

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBA 21 of 2018

Avinesh Chandra
Pritika Ashini Ram
Appellants

v

Sukhendra Lal
Rohini Lata
Respondents

Counsel: Mr T. Sharma for the appellants
The first and second respondents in person
Date of hearing : 24th April,2019
Date of Judgment: 24th July,2020

Judgment

1. The appellants appeals a judgment of the Magistrates' Court.
2. The respondents filed action against the appellants claiming a sum of \$ 32,397.78, as loss suffered as a result of incurring repairs to a vehicle they purchased from the appellants. The appellants, in their amended statement of defence denied the claim.

3. The lower court, in its Judgment on formal proof ordered the appellants to pay the respondents the claim of \$ 32,397.78.
4. The appellants appeal to this Court on the following grounds of appeal:
 - i. *The Learned Trial Magistrate erred in law and in fact when he failed to consider the evidence of the Defendant in their Statement of Defence which had already been filed in Court; see ABU 37/85 Jai Prakash Narayan v Savita Chandra explained in Civil Appeal No. ABU 0055/1997S The Attorney General of Fiji v Samisoni Naisua.*
 - ii. *The Learned Trial Magistrate erred in law and in fact when he failed to follow proper principles of proof of civil liability thereby causing substantial miscarriage of justice.*
 - iii. *The Learned Trial Magistrate erred in law and in fact when he wrongly applied principles of law relating to civil liability without doing an analysis of the evidence.*
 - iv. *The Learned Trial Magistrate erred in law and in fact when he failed to consider that the warranty given to the Plaintiff was limited and that the transaction was on a "as is where is" basis.*
 - v. *The Learned Trial Magistrate erred in law and in fact when he failed to give reasons and his analysis as to how he came to his decision in making Final Orders for the sum of \$32,397.78. The Learned Trial Magistrate erred in law and in fact in failing to act judiciously by delivering a ruling which was severely prejudiced the Defendants/Appellants; see case *Pettit v Dunkely [1971] 1 NSWLR 376 CA.**
5. The crux of this appeal is that the lower court failed to consider the amended statement of defence and only relied on the oral evidence adduced by the respondents.
6. The proceedings in the lower court, as so far as material to this appeal, are as follows:
 - The appellant filed their amended statement of defence in the lower court on 13th January,2017.
 - On 14th September,2017, Mr Sharma, counsel for the appellants and the respondents were present. The case was adjourned for 22 December,2017, for mention.
 - On 22 December,2017, the appellants were absent and unrepresented. The case was fixed for formal proof on 9th January,2018.
 - On 9th January,2018, evidence was adduced by the respondents.
 - On 4th September,2018, the Learned Magistrate delivered his Judgment on formal proof.

7. In the absence of a procedural provision in the Magistrates Court Rules on the procedure to be followed, the High Court Rules apply.
8. Or 35, r2 of the High Court Rules provides that any "*judgment, ...where one party does not appear at the trial may be set aside by the Court, on the application of that party...*"
9. In my view, the appellants were required to move the lower court to set aside the Judgment of the Magistrates' Court on formal proof and not come by way of appeal.
10. In my judgment, this Court has no jurisdiction to hear this appeal.
11. The appeal of the appellants is declined.
12. **Orders**
 - (i) The appeal of the appellants is declined.
 - (ii) The appellants shall pay the respondents costs summarily assessed in a sum of \$ 1500.



A.L.B. Brito-Mutunayagam

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JUDGE
24th July, 2020