

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

**CIVIL ACTION NO. HBC 5 OF 2016**

**BETWEEN** : **ASHNA SHAYAL VANDHNA** of Malolo, Nadi, Unemployed by her father and next friend. **MOHINESH CHANDRA MANI** of Malolo, Nadi, Farmer.

**PLAINTIFF**

**AND** : **SKYGLORY LIMITED** a limited liability company having its registered office at 79 Cumming Street, Suva.

**FIRST DEFENDANT**

**AND** : **NILESHNI IRENE RESHMI** of Nausori, Manager.

**SECOND DEFENDANT**

**Appearances** : Ms J. Singh for the plaintiff (LAC)

Mr S. Singh for the defendant

**Date of Trial** : 30 May 2019

**Date of Judgment** : 21 August 2019

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

### **Introduction**

[01] The plaintiff brought a personal injury claim against the defendants. The claim arises out of an accident which occurred on 28 March 2015. The plaintiff alleges that the accident occurred as a result of the second defendant's negligence driving.

[02] The plaintiff is a minor and the action is brought by her father on her behalf.

## Background

- [02] The background facts, as alleged by the plaintiff, are as follows.
- [03] Ashna Shayal Vandhna, the plaintiff was employed by Skyglory Limited, the first defendant as a sales girl and then cashier at the first defendant's Nadi branch. She was paid the sum of \$80 per week which later increased to \$102.00.
- [04] Nileshni Irene Reshmi, the second defendant was the Manageress of the defendant's shop in Nadi.
- [05] On or about 27 March 2015, a director of Skyglory, one Sanjesh Narayan, came from Suva and advised the staff at Nadi that there was a meeting in the first defendant's main shop in Suva and the Nadi staff had to come to display items and see the shop. The second defendant was told to bring all the staff to Suva on Saturday 28 March 2015.
- [06] The second defendant asked the plaintiff to take permission from her parents to go to Suva for one day. The second defendant also spoke directly to the plaintiff's father.
- [07] At about 5.45 pm the plaintiff left for Suva in a car registered number HS 619 driven by the second defendant. The car was loaded with some stock for Suva shop. Also travelling in the car were two other staff from the Nadi shop, namely Radhika and Nandini. The second defendant's mother-in-law was also in the car.
- [08] The plaintiff and the two other staff in the car were travelling to Suva during and in the course of their employment with the first defendant on the instructions of Sanjesh Narayan and the second defendant.
- [09] On 28 March 2015, the second defendant drove the said vehicle HS 619 so negligently, carelessly and recklessly on Queens Road, Outrigger, Sigatoka that it

collided with vehicle number HT 370 driven by one Muni Ratnam Reddy and then went into a ditch on the right side of the main road.

#### **Case for the first defendant**

[10] The statement of defence states that Sanjesh Narayan was not in Nadi on 27 March 2015 and there was no meeting in the first defendant's main shop, and that the plaintiff's injuries were due to a frolic of her own with the second defendant.

#### **Case for the second defendant**

[11] The second defendant's statement of defence was struck out on 15 November 2016. She did not participate in the trial.

#### **Agreed facts**

[12] At the pre-trial conference it was agreed by the parties that the plaintiff was employed by the first defendant as a salesgirl and then cashier at its Nadi shop, and she was a paid \$80.00 per week which was later increased to \$102.00 per week.

#### **The evidence**

##### *Plaintiff*

[13] The plaintiff ('PW1') gave evidence and called 3 other witnesses to give evidence on her behalf:

- a. Mark Joseph Rokobuli ('PW2')
- b. Shobna Shalini ('PW3')
- c. Mohinesh Chandra Mani ('PW4')

##### *Defendant*

[14] The first defendant led the evidence of its Managing Director, Mr Sanjesh Narayan ('DW1').

[15] No evidence was led on behalf of the second defendant.

[16] I will state, where necessary, what each witness said in evidence in my discussion.

### **Discussion**

[17] The plaintiff initiated this action seeking damages for the personal injuries sustained as a result of a vehicle accident allegedly caused by the second defendant when she drove her car registration number HS 619 in which the plaintiff was a passenger.

[18] The claim against the first defendant is that it is vicariously liable as the accident happened in the course of the employment.

#### *The issue*

[19] The primary issue is whether the accident happened in the course of employment and whether the first defendant is liable.

[20] The plaintiff (*PW1*) was unable to tell much about the accident. All she said about the accident was that: Nileshni was driving fast on the way and all that she heard was screaming, then there was a noise after which she woke up in the hospital.

