

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**APPELLATE (CIVIL) JURISDICTION**

**CIVIL APPEAL NO. HBA 17 OF 2019**

MC Appeal No. 03 of 2019

Small Claims Tribunal No. 157 of 2018

**BETWEEN** : **PREM CHAND t/a DISCOUNT RENTAL CARS** of Cloplott, Ba,  
Fiji, Businessman.

**APPELLANT/CLAIMANT**

**AND** : **RAVINESH PRASAD** of Tauvegavega, Ba, Fiji, Shop Assistant.

**RESPONDENT/RESPONDENT**

**Appearances** : Mr A. Dayal for the appellant  
Ms V. Diroiroi (LA) for the respondent

**Date of Hearing** : 09 August 2019

**Date of Judgment** : 09 August 2019

## **J U D G M E N T**

[01] This is a timely appeal from the Magistrates Court sitting at Ba. By his decision dated 30 April 2019, the Learned Magistrate dismissed an appeal brought by the appellant and confirmed an order made by the Small Claims Tribunal ('SCT') dismissing a claim filed by the appellant.

[02] Today, 9 August 2019, the appeal came on for hearing, when Mr Dayal counsel appearing for the appellant informed the court that the parties have reached a settlement in that the respondent had agreed to pay \$3,700.00, the sum claimed in the SCT at the rate of \$50.00 a month commencing September 2019, and the payment is to be made on or before the first day of each month.

[03] Ms Diroiroi of counsel for the respondent confirmed the settlement and the payment arrangement.

[04] As a result of the settlement, both counsel jointly make a request that the decisions of the SCT and Magistrates Court should be set aside.

[05] In appeal, the appellate court has wider jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appeal court as a court of first instance. **Order 37, Rule 18** of the Magistrates' Courts Rule (MCR) states:

*"18 The appellate court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the appellate court thinks fit to determine before final judgment in the appeal, and, generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs."* [Emphasis provided]

[06] Since the parties have reached a settlement, I would enter judgment by consent for the appellant in the sum of \$3,700.00. Accordingly, the respondent will pay \$50.00 a month commencing September 2019 until the judgment sum is fully paid. The respondent is to make payment on or before the first day of each month.

[07] I am satisfied that, in view of the settlement, I should set the decisions of the Small Claims Tribunal of 16 October 2018 and Magistrates Court of 30 April 2019. So do I. I would remit the case back to the Magistrates Court, Ba. There will be no order as to costs.

### **The result**

1. Appeal allowed.
2. Decision of the Small Claims Tribunal dated 16 October 2018 set aside.
3. Decision of the Magistrates Court dated 30 April 2019 set aside.
4. Judgment in favour of the appellant for the sum of \$3,700.00.

5. Respondent shall pay the judgment sum at the rate of \$50.00 a month commencing next month (September 2019). Such payment shall be made on or before the first day of each month until the judgment sum is fully satisfied.

*M.H. Mohamed Ajmeer*  
9/8/19

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**M.H. Mohamed Ajmeer**  
**JUDGE**



**At Lautoka**  
**9 August 2019**

Solicitors:

Dayal Lawyers, Barristers & Solicitors for the appellant  
Legal Aid Commission for the respondent