

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

**CIVIL ACTION No. HBC 283 OF 2019**

**BETWEEN** : **PRAVIN SHARMA** of 42 Nayala Subdivision, Vunimono,  
Nausori, Electronic Technician.

**PLAINTIFF**

**AND** : **BIR SINGH** of Vuci South Road, Bus Driver.

**1<sup>st</sup> DEFENDANT**

**AND** : **ISLAND BUSES LIMITED** a duly incorporated Company  
having its Registered Office at 136 Rodwell Road, Suva.

**2<sup>nd</sup> DEFENDANT**

**Representation:** **Mr. D. Singh** (Daniel Singh Lawyer) for the Plaintiff.  
**Mr. R. Singh & Mr J. Liganivai** (Munro Leys) for the Defendants.

**Date of Hearing:** 6<sup>th</sup> November 2023.

**Judgment**

**Introduction**

- [1] The Plaintiff on 2<sup>nd</sup> September 2016 was disembarking from a Bus Registration No.FJ 99 being driven by the 1<sup>st</sup> Defendant and owned by the 2<sup>nd</sup> Defendant when he fell and got injured.
- [2] The Plaintiff claims that he had just placed his left foot between the road and the pavement while getting off the said bus when the driver drove off causing him to fall and the top of his left foot being dragged along the top edge of the pavement resulting in serious injury, loss and damage to him. According to the Plaintiff, the 2<sup>nd</sup> Defendant is vicariously liable for the negligent driving of the 1<sup>st</sup> Defendant. The Plaintiff is claiming special damages, general damages for pain and suffering and loss of amenities of life, past economic loss, gratuitous care, future economic loss, costs of future care interest

under Law Reform (Miscellaneous Provision) (Death Interest) Act on the award of general damages at the rate of 6% per annum on special damages and costs.

- [3] The Defendant's Lawyers filed a Statement of Defence in which they denied the allegations and stated that the Plaintiff suddenly decided to get off the bus without pulling the bell, without alerting the driver, at a place where there is no provision for a proper bus stop and when the bus was still in motion. The Defendant's sought that the claim be dismissed and sought costs on solicitor/client indemnity basis.

### **The Issues to be Determined**

- [4] At a Pretrial Conference (PTC) the lawyers for the parties identified a number of issues for the Court to determine, as follows:
- (a) Whether the 2<sup>nd</sup> Defendant is vicariously liable for the negligent driving of the 1<sup>st</sup> Defendant.
  - (b) Whether the 1<sup>st</sup> Defendant was negligent in not stopping the bus completely while the Plaintiff was disembarking.
  - (c) Whether the 1<sup>st</sup> Defendant failed to exercise such degree of care and control over the said bus as was warranted having regard to all the circumstances.
  - (d) Whether the 1<sup>st</sup> Defendant drove off the bus without letting the Plaintiff disembark safely and securely.
  - (e) Whether in the premises, the 1<sup>st</sup> Defendant failed to drive with due care and attention and driving below the standard of a careful and prudent driver.
  - (f) Whether there was sole or contributory negligence on the part of the Plaintiff.
  - (g) If the Defendant is found to be liable:
    - (i) Whether the Plaintiff is entitled to General Damages, and if so, then the quantum;
    - (ii) Whether the Plaintiff is entitled to Past Economic loss and Special damages, and if so, the quantum;
    - (iii) Whether the Plaintiff is entitled to Gratuitous Care, and if so, the quantum;
    - (iv) Whether the Plaintiff is entitled to Future Economic Loss, and if so, the quantum;
    - (v) Whether the Plaintiff is entitled to costs for future care, and if so, the quantum;
    - (vi) Whether the Plaintiff is entitled to claim interest under the Law Reform (Miscellaneous Provision) (Death Interest) Act on the award of general damages at the rate of 6% per annum on special damages, and if so, the quantum; and
    - (vii) Whether the Plaintiff is entitled to costs, and if so, the quantum.

