

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Case No.HBC 126 of 2016

BETWEEN : SAVITA DEVI

Plaintiff

AND : MOHAMMED IMTIAZ GUL aka IMTIAZ GUL MOHAMMED

First Defendant

: TIMOCI KAISUVA

Second Defendant

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr S. Singh for the Plaintiff

: Ms. S. Saumatua for the First and Second Defendants

Date of Hearing : 5 July 2018

Date of Judgment : 20 September 2018

## JUDGMENT

1. According to the Statement of Claim:
  - (1) The Plaintiff is the lawful wife (sic, widow) of Praveen Singh (deceased). Letters of Administration to the Estate of the deceased was granted by the High Court on 18 May 2015.
  - (2) The Plaintiff brings this action:
    - (a) On behalf of the deceased's Estate under the Law Reform (Miscellaneous Provisions)(Death And Interest) Act (Cap 27).
    - (b) On her own behalf by virtue of the Compensation to Relatives Act (Cap 29).
  - (3) The First Defendant was the registered owner of motor vehicle No LM 374 (vehicle) driven at the material time by the Second Defendant, as a servant, agent or with ostensible authority of the First Defendant.
  - (4) Circa 9 March 2015 the Second Defendant so negligently and unskillfully drove the vehicle on the wrong side of Edinburgh Drive, off the road and collided into the deceased who was trying to cross the road. The Particulars of his Negligence were set out.
  - (5) The deceased was fatally injured in the accident and his Estate suffered special damages of funeral expenses of \$5,000.
  - (6) The claim is also brought on behalf of the following persons:
    - (i) The Plaintiff SAVITA DEVI, the wife of the deceased.
    - (ii) PRAVINESH PRATIK SINGH, a son of the deceased.
    - (iii) PARISH PRASHANT SINGH, a son of the deceased; and
    - (iv) PUNEET PRASHANT SINGH, the son of the deceased

- (7) The deceased was about 50 years old at his death. He was a bus driver and a part time mechanic. He earned about \$124.60 per week as a driver and about \$250 per week as a mechanic.
2. The Defendants in their Statement of Defence aver as follows:
- (1) The accident was caused and/or contributed to by the negligence of the deceased which included crossing the highway from in front of a bus.
3. The Plaintiff filed a Reply to the Defence.
4. The Minutes of the Pre-Trial Conference dated 23 August 2017 record, inter-alia,

**Agreed Facts:**

- (1) The First Defendant was the registered owner of the vehicle which was driven by the Second Defendant as a servant or agent or with ostensible authority of the First Defendant.
- (2) The deceased received fatal injuries which resulted in his death.

**Issues to be Determined:**

- (1) Whether the Second Defendant drove the vehicle negligently and unskillfully.
- (2) Whether the Plaintiff (sic, deceased) contributed to his demise by his own negligence.
5. At the outset of the hearing, Mr Singh sought to amend the earnings of the deceased to \$151.68. Ms Saumatua objected but I allowed the amendment. The hearing commenced with the Plaintiff (PW1) giving evidence. She said she was born on 27 May 1964 and was married on 5 December 1989 to the deceased who was born on 26 January 1965. She had never worked. The deceased died in the accident. There was no pedestrian crossing and no traffic lights at the scene of the accident. The accident was caused by the Second Defendant who had been convicted and sentenced to 1 year and 6 months

imprisonment for dangerous driving. She said when she arrived at the Colonial War Memorial Hospital, she was informed by the doctor that the deceased had passed away. At the time of the accident, their eldest child was in New Zealand, the second in the United States and the third was getting ready for school.

6. PW1 said the deceased worked 48 hours p.w. and his wages were \$151.68 p.w. No one else was working in her family. The deceased took care of them from his wages as well as by his earnings as a mechanic privately. She said the deceased had no medical condition and there was no retirement age for a bus driver nor a retirement age for a mechanic. But for the accident he would have continued working as both. She is claiming \$5,000 for funeral expenses for which she has no receipts nor invoices.
7. Under cross-examination, PW1 said she received no financial assistance from the deceased's employer. She said there was a pedestrian crossing but that was 15 – 20 minutes away from the scene. The deceased had almost crossed the road when the vehicle had overtaken and caused the accident.
8. The next witness was Pradeep Singh (PW2) who said the Plaintiff and her late husband were his neighbours. He said the deceased was a bus driver and part time mechanic.
9. Under cross-examination, PW2 said he did not know if the deceased had a licence to operate from his home. He was only doing private jobs.
10. With that the Plaintiff closed her case. Ms Saumatua informed the Court that the Defendant would not be calling any evidence.
11. Mr Singh then submitted. He referred to the criminal conviction of the Second Defendant. [This was put in with the consent of Ms Saumatua]. He said there was no evidence of any contributory negligence. The Plaintiff had proved the dependence of herself and the 3 children on the deceased and the Defendant had not provided any contradictory evidence.

