

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

HBC 208 of 2022

BETWEEN: **MUNI BIKAASHWAR DEO** of China Town, Cuvu, Sigatoka, Unemployed in the Republic of Fiji Islands.

PLAINTIFF

AND: **VINOD PATEL AND COMPANY LIMITED** of limited liability Company having its registered office at 1 Ratu Dovi Road, Suva in the Republic of Fiji Islands.

DEFENDANT

Appearances: Mr. Namua for the Plaintiff
 Mr. Gordon R. for the Defendant
Date of Hearing: 13 June 2023
Date of Ruling: 14 August 2023

R U L I N G

1. Before is a Summons filed by defendant on 16 November 2022. The Summons is filed pursuant to Order 33 of the High Court Rules 1988. It seeks the determination of various questions or issues. The background to this case, for the purpose of this application, might be stated as follows:
 - (i) on 25 July 2022, Sushil Sharma Lawyers filed a Writ of Summons and Statement of Claim for and on behalf of the plaintiff.
 - (ii) the claim is for general, punitive and special damages suffered due to personal injuries sustained by the plaintiff as a result of an accident at his workplace on 20 October 2021.
 - (iii) the details of this accident are not important for the purpose of the Order 33 application.
 - (iv) what is important to note at this time is that, on 08 January 2022, the plaintiff signed an application for compensation with the Accident Compensation Commission of Fiji (“ACCF”).
 - (v) on 10 March 2022, he lodged the said application with the ACCF.
 - (vi) however, on 22 June 2022 just a little over three (3) weeks after he lodged his application, the plaintiff withdrew his application from the ACCF.

- (vii) the ACCF accepted the said withdrawal on the same day, 22 June 2022.
 - (viii) a little after four (4) weeks of withdrawing his ACCF application, the plaintiff, on 25 July 2022, then filed his writ and statement of claim in the High Court.
 - (ix) the plaintiff's High Court claim is based purely on common law. He does not plead any statute (e.g. Occupational Health and Safety at Work Act or the Occupiers Liability Act or any other Act which may apply).
2. In its Statement of Defence filed on 22 September 2022, the employer, Vinod Patel & Company Limited, raises the following in defence:

Anshun Estoppel

- (i) section 20 of the Accident Compensation Act mandates that “an applicant claiming compensation for any personal injury...as a result of an accident in Fiji must make an application for compensation to the Commission.
- (ii) here, the plaintiff had withdrew his claim after 3 months of lodging it. By doing that, he is making an election to withdraw his claim. He is saying to ACCF and to everyone that:

“I no longer want compensation for my injuries” i.e. he has forfeited his right to compensation.
- (iii) also, the plaintiff cannot file any claim in the High Court until he has first exhausted the ACCF process under the Accident Compensation Act.
- (iv) section 25 of the Accident Compensation Act provides:
 - (1) If an applicant, having made an application for compensation to the Commission, decides not to accept the decision of the Commission and the amount prescribed by the Commission in its decision as compensation for personal injury or death under the no fault compensation scheme, then a proceeding, claim or action may be instituted in a court or tribunal for compensation for the personal injury or death under common law.
 - (2) Nothing in this Act affects the operation of the Limitation Act 1971 with respect to any proceeding, claim or action for compensation for personal injury or death as a result of an accident in Fiji.
- (v) only after the ACCF, has considered his application, and refuses it the Applicant may then file proceedings in the High Court.
- (vi) section 26 of the Act provides:
 - (1) Where any person has instituted any proceeding, claim or action in any court or tribunal, whether for the person or on behalf of another person, for damages or compensation for personal injury or death as a result of an accident in Fiji, without making an application for compensation to the

Commission, the Commission must, as soon as practicable upon being served with the particulars of the proceeding, claim or action—

- (a) consider the proceeding, claim or action;
 - (b) make a decision on whether to award compensation under the no fault compensation scheme;
 - (c) promptly inform the applicant of the decision of the Commission in writing; and
 - (d) if the Commission decides to offer compensation under the no fault compensation scheme, prescribe the amount payable by the Commission in its decision.
- (2) If the Commission makes a decision and offers compensation under the no fault compensation scheme and the person instituting the proceeding, claim or action accepts the Commission's offer, the person instituting the proceeding, claim or action must convey acceptance of the offer in writing to the Commission within the time prescribed by regulations and the Commission must as soon as practicable pay the compensation to the person instituting the proceeding, claim or action or to the person who is entitled to receive the compensation.
- (3) Where any person has instituted any proceeding, claim or action in any court or tribunal, whether for the person or on behalf of another person, for damages or compensation for personal injury or death as a result of an accident in Fiji and subsequently accepts compensation from the Commission under the no fault compensation scheme, then the acceptance of the compensation from the Commission under the no fault compensation scheme has the effect of terminating the proceeding, claim or action.
- (4) If the payment of compensation by the Commission under the no fault compensation scheme is in respect of any personal injury or death as a result of an accident in Fiji which is covered under a policy of insurance issued by an insurance company, then the insurance company must pay to the Commission such amount paid out by the Commission under the no fault compensation scheme within the time prescribed by regulations, provided however that the insurance company is only required to pay such amount as is covered under the policy of insurance.
- (5) In considering a proceeding, claim or action, the Commission may require the applicant or any other person to provide such particulars and information as the Commission deems necessary, including particulars of the accident and particulars of the injuries sustained by any person from the accident.
- (6) Any person who fails to provide the required particulars and information under subsection (5) commits an offence and is liable upon conviction to—
- (a) in the case of a natural person, a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both; or
 - (b) in the case of a body corporate, a fine not exceeding \$100,000.

Non-Compliance with the Act

(vii) the plaintiff did not comply with the requirement under the Act by not submitting himself to a medical examination when requested to do so by the ACCF.

3. It is the above which has prompted the Order 33 application by the defendant firstly, to seek the leave of the Court that the issues raised are to be determined as a preliminary point and secondly, to make directions accordingly.
4. As a general rule, the Court will only grant leave if the determination of preliminary points raised will either determine the issues between the parties finally – or – at the very least, determine the issues substantively.
5. I see that in the statement of defence filed by the defendant, they also deny liability and plead contributory negligence also.
6. I am mindful, from a case management point of view, that any decision I make, though interlocutory, is likely to be appealed further to the Fiji Court of Appeal by either party, because the questions raised are legal questions which entail some statutory and related policy interpretation which may determine the rights of the parties, substantively, one way or another.
7. I will grant leave on the proviso that the parties file before me a detailed set of Agree Facts within fourteen (14 days) which I will review before I timetable the filing of submissions.
8. Leave granted pursuant to the application.
9. Matter adjourned to Friday 01 September 2023 for mention at 10.30 a.m. to see if the parties have filed agreed facts and if they have, to then give further directions on the Order 33 hearing.



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Anare Tuilevuka
JUDGE
Lautoka

14 August 2023