came on attachment and was injured. The apprentice is not supposed to work alone but to be with the supervisor. The plaintiff was injured because he ignored what (DW1) told him not to do.
19. In cross examination DW3 said Raphael (DW2) could pick up the phone or ask someone to go and see what was the problem. He was aware an apprentice should be supervised by a qualified person and should be accompanied by a supervisor if working on a machine.
20. After his re-examination, the defendant closed its case.
21. The oral submissions now commenced. Counsel for the defendant submitted that the defendant's witnesses had told the plaintiff not to touch the machine and he was only to go and see the operator and come back. But he did not do what he was told and did the harm to himself. The plaintiff was therefore wholly liable. Counsel submitted various authorities on liability and quantum and why the special damages should not be allowed.
22. Counsel for the plaintiff in his submission said DW2 testified he did not tell the plaintiff not to touch the machine. A supervisor cannot abdicate his

responsibility by telling an attachee to look and come back. There was causative or moral blameworthiness here. There was a sudden fall of the blade and the plaintiff was not conscious of the risk. There was a breach of the duty of care to the plaintiff resulting in injuries, damage and loss of amenities of life. Liability was entirely on the defendant.

23. Counsel then submitted on the quantum of damages. He said general damages should be \$50,000.00 and special damages should be \$600.00. The multiplier for loss of earnings should be 16 (years) and the multiplicand \$20.00; thus the quantum should be 52 weeks x \$20.00 per week x 16. He asked for interest at the specified rates and costs of \$4,000.00 to \$5,000.00. Finally he submitted that contributory negligence only reduces general damages.
24. Counsel for the defendant in her reply said the multiplier should not be used; that she agreed with plaintiff's counsel on the rates of interest and that contributory negligence only reduced general damages and not special damages and said costs should be \$500.00 to \$700.00.
25. At the conclusion of the hearing, I directed both Counsel to file and serve their respective Bundles of Authorities by 30 June 2015 and fixed the matter for mention on 1 July 2015. On that date I informed Counsel that I would deliver my judgment on a date to be announced.
26. In the course of reaching my decision, I have perused the following:
  - (a) The Bundle of Pleadings;
  - (b) The Agreed Bundle of Documents;
  - (c) The Plaintiff's Bundle of Authorities;
  - (d) The Defendant's Bundle of Authorities.
  - (e) The Defendant's Additional Bundle of Authorities.
27. I now deliver my judgment.

28. The facts of the claim are clear from the Minutes. The plaintiff was injured while checking a cutting machine during the course of his employment with the defendant. The only issues then for the court to decide are whether the plaintiff was wholly or contributory negligent and the extent of his injuries and thus his consequent loss and damage.
29. Taking the issue of liability first. I have had the advantage of observing the demeanour in the witness box of the plaintiff and the witness called on both sides and assessing their credibility.
30. I am satisfied that the plaintiff's version is the more plausible, based on a review of the totality of the evidence given during the course of the hearing.
31. The plaintiff testified that DW2, his superior came to him and told him to go and fix the machine. If he did not listen to DW2, his contract could be terminated.
32. To my mind, I am satisfied the plaintiff, when he was injured, was carrying out the instructions of his superior to fix the machine and not merely to observe it. It is clear that for the superior, it was important that the machine be rectified so that the production would not be (adversely) affected.
33. The supervisor, DW2 had other things to attend to and consequently delegated to his apprentice (the plaintiff) the patently dangerous task of rectifying a dangerous machine.
34. I therefore find as a fact that the injuries that the plaintiff suffered were solely the result of the Defendant and/or its servants or agents' negligence in wilfully exposing the plaintiff to a known risk, in failing to take any measures for his safety when he carried out a task he was instructed to perform and in the defendant's breach of its statutory duty to provide the plaintiff with a safe system of work.

35. I find that there is no evidence of any contributory negligence on the part of the plaintiff and I therefore find and so hold that the plaintiff has satisfied me on a balance of probabilities that the defendant is solely liable for the accident.
36. I turn now to the other issue that of the damages.
37. The sole medical evidence before me is that of the doctor (PW1) and his medical report, AB2. I have perused the authorities cited. I am cognizant of the fact that the award I am going to make must be both in consonance with the trend of awards for similar injuries and also appropriate for the present plaintiff's injuries.
38. I will base my award on the fact that his incapacity was not so severe as those of the plaintiffs in the cases cited. Also with his youth at the material time his ability to adapt is and has been greater. In *Nisha v Eastern Apparels Company Ltd* [2001] FJHC 221, \$15,000.00 was awarded for the amputation of the little finger of the left hand. In *Singh v Domalco Ltd* [2000] FJHC 197, \$25,000.00 was awarded to a plaintiff whose left ring and little fingers were amputated.
39. In my opinion a sum of \$25,000.00 as general damage would be appropriate and adequate compensation to the plaintiff for pain and suffering and loss of amenities and taking into consideration the 10% incapacity under the Workmen's Compensation Act, and I so award this sum.
40. For loss of earnings I would allow 1 year's loss at \$20.00 per week which would come up to \$1,040.00. Applying the *de minimis non curat lex* principle, I would allow the special damages at \$600.00. I will not allow any loss of future earnings because I note that the Plaintiff, in his evidence, said he is currently earning \$7.00 per hour working 40 hours per week plus overtime.



41. I therefore enter judgment for the plaintiff and order the defendant to pay the plaintiff:

- (1) General Damages of \$25,000.00
- (2) Special Damages of \$600.00
- (3) Interest on (1) at the rate of 6% per annum from the date of filing of the writ to the date of judgment.
- (4) Interest on (2) at the rate of 3% per annum from the date of the accident (13 August 2008) to the date of judgment.
- (5) Interest at the rate of 4% per annum on the judgment sum of \$25,600.00 from the date of judgment to the date of realization.
- (6) Costs, which I summarily assess at \$3,000.00.

**Dated this 4<sup>th</sup> day of December 2015 at Suva**



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David Alfred  
**JUDGE**  
High Court, Suva