

THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC No. 193 of 2016

BETWEEN : PRABHA

PLAINTIFF

AND : MOHAMMED RAIYAZ

FIRST DEFENDANT

AND : MADDOOR LAL

SECOND DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr D. Singh for the Plaintiff
Mr P. Katia for the First and Second Defendants.

Date of Hearing : 11 October 2018
Date of Judgment : 30 November 2018

JUDGMENT

1. The Plaintiff in her Statement of Claim says as follows:
 - (1) She is a widow who was born on 25 February 1956.
 - (2) The First Defendant was the driver of motor vehicle registration number LT 5011 (vehicle) as a servant or agent of the Second Defendant the registered owner of the vehicle. The vehicle was insured with Sun Insurance Limited.
 - (3) On 15 June 2016 (sic, 2015) the Plaintiff was walking along Newtown Squatter Road, Manoca when the First Defendant negligently reversed the vehicle and collided with the Plaintiff.
 - (4) The Plaintiff will rely on Regulations 8 and 50 of the Land Transport (Traffic) Regulations 2000 for proof of negligence as alleged.

Particulars of Negligence

- (a) Reversing without first ascertaining and ensuring it was safe to do so.
 - (b) Failing to keep a proper lookout and have regard for the Plaintiff or to see her.
 - (c) Failing to stop, swerve or so to control the vehicle as to avoid the accident.
 - (d) Failing to exercise care and control of the vehicle.
 - (e) Failing to give any warning of his approach.
 - (f) Driving without due care and attention.
- (5) The Plaintiff suffered a Tibial Plateau fracture and had open reduction and fixation of the fracture done.
 - (6) The particulars of special damages were:
 - (a) Medical report \$57.50

(b) Medication	\$100.00
(c) Cost of transport	\$200.00
(d) Diapers	\$150.00
(e) Loss of earnings	\$4320.00
(\$120 a week for 9 months)	

\$4827.50

(7) Wherefore the Plaintiff claims general and special damages, gratuitous care and costs of future care.

2. The Defendants in their Statement of Defence say as follows:

- (1) They take no issue with paras 1,2,3,4 and 5 of the Statement of Claim.
- (2) They state the First Defendant did not negligently reverse the vehicle and collide with the Plaintiff.
- (3) Any injury, loss or damage suffered by the Plaintiff were wholly caused by the Plaintiff's own negligence.

Particulars of Negligence

- (a) The vehicle did not come into contact with her.
- (b) The Plaintiff slipped tripped or fell due to the condition of the road.
- (c) Failing to take care for her own safety.

(4) The Plaintiff's injuries and special damages are denied.

3. The Minutes of the Pre-Trial Conference dated 25 May 2018 record, inter-alia, the following:

Agreed Matters

- (1) The First Defendant was the driver of the vehicle and acting as a servant or agent of the Second Defendant the registered owner of the vehicle.
- (2) There was a policy of insurance for the vehicle in accordance with the Motor Vehicle (Third Party Insurance) Act with Sun Insured.

Matters in Issue

- (a) Whether the First Defendant drove the vehicle negligently and collided with the Plaintiff.
 - (b) Whether the Plaintiff was negligent in falling and causing her own injury without coming into contact with the vehicle.
 - (c) Whether the Plaintiff is entitled to gratuitous care and cost of future care.
4. At the outset of the hearing Mr Katia informed the Court that he was not calling any evidence. Both Counsel confirmed that subject to liability being established the special damages (excluding loss of earnings) were agreed at \$500.
 5. The first witness called was Dr Vueta Vou Scott Buadromo (PW1). He said the medical report (AB tab 8) was written by him.
 6. At this juncture Mr Katia stated that all the documents in the Agreed Bundle (AB) are tendered as exhibits and he confirmed that all were agreed and admitted.
 7. PW1 continued. He said the Plaintiff was involved in a motor vehicle accident and her fracture was as a result of a high velocity injury and it is consistent with a motor vehicle impact. It is almost never from falling on a surface. She was a

farmer and a market vendor and would have difficulties in such activities. Her whole person impairment is 15%.