12. Counsel asked for \$2,500 for loss of expectation of life of the deceased and \$5,000 for funeral expenses which had not been challenged. For the lost years, he asked for \$151.68 p.w. plus \$250 p.w. for 8 years. After allowing a 1/3 deduction the claim would be \$70,142.44 and interest based on a 100% liability basis.
13. Ms Saumatua then submitted. She said liability should be apportioned at 70% against the Defendants and 30% against the deceased. The deceased was contributorily negligent in that he did not use a pedestrian crossing to cross a busy highway where cars travelled at high speed. She would allow \$3,500 for funeral expenses and \$2,000 for loss of expectation of life. For the lost years only the deceased's income as a bus driver should be considered and the net pay and not the gross. He would have spent 1/3 on himself and 2/3 on the family. The retirement age is 55 years. The loss should be \$77.52 x 52 weeks x 5 years which would give a total of \$20,155.20.
14. Mr Singh in his reply said there was no legal authority for the proposition that a party can rely on contributory negligence without calling any evidence to support it. The bank statements prove the deceased's side income as a mechanic.
15. At the conclusion of the arguments I said I would take time for consideration. Having done so I now deliver my judgment.
16. The issue of liability will first be resolved. It is axiomatic that in running down actions a decision in one case is no more than a guide to arriving at a decision in another. The factual matrix is never 100% similar. The instant case is one such example.
17. Here I am assisted by the judgment of the Resident Magistrate (RM) delivered on 18 August 2017 (Exhibit P2). At para 188 of the judgment, the RM states "I have had the benefit of hearing the evidence and observing the demeanour of the witnesses in the witness box. I accept the evidence of PW7 the passenger in the Tacirua bus and reject the evidence of the Accused".

18. Then at para 190 the RM says “An objective view of the situation in this case is that the Accused created the dangerous situation by overtaking the bus and crossing double hard lines onto the other side of the road. He was also speeding and failed to apply the brakes in time to avoid hitting the victim on the opposite side of the road which was a fault in his manner of driving and which is extremely dangerous”.
19. In the absence of any evidence from any witness called by either side as to how the accident occurred, this Court has to rely on the judgment of the RM in arriving at its decision here on the issue of liability. So I shall turn to the Civil Evidence Act 2002.
20. Section 17(1) thereof lays down that in any civil proceedings the fact that a person has been convicted of an offence by a court is, subject to subsection (3), admissible in evidence for proving that the person committed the offence.
21. Subsection (3)(a) provides that the person is taken to have committed the offence unless the contrary is proved, which has not happened in this case.
22. I am fortified in the decision I am arriving at here by the decision of Pathik J. in : Mei Bui AND Parmend Singh [2005] FJHC 439 : 2005 where he said “In order for the deceased to contribute to the negligence he should in some way be careless in looking after his own safety”.
23. In this case, there is no evidence before this Court that the deceased was careless in looking after himself”. I accept the RM’s finding in para 190 and in the words of Pathik J “I find that no element of contributory negligence arises in this case”. Consequently the Second Defendant was solely negligent and the First Defendant is vicariously liable because it is an agreed fact that the Second Defendant drove the vehicle as a servant, agent or with ostensible authority of the First Defendant. In the event the Defendants are held solely liable for the death of the deceased.

24. I shall now consider the quantum of damages. I would award \$2,500 as damages for loss of expectation of life and \$4,000 for funeral expenses. I am here applying the maxim "de minimis non curat lex".
25. This leaves for consideration the claim for the lost years. His birth certificate states the deceased's date of birth as 26 January 1965. Thus he was 50 years of age at his death. Since it is accepted that the usual retirement age in Fiji is 55 I shall apply a multiplier of 5 (years). The deceased's income I find, on the evidence led, to be the sum of \$151.68 p.w. as a bus driver and \$50 p.w. as a part time mechanic. This is because I accept that a father would find it necessary to augment his full time income by the income obtained from a part time job, in order to put bread on the table for his family. This would give a total of \$201.60 which I round off to \$200 p.w. From this I shall deduct 1/3 (\$66) for what the deceased would have spent to maintain himself at his standard of living. Thus the available surplus would have been \$134 p.w. Consequently the quantum for this claim is \$34,840 ( $\$134 \times 52 \times 5$ ).
26. In my computation of the above claim I am relying on the decision of the English Court of Appeal in : *Harris v. Empress Motors Ltd. Cole and Anor v. Crown Poultry Packers Ltd* [1984] 1 W.L.R 212, 213.
27. In the result I order the First and Second Defendants to jointly and or severally pay the Plaintiff:
- (1) \$2500 as damages for loss of expectation of life.
  - (2) \$4,000 for funeral expenses.
  - (3) \$34,840 as damages for the lost years.
  - (4) Interest on (1) and (2) above at the rate of 3% p.a. from the date of the accident (9 March 2015) to the date of judgment.
  - (5) Interest on the judgment sum of \$41,340 at the rate of 4% p.a. from the date of judgment to the date of payment.
  - (6) Costs of this action summarily assessed at \$1,750.

Delivered at Suva this 20<sup>th</sup> day of September 2018.



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David Alfred

**JUDGE**

High Court of Fiji