### **Trial**

- [5] The matter was ready for trial from the time an agreed bundle of documents was filed on 9<sup>th</sup> March 2022. The agreed bundle included a copy of the Police Medical Examination Form (Dated 10<sup>th</sup> November 2016), copy of the Medical Report of Dr. Pauliasi Bauleka (Dated 2<sup>nd</sup> March 2017), copy of letter from Police Force – Nausori Traffic Office (dated 24<sup>th</sup> September 2017), and a copy of Medical report from CWM Hospital of Dr. Pauliasi Bauleka (dated 16<sup>th</sup> April 2021).

## Determination

- [6] In determining the issues between the parties, this Court will first deal with the issue of liability. As pointed out by Mr Daniel Singh (Lawyer for Plaintiff) Regulation 22 (1) (b) of the Land Transport (Public Service Vehicles) Regulation 2000 stipulates the conduct of drivers, in this matter the bus driver must “*take all reasonable precautions to ensure the safety of passengers in or entering or alighting from the vehicle.*” and Regulation 22 (1) (f) states that “*when picking or setting down passengers, stop the vehicle as close as practicable to the left of the road*”. The conduct of passengers which is relevant in this matter is governed by Regulation 23 (1) (s) which states that a passenger must not “*enter or alight from the vehicle or attempt to do so while the vehicle is in motion.*”
- [7] The evidence in this matter is basically that of the Plaintiff and the 1<sup>st</sup> Defendant (Bus Driver). Let us look at what each stated in their evidence in relation to the incident. According to the Plaintiff on 2<sup>nd</sup> September 2016 at around 12.15pm and 12.30pm he was travelling from Vuci Road to Nausori Town. He was seated almost three quarter way in the bus. He had intended to get off the bus stop where the Nausori bridge roundabout is at the junction of the Vuci Road. The driver was in a rush. The Plaintiff pulled the string for the bell to indicate to the driver to get off. The bus stopped. As he was getting off from the bus, the bus suddenly moved. His left foot was stuck and rubbed against the side of the foot path. According to the Plaintiff there was a bus stop where he was getting off. Later in cross-examination the Plaintiff agreed that there was no marking that it was a bus stop. The proper bus stop is near Nausori village which is further up and towards Nausori Town. In re-examination the Plaintiff stated that the bus stopped, he was getting off, and his left foot was already on the footpath and the right foot on the last step. The bus suddenly moved and his feet came and scrubbed the side of the footpath which resulted in the crushing of his toe and upper skin of the foot.
- [8] The Bus Driver (1<sup>st</sup> Defendant) informed the Court that he has been driving buses for 17 years. He recalled the Plaintiff getting on the bus from Vuci Road (near Vuci Methodist School) and was seated in the first seat, front left. While driving towards Nausori and upon reaching the junction, while the bus was in motion the Plaintiff jumped out of the bus. There was no bus stop. The driver was looking at the right hand side as he approached the junction. The passengers shouted. He stopped the bus on the main road. Few minutes later the police arrived. The Plaintiff was taken to hospital in a private vehicle. The bus driver went to the police station to make a report. He was not charged for any offence. According to the 1<sup>st</sup> Defendant the Plaintiff did not pull the bell cord.
- [9] The evidence of the Plaintiff and the 1<sup>st</sup> Defendant (Bus Driver) are diametrically opposed to each other on many fronts. The only issue not in dispute is that the Plaintiff was on the bus and while alighting from the bus he fell and injured his left leg. Part of the agreed bundle of documents is a copy of the Fiji Police Force Medical Examination Form (For Plaintiff) dated 10<sup>th</sup> November 2016 (incident happened on 2<sup>nd</sup> September 2016). I also note that there is some overwriting on the date and time of the medical examination. There is alteration of the date and time of the medical examination. The person who filled the form did not come to Court to give evidence. The Form contains certain information on how the Plaintiff met the accident. Section A (4) of the Form contains background information relevant to request for medical examination, as related by person to be

examined. In it is stated as follows *“alleged that he was involved in an accident at the roundabout Vuci Road on the 2<sup>nd</sup> day of September 2016 at about 12.15 – 12.30 on Wainibokasi Road”*. In Section D (10) which is history related by the person to be examined is as follows *“was getting of a bus when he tripped and fell on the footpath and was being dragged along the footpath.”* The letter from the Fiji Police Force dated 24<sup>th</sup> September 2017, states that *“the victim was travelling from Raralevu... towards Nausori Town. Coming close to the roundabout of Vuci Road and Wainibokasi Road the victim pulled the bus bell to get off the junction. Whilst the victim was walking towards the door he put out his left leg out of the bus when the driver suddenly moved the bus and the victim injured himself on the pavement of the footpath and injuring his left big toe that rubbed against the pavement of the footpath.”*

