

In the High Court of Fiji

At Suva

Civil Jurisdiction

Civil Action No. HBC 173 of 2019

Asata Dimatebalavu

Plaintiff

v.

Vandna Vikashni Lal

First defendant

Veramu Rokotavaga

Second defendant

Counsel: Mr G. O' Driscoll for the plaintiff
Mr R. Vananalagi for the defendant

Date of hearing: 29th January, 2021

Date of Judgment: 4th May, 2023

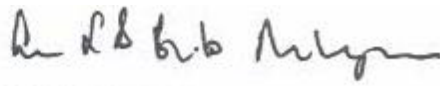
Ruling

1. The Solicitors for the defendants seek leave to withdraw the Acknowledgment of Service filed on 20 June, 2019.

2. The Insurance Officer of New India Assurance Company Limited, (company) in her affidavit in support states that the company took conduct of this matter. On 20 June, 2019, Messrs Faiz Khan Lawyers filed Acknowledgment of Service of the writ of summons on behalf of the defendants. It has now been revealed that the accident caused by motor vehicle registration No. JH077 was a private motor vehicle given for hire by the first defendant and co-owner of the vehicle, in breach of the compulsory third party policy. The company has instructed its Solicitors not to continue with the defence. The company has written to the first defendant and co-owner advising them to seek independent legal assistance to defend the proceedings.
3. The plaintiff, in her affidavit in opposition states that the insurer cannot deny third party liability by alleging breach of the policy. The insurer needs to prove exemptions liability. Section 6 of the Motor Vehicle (Third Party) Insurance Act states that *“an approved insurance company issuing a policy of insurance... shall be liable to indemnify the persons or classes of person specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of person”*.
4. The first defendant in her affidavit in opposition states that motor vehicle registration number JH077 was not given for hire. She did not breach the compulsory third party policy. The writ was not served personally on her.
5. The plaintiff, in her statement of claim states that on 2nd December,2017, the second defendant while driving vehicle No JH 077 crossed to the wrong side of Kings’ Road, Delainimasi and collided with her vehicle causing the death of her husband. The first defendant was the owner of vehicle No JH 077.
6. The issue whether motor vehicle registration number JH077 was given for hire by the first defendant and co-owner is disputed by the plaintiff.
7. In my view, that issue has to be determined at the trial. I decline the summons to withdraw the Acknowledgment of Service.

8. There is also a summons before me seeking leave for a declaration that Messrs Faiz Khan Lawyers, Barristers and Solicitors have ceased to act for the defendants.
9. The supporting affidavit filed states that there was a breach of compulsory third party policy by the first defendant and the co-owner by giving vehicle No JH 077 for hire at the time of the accident contrary to its permitted use.
10. I do not find the reason given by Messrs Faiz Khan Lawyers to withdraw as Barristers and Solicitors acceptable, as it is the same reason given by them for seeking leave to withdraw its Acknowledgment of Service.
11. **Orders**
 - a. The summons filed by Messrs Faiz Khan Lawyers seeking leave to withdraw the Acknowledgment of Service filed on 20 June, 2019 is declined.
 - b. The summons filed by Messrs Faiz Khan Lawyers, Barristers and Solicitors seeking leave for a declaration that they have ceased to act for the defendants is declined.
 - c. I make no order as to costs.
 - d. This matter is sent to the Master for pre trial steps.




A.L.B. Brito-Mutunayagam
JUDGE
4th May, 2023