

In the High Court of Fiji
At Labasa
Civil Action No. 38 of 2015

BETWEEN:
Sheik Mohammed Tasheen
Plaintiff
And
Jaswant Prasad
First defendant
And
Aquihu Limited
Second defendant

COUNSEL: Mr A. Kohli for the plaintiff
Mr A. Vulaono for the defendants

Date of hearing: 9th November, 2016

Dates of Judgment: 15th November, 2016

Judgment

1. The plaintiff, in his statement of claim states that on 5th May, 2013, he was driving his motor vehicle bearing "*personalised registration number plate 4 STAR*" on the left lane of the Labasa-Nabouwalu highway, when the first defendant negligently reversed truck bearing number HN 669 belonging to the second defendant from the right lane of the highway on to the path of the plaintiff's vehicle and collided with his vehicle causing it to veer off the road and fall into the drain. The plaintiff's vehicle was damaged. The statement of claim pleads the following particulars of negligence, viz, the first defendant failed to lookout, apply the brakes to steer or control his motor vehicle to avoid the collision and drove his motor vehicle on the wrong side of the road and reversed his vehicle on to the path of the plaintiff's vehicle, when it was unsafe to do so.
2. The first and second defendants, in their statement of defence state that the plaintiff negligently drove his vehicle into their stationary truck. Alternatively, that he was contributory negligent. The defendants plead the following particulars of contributory negligence against the plaintiff, viz:
 - i. *Over speeding and not able to stop his vehicle.*
 - ii. *Failing to keep a look out of parked vehicle as a reasonable driver is expected or would do.*
 - iii. *Failing to steer his vehicle adequately or at all as to avoid the collision.*
 - iv. *Failing to take any or any adequate precautions to avoid the collision.*
 - v. *Failing to take heed of the hazard lights of vehicle registration HN 669.*
3. The plaintiff joins issue with the denials in in the statement of defence.

The determination

4. The primary facts are not in dispute. The plaintiff was proceeding along the left lane of the Labasa-Nabouwalu highway to Dreketi. The first defendant was proceeding in the opposite lane to Seaqaqa, when his truck encountered mechanical problems at Baskalave. He stopped his truck on the white dotted line on his lane. What happened next is disputed.
5. The question for determination is whether the first defendant reversed his truck onto the plaintiff's path, as contended by the plaintiff or whether the truck remained stationary on the right lane of the highway, as argued by the defendants.
6. I turn to consider the evidence.

The plaintiff,(PW1)

7. PW1, in his evidence in chief said that on the evening of 5th May,2013, between 6 to 7pm, he was travelling in his vehicle on the left lane of the Labasa-Nabouwalu highway at a speed of 70 to 80 kmph. He saw a stationary truck on the highway at a distance with its headlights on. The truck was facing Labasa. He flicked his lights. The truck driver dimmed his lights. It was dark at that time.
8. PW1 said that as he was proceeding, the truck suddenly reversed towards the junction on his side and came half way on to his path. He applied his brakes, but could not avoid the collision, as the truck reversed instantly at a distance of approximately 16 metres away from his vehicle. He steered to the left, but collided with the tray of the truck and his vehicle fell into the drain. The driver's side of his vehicle collided with the tray of the truck behind the rear tyre of the other driver's side.
9. PW1 said that the hazard lights of the truck were not on, when the collision occurred. He was not over speeding. He was driving carefully.
10. After the accident, the first defendant asked him if he had not seen that he was reversing.
11. PW1 produced the rough sketch of the accident drawn by the Police depicting that the point of impact was on the left lane of the highway. Three-fourths of the truck was on PW1's path.

12. In cross-examination, PW1 said that he did not slow down as he was proceeding, since the truck was stationary. He was travelling at a normal speed. The truck reversed on to his lane, as he was getting closer to the truck. The road was clear. There was nothing obstructing his view.

Nazeel Janiff, (PW2, Operational Manager, Industrial Sheetmetal and Plumbing Works Metal Ltd, Labasa)

13. PW2 produced his quotation for repair of PW1's vehicle, in a sum of \$ 41500 .

14. In cross-examination, PW2 said that he could not say whether this accident was caused as a result of one vehicle speeding, as he had not witnessed the accident. He agreed that there would not have been the same extent of damage, if the vehicle was driven at a slow speed.

The first defendant (DW1)

15. The first defendant, in his evidence in chief said that his truck was stationary on the white dotted line on the highway, as he encountered mechanical problems. The hazard and headlights of the truck were on. The plaintiff's vehicle was coming at a fast speed.

16. He denied that he was reversing. He said that in that event, the impact would have been in the middle of his truck, not the side. The position of the truck as drawn in the Police sketch is incorrect, albeit he signed it.

17. He was fined \$ 200. He paid the fine.

18. Mr Vulaono, counsel for the defendants referred the witness to his statement to the Police, where he had said that "*Yes I assure you that I was wrong*", in answer to the question "*Do you know that you have parked your truck wrongly which caused the oncoming vehicle to be bumped you*". He clarified he meant that he was "*wrong*", in parking his truck on the white line.

