

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Appeal No.08 of 2021

(On an appeal from the Ruling of the
Magistrate's Court of Suva in Civil Case
No. 230 of 2019)

BETWEEN: NARENDRA PILLAY & JAMES NILESH RAM

APPELLANTS
(Original Defendants)

AND: SAIRA BANO

RESPONDENT
(Original Plaintiff)

Counsel

Appellant: Ms. Prakash. D
Respondent: Mr Raikanikoda. S
Date of Hearing: 28.11.2022
Date of Judgment: 05.12.2022

JUDGMENT

INTRODUCTION

1. Respondent-Plaintiff (Plaintiff) instituted this action in court below against the Appellants-Defendants (Defendants) for alleged negligence regarding sale of a vehicle for a price agreed but paid through installments. Plaintiff was given possession of the vehicle without transferring the registration. After partial payment of the agreed price Plaintiff had defaulted payments and vehicle was repossessed. Plaintiff instituted an action for negligence claiming damages. The particulars of the said negligence as pleaded in the statement of claim inter alia are that first Defendant manipulated and took advantage of the Plaintiff's needs and sold a vehicle registered under second Defendant, under oral agreement for a sum of \$12,000, and or first Defendant acted in a deceitful, fraudulent and negligent manner when he made the Plaintiff to agree to bogus deal in selling vehicle DY 683. Plaintiff had claimed damages for pleaded negligence. Plaintiff gave evidence but was unable to prove the cause of action based on negligence and particulars of the alleged negligence. Resident Magistrate had not

considered the pleaded cause of action but decided on breach of contract which was not a cause of action pleaded. The judgement of court below is set aside.

FACTS

2. According to the decision of Resident Magistrate dated 25.8.2020, Plaintiff in her evidence in court below had admitted entering in to an oral agreement with the Defendants to purchase vehicle bearing registration No DY 683 and had done repairs to the tune of \$2523.06 initially and then orally agreed to pay the price agreed by weekly installments.
3. According to statement of claim the agreed price for the said vehicle was \$12,000 and weekly agreed installments was \$200. These facts were not denied by Defendants in evidence, at hearing.
4. It was never alleged that Plaintiff paid full price of \$12,000 including the cost of repairs done initially for the value of \$2523.06.
5. There was no written agreement signed by both parties. So the agreement between the parties was an oral agreement.
6. Vehicle bearing registration DY683 was not transferred to Plaintiff but possession was granted.
7. Plaintiff had the possession of vehicle bearing registration DY 683 from 26.11.2008 to 30.4.2010
8. Plaintiff had paid weekly installments till 8.01.2010 and there was no evidence of payments after said last payment, till it was re-posessed.
9. Defendants had repossessed the said vehicle in end of April, 2010.
10. According to Plaintiff when vehicle registration DY683 was repossessed Defendants promised to pay her \$10,850, this was denied by Defendant. . There was a criminal action filed upon a complaint by Plaintiff. Plaintiff had produced receipts for the repairs and payments up to 08.01.2010 but they were irregular as to time and amount.
11. Plaintiff's evidence is found in pages 210-2012 of the Copy Record and there was no evidence adduced regarding negligence and particulars of negligence pleaded in the evidence.
12. Narendra Pillay who is one of the Defendants had given evidence on behalf of Defendants. He had denied that he promised to repay Plaintiff the installments and repairs to the vehicle that was repossessed. He had told that vehicle was used by

Plaintiff's husband for business and all repairs to be borne by Plaintiff. In the absence of any written agreement where both parties had signed this position is not proved.

13. Resident Magistrate in his decision of 25.8.2020, held there was a breach of contract and for that he had granted a sum of \$10,000. Had not specified such a cause of action was pleaded and what was the specific breach contract and or conditions.
14. After verbatim reproduction of statement of claim from paragraph 4 to paragraph 16 in the judgment of court below first Defendant's defence was stated.
15. Resident Magistrate had summarized the evidence for the Plaintiff and Defendant, but had not considered the cause of action pleaded in the statement of claim.
16. Plaintiff in the statement of claim up to paragraph 13 alleged some facts and in paragraph 14 pleaded 'that as a result of the deceitful, bogus, corrupt practice and negligent act of both the Defendants the Plaintiff suffered and continues to suffer injuries and loss.
17. So in paragraph 15 of the statement of claim Plaintiff is claiming damages for 'deceitful, bogus, corrupt practice and negligent act' and the particulars of the negligence were pleaded.
18. Resident Magistrate had not considered the pleaded cause of action but had considered breach of contract which was not pleaded and also not proved by Plaintiff and had granted \$10,000. There was no basis stated in the said judgment of court below.
19. Plaintiff could not prove that she had paid weekly \$200 till the payment of \$12,000 minus repairs done initially. Plaintiff had breached the oral agreement hence will not be entitled to claim damages for breach of contract even if she pleaded in the cause of action. Hence the Resident Magistrate's judgment was erroneous.
20. Defendants in joint statement of defence filed in paragraph 11 had counter claimed against Plaintiff for negligence in maintaining the vehicle bearing registration DY 683, but no such evidence was placed before the court to prove any negligence on the part of Plaintiff.
21. Only possession of the said vehicle was given to Plaintiff and there was no proof that that Plaintiff was obliged to make all the repairs for the said vehicle till it was transferred to her. Such a proposition was not put to Plaintiff in her evidence. So there was no proof of negligence on the part of Plaintiff as pleaded in the paragraph 11 of the statement of defence. Again, Resident Magistrate had not considered cause of action pleaded in the counter claim, but proceeded to proof of special damages and rejected it on the basis of lack of evidence to prove special damages.

