

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

CIVIL ACTION NO.: HBC 292 of 2019

**BETWEEN : LEO NAIKASAU trading as MASADA TRANSPORT
PLAINTIFF**

**AND : SHARMA'S ENTERPRISES LIMITED
FIRST DEFENDANT**

**: HIRDESH SHARMA
SECOND DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. S. Naidu [AP Legal]
DEFENDANT : No Appearance [Fazilat Shah Legal]
RULING BY : Master Ms. Vandhana Lal
DELIVERED ON : 01 August 2023

INTERLOCUTORY RULING

[Setting Aside Judgment By Default]

1. The Defendants seek to have the default judgment entered against them on 31st October 2019 be set aside.
2. According to the Defendants, they deny negligence and the Second Defendant states that he was on the Kings Highway and woke up after several months in a Hospital in Brisbane. He suffered "*a sudden onset of a clonic seizure*" prior to the motor vehicle accident.

He did not suffer from any pre-existing medical condition which would lead to a seizure.

He further informs that the insurance company has compensated the Plaintiff and has no authority to claim money on behalf of Tower Insurance.

3. The affidavit in opposition filed on behalf of the Plaintiff is by a senior claims officer with Tower Insurance who states as follows.

The action is a subrogated claim by Tower Insurance (Fiji) Limited for an insurance claim arising out of a motor vehicle accident between the Plaintiff and the Second Defendant.

Based on report by the Korovou Police Station dated 17th July 2018, the accident was due to the negligence and/or recklessness of the Second Defendant as *“the Second Defendant lost control of the vehicle and went on the right line and collided head-on”* with the Plaintiff’s vehicle. The Second Defendant has been charged with the offence of Dangerous Driving.

Regarding the Second Defendant’s medical condition, the Plaintiff states that the Defendant was admitted on 06th September 2018 and discharged from Princess Alexandra Hospital on 23rd October 2018.

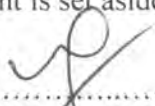
Annexure “c” to the affidavit in support states that the Second Defendant initially was on sodium valproate, changed to levetiracetam 500mg and has been on this since 2006 with last seizure in 2007.

Sodium valproate and levetiracetam are used to treat epilepsy.

4. The writ was served on the Defendants on 10th September 2019 and service has not been disputed.
5. The Defendant has failed to provide reasons for failure to acknowledge service and defend the proceedings.

6. The default judgment was sealed on 14th October 2019. This application was filed on 07th November 2019. There has been a delay of one month in making the said application.
7. The Defendants states they deny liability as the Second Defendant claims he did not have pre-existing condition which would have caused the seizure and in the draft statement of defence on paragraph 1 state "*the collision occurred due to sudden onset of an illness hitherto to unknown to the Second Defendant*".
8. However, according to the medical report being annexure marked "c" to the Defendants' affidavit in support, the Second Defendant previously suffered seizures and was on medication. There is nothing stated he had medical clearance to drive again. This was not a new medical condition for the Second Defendant.
9. A perusal of the draft defence either wise, shows bare denial with no arguable defence.
10. Conviction in the Magistrate Court in Tailevu File No. 09 of 2019 is relevant as the Plaintiff intends to rely on this to establish the Second Defendant's liability.
11. I have taken judicial notice of the proceeding at Tailevu Magistrate Court Traffic Case No. 09 of 2019 where the Defendant had pleaded guilty and was convicted for dangerous driving and sentenced thereafter.
12. The Defendant's application filed on 07th November 2019 is hereby dismissed and any stay granted on execution of the judgment is set aside.




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Vandhana Lal [Ms]
Master of the High Court
At Suva.

01 August 2023

TO:

1. **Suva High Court Civil File No. HBC 292 of 2019;**
2. **AP Legal, Solicitors for the Plaintiff;**
3. **Fazilat Shah Legal, Solicitors for the Defendants.**