[21] She (*PW1*) however explained in her evidence the circumstances under which she happened to be travelling with the second defendant to Suva. She said: she had been working for the first defendant for about 3 months at the Nadi shop. On 27 March 2015, Mr Sanjesh Narayan visited the Nadi shop and asked all the staff to come to Suva for a meeting and to see shop displays at their Suva branch otherwise all will be terminated. There were 6 staff at Nadi shop which include- Shobna, Radhika, Devnil, Nileshni (second defendant), Sera and herself. She was reluctant to go to Suva but Nileshni forced her and called and spoke to her father who gave permission to go to Suva with Nileshni and other staff. They went to Suva in a private vehicle HS 619 on the afternoon of Saturday 28 March 2015. She further said: the company was not providing any overnight residence so all were to go and stay at Nileshni's house at Nausori. Nileshni, Radhika, Shobna,

Nileshni's mother in law and she travelled in the vehicle. Sera did not come because she could not fit in the boot of the car.

- [22] Under cross examination, PW1 admitted that she was not at work on 28 March 2015. That was her day off. She said Nileshni met her father and asked for his consent in person. She denied any friendship or connection with Nileshni but admitted that her family was in Suva and that she travels every weekend to Suva to be with her family. She also denied any form of friendship with Radhika or Shobna and said they were simply workmates. This was first time in her 3 months' work with the first defendant that they were asked to come to a meeting in Suva. She knew it was a private car and it did not belong to the company. She denied that she went for a sightseeing trip to Suva and maintained that she travelled to Suva for work.
- [23] PW 2 was the doctor who produced the medical report prepared for the plaintiff.
- [24] Ms Shobna's (PW3) evidence was that she was employed with Skyglory for a week before the accident. Nileshni interviewed her and employed her and Mr Sanjesh interviewed her again on Friday 27 March 2015. She gave similar evidence that of the plaintiff regarding the trip to Suva and the accident. She also said Nileshni was driving fast. She asked her to slow down. She felt the vehicle go in a zig zag manner. Under cross examination, PW3 said Nileshni called her father for permission and not her husband because she was already separated from her husband. She disagreed that she started work that same day (28 March 2015) and said she started work the Monday of that week. She also disagreed that they were going for a sightseeing with Nileshni but for company meeting.
- [25] PW4, the plaintiff's father said that Nileshni first called him and then he came to see her in person after which he allowed his daughter to travel on Nileshni's responsibility.
- [26] DW1, Mr Sanjesh Narayan gave evidence for the plaintiff that: he was the managing director of the first defendant. The company had shops in Suva, Nasinu, Nausori and Nadi. The company owned motor vehicles. He himself

travelled to shops for meeting with shop managers. Sanjesh did not meet individual staff members. He had 48 staff and he had no reason to threatened staff members. He said he was not in Nadi on 28 March 2015 and did not call his Nadi shop staff on 28 March 2015 for a meeting in Suva on 29 March 2015. There was no meeting on 29 March 2015, and she stated work the previous day-28 March 2015. Under cross examination, he denied that he had asked the Nadi staff to come to Suva for the meeting. He also denied that he was still in Nadi when the accident happened on 28 March 2015. Nileshni took Ashna, Shobna and Radhika to Suva and that was not for work purposes.

[27] It is common ground that the second defendant was employed as the shop manager of the first defendant's Nadi shop.

[28] According to the plaintiff and her witnesses, the meeting was compulsory and if they failed to attend the meeting their employment will be terminated. One of the staff members was left out to accommodate Nileshni's mother in law. If it were an official compulsory meeting why Nileshni's mother in law who did not work for the company was given priority than the staff. There is no other correspondence regarding the meeting. I am unable to accept the plaintiff's evidence that Mr Sanjesh came to Nadi to invite the staff for a meeting in Suva. A staff member was left in order to take Nileshni's mother in law to Suva and a private vehicle was used for the trip. This all suggests that the trip was a private one and not a work related one.

[29] The plaintiff knew that she was going in a private vehicle in which Nileshni's mother in law also travelled, and she was going to stay at Nileshni's residence.

[30] Mr Sanjesh gave straightforward evidence. Therefore, I accept his evidence.

### **Conclusion**

[31] The plaintiff has failed to prove, on the balance of probability, that the accident occurred in the course of her employment with the first defendant. I would, therefore, dismiss the plaintiff's claim against the first defendant. Since the

plaintiff was represented by the Legal Aid Commission, I make no order as to costs.

**The result**

1. Plaintiff's action dismissed.
2. No order as to costs.

*M. H. Mohamed Ajmeer*  
21/8/19

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**M. H. Mohamed Ajmeer**

**JUDGE**

**At Lautoka**

**21 August 2019**

Solicitors:

For the plaintiff: Legal Aid Commission

For the first defendant: Shelvin Singh Lawyers, Barristers & Solicitors