19. In cross-examination, Mr Kohli, counsel for the plaintiff asked the witness why he had removed his truck from the road immediately after the accident. He said that he was shocked, as this was the first time the incident had happened to him. A mechanic came and helped him to remove the truck, as the road was getting busy. The mechanic lived across the road, in the middle of where the truck was positioned.
20. He denied that he was reversing to go to the mechanic's house. He admitted that half the road was clear, there was ample room for another vehicle to pass on the right side.
21. Mr Kohli asked DW1 why he did not tell the Police that PW1 was travelling fast, as he now says. His answer was that he did tell and the Police said that PW1 had been booked many times.
22. He said that he signed the Police sketch, as he was told to. It was the first time he had met with an accident.
23. Mr Kohli elicited that he had no animosity with the Police Officer who drew the sketch.
24. He paid the fine of \$200 the next day. The Police did not ask him to pay at once. It transpired that he earned \$200 per week.
25. At the conclusion of the case for the defendant, Mr Kohli and Mr Vulaono made oral submissions, as directed by Court.
26. On a review of the evidence as a whole, I am of the view that the collision occurred, as a result of DW1 suddenly reversing his truck on to the left lane of the highway to go to the mechanic's house. I have reached this conclusion for the following reasons.
27. In cross-examination, DW1 admitted that the mechanic's house was on a side road, which commenced at the junction on the left lane in the middle of where his truck was positioned. Immediately following the accident, the mechanic "*helped (him) to move the vehicle*".

28. He admitted that he moved on to PW1's path. His cross-examination on this point reads as follows:

- Q. *Was your truck parallel to the white line?*
A. *The tyre was on the white line.*
Q. *Were both the front and rear tyres on the white line ?*
A. *My front tyre was a bit on my side of the white line. The rear tyre was on the white line, but little towards the other side...*
Q. *Did the Plaintiff's van come in a zig zag?*
A. *No.*
Q. *Did the Plaintiff's van come on your side?*
A. *It was on its lane.*
Q. *If it was on its lane, it would have veered towards you or travelled near your truck.*
A. *His vehicle came near my truck. (emphasis mine)*

29. DW1's statement to the Police strongly indicates his intention to reverse, as pointed out by Mr Kohli.

30. I reproduce an extract of his statement:

- Q23. *What happened at Baskalave?*
A. *Whilst I was on my way back to Savusavu, I felt that there was a problem in one of the fuel pipe.*
Q24. *And then what happened?*
A. *I parked the truck on my side and want to reverse.*
Q25. *What happened then?*
A. *I saw the oncoming vehicle and did not apply me reverse gear but only on my hazzard and on my light.*
Q26. *What was your position when you saw the oncoming vehicle?*
A. *The tyre of my vehicle was seen situated on the opposite side from the middle white lane.*
Q27. *At what speed did you apply?*
A. *No, I was parked. (emphasis mine)*

31. The Police sketch signed by DW1 and PW1 depicts that the point of impact was on PW1's path. The sketch depicts three-fourths of the truck positioned at an angle on the left lane of the highway.

32. In my judgment, the sketch plan provides objective evidence to find the first defendant solely negligent.

33. I would note that in the aftermath of the accident, PW1 said that the first defendant had asked him if he had not seen that he was reversing.

34. I accept PW1's version of the events. In my view, he could not have avoided the accident, as DW1 suddenly reversed onto his path.
35. Finally, DW1 was charged under section 99(1) and 114 of the Land Transport Act of 1998 for driving his vehicle "*without due care and attention*", as provided in the Traffic Infringement Notice. It transpired that he paid the fine the next day.
36. I find the first defendant sole negligent for the accident. The plea of contributory negligence fails.
37. The second defendant, as owner of the vehicle is vicariously liable for his negligence. It follows that the defendants are liable for the damage caused to the plaintiff's vehicle.
38. It remains then, to consider the question of damages.
39. PW1 produced three quotations for the repair of his vehicle. PW2's quotation of \$ 41500 was the least expensive.
40. PW2 testified that there was major damage to the chassis, the drivers' side door, the cross member, the front and rear end of PW1's vehicle. It would take 3 months to repair the vehicle. He said that chassis alignment is not done in Fiji, as there is no proper machinery. There is no warranty on the use of second hand parts. It would not be satisfactory.
41. He was not cross-examined on any aspect of his quotation.
42. It follows and I hold that the plaintiff is entitled to judgment against the first and second defendants in a sum of \$ 41500.
43. PW1, in his statement of claim claims general damages for loss of use of the vehicle from 5th May, 2015, at the rate of \$500 per day, which Mr Kohli clarified to be \$ 500 a week. PW1 said that Viti Vanua Holdings Ltd hired his vehicle.
44. It emerged in his cross-examination that his vehicle was not registered for hire. His insurance had expired. Mr Vulaono asked PW1, if he had any receipts from the hiring company or statements to show loss of income. His answer was in the negative.

45. I find it unlikely that Viti Vanua Holdings would not have issued receipts to PW1. I do not accept the plaintiffs' evidence in this regard.

46. The plaintiff's claim for damages for loss of hire of his vehicle is declined.

47. Orders

- (a) The first and second defendants shall pay the plaintiff a sum of \$ 41500.
- (b) The first and second defendants shall pay the plaintiff costs summarily assessed in a sum of \$ 1000.



A.L.B. Brito-Mutunayagam

**A.L.B. Brito-Mutunayagam
JUDGE**

15th November, 2016