

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

Civil Action No. HBC 48 of 2012

**BETWEEN** : **INTERCITIES BUSES SERVICES LIMITED** a limited liability company having its registered office at 7 Nayau Street, Samabula, Suva.

**PLAINTIFF**

**A N D** : **HAROON'S GENERAL HARDWARE STORE** of 15 Vaileka Street, Rakiraki.

**1<sup>ST</sup> DEFENDANT**

**A N D** : **SHAHIDA KHATOON** of 15 Vaileka Street, Rakiraki.

**2<sup>ND</sup> DEFENDANT**

**Appearances** : Mr Pita Katia for Plaintiff  
Mr Mosese Raratabu for 1<sup>st</sup> & 2<sup>nd</sup> Defendants

**Date of Hearing** : 3 July 2017

**Date of Judgment:** 3 July 2017

**R U L I N G**

- [01] When the matter was taken up for trial, counsel appearing for the Plaintiff made an application that the Defendants should begin the case, for they have pleaded inevitable accident as defence.
- [02] In response, Mr Raratabu, counsel appearing for the Defendants admittedly submitted that the Defendants will only rely on the judgment of the Magistrate's Court in Traffic Case No.43 of 2011, where the Court

acquitted the second Defendant (accused in the Traffic Case) on all traffic charges emanated from the accident that occurred on 20 January 2011.

- [03] The Defendants admit that on 20 January 2011, the Plaintiff's vehicle and the Defendant's vehicle were involved in a collision at Vitawa Road junction in Rakiraki.
- [04] The defence raised by the Defendants in their amended statement of defence filed on 01 August 2016 is that the collision occurred due to mechanical defects (no particulars given) which was beyond the knowledge of the Defendants (See para 6 of the Statement of Defence).
- [05] It is obvious that the Defendants rely on the mechanical defects as the cause of the accident and it appears that their defence is one of inevitable accident.
- [06] Counsel for the Plaintiff submits that the inevitable accident must be proved by the Defendants. As such, they have to begin the case. He relies on the case authority of *Singh v Katonivere* [1979] FJHC 203; Hbc 0242j.94s (20 March 1997), where Pathik J said:

*The defence of "inevitable accident" was also raised by Mr Singh in his address to Court.*

*What is required to be proved by the defendant in this regard is a set out in the judgment of **LORD JUSTICE FRY** in THE MERCHANT PRINCE 892 p.179 when he said:*

***"The burden rests on the Defendants to show inevitable accident. To sustain that, the defendants must do one of two things. They either show what was the cause of the accident, and show that the result of that cause was inevitable; or they must show all the possible causes, one or other of which produced the effect, and must further show with regard to every one of these possible causes that the result could not have been avoided. Unless they do one or other of these two things, it does not appear to me that they have shown inevitable accident."***

*On the evidence before me I find that he has not shown **inevitable accident.***”

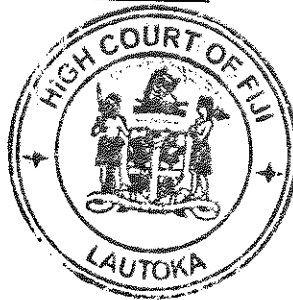
[07] I accept the submission advanced by the Plaintiff that the Defendants must begin the case as they have pleaded the defence of inevitable accident as a result of mechanical defects.

[08] Accordingly, I order that the Defendants must begin the case.

*M.H. Mohamed Ajmeer*  
3.7.17

**M.H. Mohamed Ajmeer**

**JUDGE**



**At Lautoka**

**3 July 2017**