

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 18 of 2018

BETWEEN : JOJI DUVAGA
PLAINTIFF

AND : TEBARA TRANSPORT LIMITED
DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms Sauduadua [Lal/Patel/Bale Lawyers]

DEFENDANT : Mr Kumar with Mr Singh [Parshotam Lawyers]

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : **05 March 2020**

INTERLOCUTORY RULING

[Setting Aside Judgment By Default]

The Application

1. This is the Defendant's application to have the judgment by default entered on 22nd May 2018 to be set aside and that it be given liberty to defend the claim by filing statement of defence.

The said application is made pursuant to Order 19 rule 9 and Order 45 rule 10 of the High Court Rules and is supported by an affidavit of Arvind Maharaj.

2. The Plaintiff who is opposing the application filed his affidavit on 17th August 2018.
3. A reply to said opposition was filed on 4th September 2018.

Brief Chronology Of The File Prior To Filing Of The Said Application

4. On or about the 18th January 2018 the Plaintiff caused a writ of summon to be issued from the High Court Registry.

His claim is for damages for injury he sustained whilst working as a heavy mechanical serviceman at the Defendant's garage at Sealark Hill, Edinburgh Drive, Suva.

5. An affidavit of service was filed on 06th February 2018 and according to the server one Ratu Sakiusa Tovutonaivalu Mataitini, he on Wednesday the 31st January 2017 at Tebara Transport Limited, Edinburgh Drive Suva served the Defendant with the writ of summons and acknowledgment of service.
6. The Plaintiff on or about 10th May 2018 proceeded to file a praecipe, search and judgment by default.
7. The judgment by default was sealed on 22nd May 2018 for amount of special damages pleaded in the claim.
8. A copy of said judgment was served on the Defendant on or about 28th May 2018. An amended affidavit of service was filed on 12th June 2018.
9. The Defendant made said application for setting aside of the judgment by default on or about 27th June 2018.

Was the Judgment so extend regular?

10. The writ of summon was served on the Defendant on 31st January 2017 and a default judgment was not entered until May 2018.
11. The action is based on tort.

12. In the case of **Mohammed v Akbar A Lautoka High Court Civil Action No. 140 of 2001** Singh J. on an application for settling aside default judgment cited Lord Hope of Craighead in *Jameson and Another v Central Electricity Generating Board* (1999) 1 ALL ER 193 where it was held:

“A claim of damages on tort is a claim for unliquidated damages. It remains unliquidated until the amount has been fixed either by the judgment of the court or by an agreement as to the amount which must be paid satisfy the Claim”.

In the said case Singh J. stated that *“the Plaintiff would need to prove his loss of income. He would need to show how much he was earning per day, where did he work, any tax and FNPF deductions”.*

13. In **Philips & Co [A Firm] v Bath Housing Cooperative Ltd [2013 2 ALL ER 475** the Court Of Appeal [Civil Division] expanded the scope of liquidated claim from its conventional limit, to indicate certain forms of damages within the meaning of liquidated claims. The Court of Appeal stated:

“There is therefore some scope for debate as to the width of the word "debt" in this context. As for the word "liquidated", I would take it that, in ordinary legal usage, this requires that the liability should be for an ascertained amount. Most liquidated claims would be for a debt. Obvious examples include the outstanding principal and unpaid interest (at a contractual rate) on a loan, and sums due by way of rent or hire, and the price of goods (if specified in the contract). Conventionally, unliquidated claims are normally in damages. Some damages claims, however, may be liquidated. A good example is a building contract which has a liquidated damages clause defining the builder's liability if the work is not complete by the stipulated finishing date.

In Amantilla Ltd v Telefusion plc (1987) 9 Con LR 139 His Honour Judge John Davies Q.C. sitting on Official Referees' Business held that a builders' claim for a quantum meruit was a claim within section 29(5).

He said this on the point:

"If the parties themselves cannot agree on what is a reasonable sum, the contractual obligation to pay such a sum provides a sufficiently certain and definitive datum to enable the court to ascertain its amount by calculation and circumstantial (or "extrinsic") evidence, in accordance with the terms of the contract and without any further agreement of the parties. Indeed, it would be remarkable for the law to impose such an obligation if it did not have those attributes. A quantum meruit claim for a 'reasonable sum' lies in debt because it is for money due under a contract. It is a liquidated pecuniary claim because 'a reasonable sum' (or a 'reasonable price' or 'reasonable remuneration') is a sufficiently certain contractual description for its amount to be ascertainable in the way I have mentioned ... Such a claim is different in kind from its opposite, which is a claim for unliquidated damages. The former is a claim for a specific sum, namely a reasonable sum due under a contract; it is no less specific for being described in words rather than in figures, provided it is sufficiently defined to be ascertainable - which it is, as I have already explained. The task of the court, if it has to assess such a sum, is one of translating the words of the contract into figures in order to effectuate the intention of the parties. The nature of a claim for unliquidated damages is wholly different. The function of the court is not one of interpreting the contract but of deciding, in accordance with legal principles, what compensation, if any, should be paid to redress any harm done by its breach.


It is for these elemental reasons that a quantum meruit claim is a liquidated pecuniary claim, whilst conversely a claim for unliquidated damages is not, and cannot be such, even though it be claimed at a definite figure."

14. In the instant case the Plaintiff entered a judgment by default in the sum of \$176,314.32 which is claim for loss of prospective earnings.
15. Hence I find that the judgment so entered on 22nd May 2018 is an irregular judgment which ought to be set aside. The plaintiff ought to have entered an interlocutory judgment with damages to be assessed and thereafter made an application for assessment of damages.

Final orders

16. On the Defendant's application dated 22nd June 2018 I make following orders;
 - i. The judgment by default sealed on 22nd May 2018 is set aside;
 - ii. The Defendant is granted leave to file and serve its acknowledgment of service with 07 days and a statement of defence in 07 days thereafter.
 - iii. Parties to bear own cost.




.....
Vandhana Lal [Ms]
Acting Master
At Suva.