8. Under cross-examination, PW1 said falling on the knee would not cause a fracture. It would require a push.
9. In re-examination PW1 said the possibility of the Plaintiff suffering arthritis is very likely.
10. The next witness was the Plaintiff herself (PW2). She said she was going to the market on foot when the taxi reversed and knocked into her right leg. She was knocked down, tried to get up but the taxi reversed into her again. She was hospitalized for one month and bedridden for 1 year. Her daughter looked after her and could not go to school for one year. Before the accident she did farming but cannot now because of the pain. She is claiming loss of earnings during the period she was bed ridden and for the gratuitous care of her daughter.
11. Under cross-examination PW2 said she was wearing shoes and not flip flops. The taxi reversed and bumped into her from behind. The taxi was on the road beside the walkway on which she was walking. The taxi knocked into her again. The taxi was proceeding at a fast pace.
12. The next witness was Ms Merlyn Geeta (PW3). She said she saw the taxi reverse and knock the Plaintiff.
13. Under cross-examination PW3 said she was 10m from the scene of the accident. The taxi bumped into the Plaintiff. She was wearing shoes.

14. Both parties now closed their cases and Counsel made their oral submissions.
15. Mr Singh said the doctor's evidence was of a high velocity impact. The tibia is one of the strongest bones and it is difficult to slip and fall and break that bone. The evidence of the Plaintiff and PW3 is consistent with a motor vehicle accident.
16. Counsel said the general damages should be \$60,000. The loss of earnings should be at \$120 p.w. for 3 years. The gratuitous care should be for 1 year at \$50 p.w. The global award for future care should be \$5,000. There is no contributory negligence as she was bumped from behind. Costs should be \$3,500.
17. Mr Katia then submitted. He said there was contributory negligence by the Plaintiff of 30%. The damages for pain and suffering should be reduced by 30%. The Court should look at the AB documents in arriving at liability.
18. Mr Singh replied that the driver's absence speaks for itself. There was no contributory negligence as the Plaintiff was hit from behind.
19. At the conclusion of the arguments I said I would take time for consideration. Having done so I shall now deliver my decision.
20. I shall first deal with the issue of liability. A careful perusal of the Statement of Defence discloses no allegation of contributory negligence against the Plaintiff. The allegations in para 3 is that the injuries, loss and damage" suffered by the Plaintiff was/is wholly caused by the Plaintiff and her own negligence".

21. Since a party is bound by their pleadings the Defendants cannot now contend through their Counsel's submission at the Bar Table that the Plaintiff was 30% contributorily negligent, not having pleaded it.
22. The Defendants' Counsel through his cross-examination of the Plaintiff established that while walking on the walkway the vehicle reversed and knocked into her. This was confirmed by the evidence of PW3.
23. Then I note from tab 7 of the Agreed Bundle that one, Savita Wati, made a police statement that the vehicle reversed and bumped one lady who walking on the left side of the road.
24. Finally there is tab 6 of the Agreed Bundle which is the statement from the Traffic Officer, Nausori stating "The matter was reported to Nausori Police station whereby the driver (Mohammed Raiyaz) of vehicle registration number LT5011 was interviewed under caution for careless driving and was warned for prosecution at Nausori magistrate court".
25. Thus as submitted by the Defendants' Counsel, the Court has looked at the documents in the AB, has also considered the legal position regarding pleadings and the evidence during the hearing, and come to the conclusion that the First Defendant as the servant and agent of the Second Defendant was wholly liable for the accident. There was no contributory negligence on the part of the Plaintiff.
26. I now turn to the issue of the quantum of damages. For pain and suffering and loss of amenities I shall award \$60,000. For loss of earnings I shall award \$6,240

(\$120 x 52 weeks). For gratuitous care I shall award \$2,600 (\$50 x 52 weeks). For future care I shall make a global award in the notional sum of \$2,500.

27. In the result I enter judgment against the First and Second Defendants and order them to pay the Plaintiff:

- (1) \$60,000 as general damages.
- (2) \$6,240 as loss of earnings.
- (3) \$2,600 for cost of gratuitous care.
- (4) \$2,500 for cost of future care.
- (5) \$500 for agreed special damages
- (6) Interest on (1) at the rate of 6% p.a. from the date of issue of the writ to the date of judgment.
- (7) Interest on (2) and (5) at the rate of 3% p.a. from the date of the accident (15.6 2015) to the date of judgment.
- (8) Interest on the judgment sum (\$71,840) at the rate of 4% p.a. from the date of judgment to the date of payment.
- (9) Costs of the action summarily assessed at \$3,500.

Delivered at Suva this 30th day of November 2018.



David Alfred

Judge

High Court of Fiji