22. Defendant had sought Appeal against the Resident Magistrate's decision handed down on 25.9.2020 on following grounds:

1. "THE Learned Resident Magistrate erred and /or misdirected himself in law and in fact in summarily dismissing the Appellant's statement of Defense and granting orders against the Appellant.
2. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to accord the Appellant a reasonable opportunity to close its case by filing a closing submission despite a notice of motion and affidavit in support being filed to seek leave of the court to file a closing submission.
3. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to consider the prejudice suffered by the Appellant in summarily dismissing its defense and counter claim.
4. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to consider that the receipts tendered in by the Respondent Lady during the hearing was unauthentic and she was herself not aware what the receipts were for.
5. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to consider that the receipts tendered did not show a true account of the repairs done on the subject vehicle.
6. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to consider that the receipts tendered by the Respondent Lady also included receipts for other vehicles.
7. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to consider that at all given times the First Appellant held an authority to act on behalf of the Respondent Lady.
8. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to consider that the Respondent had not produced any evidence to show transportation cost of \$1000.00 (One Thousand Dollars).
9. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to consider that the Respondent lady had not tendered any evidence to show telephone cost of \$1000.00 (One Thousand Dollars).

10. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by failing to consider that the Respondent had accepted during the hearing that the vehicle was removed from her possession or was rather repossessed as she had not been making payments to the Appellant.
11. THAT the Learned Resident Magistrate erred and /or misdirected himself in law and in fact by awarding the Respondent the sum of \$10,000.00 without considering that the Respondent had earned more than that amount during the course of which the Respondent had possession of the vehicle.
12. THAT the Learned Resident Magistrate erred and/or misdirected himself in law and in fact by failing to consider that when the vehicle was repossessed it was described to be in a bad condition and required substantive repairs before it could be sold again.
13. THAT the Learned Resident Magistrate erred and/or misdirected himself in law and in fact by failing to consider that the vehicle was under Bill of Sale and had to be sold in order to repay the Financial Institution.
14. THAT Learned Resident Magistrate`s decision is incorrect and erroneous and exhibits wrongful exercise of discretion having regard to the facts and circumstances of the case.”
23. Appeal grounds are vague and not precise to the point to argue and repetitive.
24. Appeal grounds 1, 3 deals with the counter claim but had not identified the defect of the decision where pleaded counter claim was not considered before proceeding to assessment of the said claim.
25. Appeal ground 2 cannot be considered a ground.
26. Appeal ground 4, 5, 6, 7, 8, 9, relate to evidence and needs no determination due to patent error in the said judgment by not considering cause of action pleaded.
27. Appeal ground 10, 11, 13, are repetitive, but they were considered earlier.
28. Appeal ground 12 was discussed earlier in this decision.
29. Appeal ground 14 is allowed for the reasons given earlier for patent error in the judgment where non pleaded cause of action for breach of contract was considered. Judgment of court below had not stated which condition of the contract was breached by Resident Magistrate.
30. Accordingly appeal grounds were not considered separately as the decision of Resident

Magistrate was not in accordance with the pleadings and there was no consideration of pleaded cause of action and particulars of negligence alleged.

31. Considering the long delay in this litigation that had taken more than ten years I am not inclined to remit the matter for retrial. There should be an end to litigation and both parties may have spent more than the respective claims.
32. Plaintiff also had used the vehicle for business purpose during this time which was more than one year. Since the goods were used by buyer, she cannot claim the entire sum paid in a properly pleaded statement of claim.
33. Judgment in court below is set aside. Appeal allowed. Considering circumstances of the case and this case I do not award costs.

FINAL ORDERS

- a. Appeal allowed.
- b. Decision of Resident Magistrate handed down on 25.8.20 set aside.
- c. No Costs.

Dated at Suva this 5th day of December, 2022.



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Justice Deepthi Amaratunga
High Court, Suva