

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

High Court Civil Appeal No. HBM 136 of 2018

Magistrates' Court Civil Action No. 114 of 2018

BETWEEN

PARMOD'S DIRECT IMPORTS (PTE) LIMITED, a limited liability company
having its registered office / business at Kings Road, Ba Town.

APPELLANT

AND

XPEDITORS FREIGHT FORWARDING having its registered business at
24 Edinburgh Drive, Suva.

RESPONDENT

Counsel : Mr. Yunus M. for the Appellant
Respondent absent and unrepresented

Date of Hearing : 31st March 2020

Date of Judgment : 20th April 2020

JUDGMENT

- [1] The appellant instituted proceedings in the Magistrates' Court seeking the following reliefs:
- i) Special damaged in the sum of \$6,853.43;
 - ii) Loss of business at \$3500.00 per month until the date of judgment;
 - iii) General, Aggravated, Exemplary and punitive damages not exceeding \$50,000.00;
 - iv) Interest pursuant to order XXXII rule 8 of the Magistrates' Court Rules at 5% per annum;
 - v) Costs on a Solicitor / Client indemnity basis of \$2180.00;
 - vi) Such other and further or other relief that may seem just and proper to this Honourable Court.
- [2] The appellant's case is that it paid the defendant \$7935.00 to clear four vehicles from Suva wharf but it failed and/or neglected to refund the money paid to the respondent.
- [3] The respondent did not appear in court and the matter was fixed for formal proof. The learned Magistrate delivered the judgment on 25th October 2018 upon formal proof dismissing the action of the appellant.
- [4] Being aggrieved by the said dismissal the appellant appealed to this court on the following grounds:
1. That the learned Resident Magistrate erred in law and in fact in holding that the plaintiff had failed to adduce any evidence to prove the claim I forms of invoices or proof of payment or any other documentary evidence of the sum claims as special damage having all documents as exhibits before the court.
 2. That the learned Resident Magistrate erred in law and in fact by totally dismissing and striking out the claim against the respondent, when there was evidence through invoices that the defendant owed the plaintiff a sum of \$5,951.43 and thus not awarding orders for the remaining balance of \$5,951.43 when in fact one of the plaintiff's prayers were 'Such other and

further or other relief that may seem just and proper to this Honourable Court'.

- [5] At the hearing of the appeal the respondent was not present. Before this appeal was taken up for hearing this appeal was mentioned before this court ten times and on several occasions served NOAH on the respondent. However, the respondent did not appear in court.
- [6] In paragraph 6 of the statement of claim the appellant states that the plaintiff had to have the remainder of the 3 (three) vehicles cleared at its own expenses for which it has incurred additional charges in the sum of \$6,853.43. This amount is not what was given to the respondent to clear the vehicles.
- [7] Special damages are damages that can be quantified. The appellant has not adduced any evidence at the hearing to prove that he had to incur an additional amount of \$6,853.43 to clear the vehicle. This amount is different from what the plaintiff had to incur in clearing the vehicle. These are additional expenses.
- [8] As correctly observed by the learned Magistrate the appellant has not claimed what it paid the respondent to clear the three vehicles. The witness has said in his evidence that the plaintiff paid the defendant \$7935.24 to clear four vehicles for the wharf which is borne out by the invoices tendered in evidence.
- [9] The appellant's witness in his evidence said the total cost the three vehicles that were not cleared by the defendant was approximately \$6800.00. In the statement of claim it has been averred that the appellant had to clear the three vehicles at its own expense for which it had incurred additional charges in the sum of \$6,853.43, which is \$2284.47 per vehicle. The learned Magistrate's finding is that the appellant failed to adduce evidence prove the claim for special damages which is correct.
- [10] The appellant's position is that the court should have awarded the amount paid to the respondent to clear the three vehicle although it had not been prayed for.
- [11] It is evidenced by the invoices tendered in evidence that the appellant paid \$5951.43 for the vehicles not cleared by the respondent. \$6,853.43 is the amount, according to the appellant's witness, incurred by the appellant to clear the three vehicles. Out of

this amount the appellant has proved by documentary evidence, which was not challenged by the respondent, the payment of \$5,951.43.

[12] Special damages are damages that can be quantified. It appears from the pleadings and the evidence of the appellant's witness, \$6,853.43 claimed by the appellant as special damages include the amount of money paid to the clearance of the three vehicles in question which is \$5951.43. I am therefore of the view that the learned Magistrate should have awarded this amount to the appellant which is less than what had been prayed for.

[13] The appellant has failed to adduce evidence on the other claims for damages. The learned Magistrate is therefore, correct in refusing to award damages for loss of business and general, aggravated, exemplary and punitive damages.

[14] For the above reasons the court makes the following orders.

ORDERS

1. The appeal is allowed.
2. The respondent is ordered to pay \$5951.43 to the appellant with interest at the rate of 5% per annum until the entire sum is paid in full.
3. The respondent is also ordered to pay the appellant \$2000.00 as costs.
4. The judgment of the learned Magistrate is accordingly varied.




Lyone Seneviratne

JUDGE

20th April 2020