- [10] I note that it is evident from all the evidence that the Plaintiff wanted to alight the bus at the junction where there was no designated bus stop. The closest bus stop was near the Nausori village which was past the junction. If we are to accept the Plaintiff's version that he pulled the bell. He should have expected to disembark at the closest bus stop which is near the Nausori village. From his evidence and that of his report to the police it seems that the Plaintiff had made up his mind to alight the bus at the junction. There was no bus stop at the junction where the incident happened.
- [11] If we are to believe the Plaintiff then we take it that the bus driver (1<sup>st</sup> Defendant) took his ringing of the bell and stopped the bus at the side of the road and as the Plaintiff was alighting the bus, the driver drove the bus which resulted in injuries to the Plaintiff. The bus driver is an experienced driver of 17 years. He would surely be looking at the Plaintiff if he was disembarking after ringing the bell. He would not drive off when the Plaintiff is alighting and has one foot on the steps of the bus. I do not believe the Plaintiff as he at first was telling the Court that where he was getting off it was a bus stop or bus bay. After cross-examination it was clear and he agreed that there was no bus stop or bus bay where he was alighting the bus. The bus driver's version of events is plausible. The Plaintiff was seated near the exit. He did not pull the bell. He alighted suddenly without the driver's knowledge. According to the bus driver he was looking right at the roundabout. The Plaintiff's version of events is not plausible.
- [12] The driver was applying the right hand rule at the roundabout. The right-hand rule is a driving rule that applies at intersections, roundabouts, parking lots or other open spaces where no other warning signs or rules exist. The right-hand rule basically means that you have to give way to the vehicle coming from your right. We must understand that a bus is not a small vehicle. A driver in control of a bus is required to apart from his duties to the passengers ensure that he safely navigates the bus on the road. As with any driving he is required to see in front of him, the sides and anything approaching from the back. At a roundabout a driver is required to give way to vehicles approaching from his right. He also needs to see what is coming from the left. According to the Driver he did not stop at the junction, he was looking to his right when the plaintiff alighted the bus.
- [13] I find from the evidence before me that there was no provision to stop the bus at the junction and that the driver did not stop the bus at the junction. There was no bus bay or bus stop to stop the bus. The driver was slow as there was traffic. He had to manoeuvre the bus at the roundabout. The driver did not see the Plaintiff alighting the bus. He

became aware after the passengers shouted when the Plaintiff fell. It was the Plaintiff who chose to get off the slow-moving bus. A driver would not expect a passenger to alight a bus at the roundabout. The driver was focusing on the right side as he needed to negotiate the roundabout by giving way to the traffic approaching him from the right. The case for the 1<sup>st</sup> Defendant was that the bus never stopped at all. It was said that the bus was slow as he was near the roundabout. The bus driver was on the outer lane as he mentioned he needed to navigate the roundabout. This brought the bus closer to the side of footpath. In my judgment, it is not shown that the driver in these circumstances did anything that he ought not to have done, or omitted to do anything that he should have done. The bus driver cannot be faulted for the Plaintiff alighting the bus at the point he did. For these reasons I find that the sole cause of the accident was the Plaintiff's own negligence that is alighting from a moving bus which had not come to a complete stop.

[14] The Plaintiff's claim is dismissed. The writ of summons is struck out. Costs are an issue in this matter. The Plaintiff has failed in his claim against the Defendant's. The Defendants have incurred expenses in defending this matter. I have had regard to the particular nature and circumstances of the matter, and the conduct of the proceedings by the Plaintiff. The Plaintiff has suffered as a result of the incident. If I order costs it will be financial burden in these difficult times given his personal circumstances. Having considered everything I do not award any costs in this matter against the Plaintiff. Each party will bear its costs.

[15] **Court Orders:**

- (i) The Claim is dismissed.
- (ii) The Writ of Summons is struck out.
- (iii) No Orders as to costs.



Chaitanya Lakshman

**Acting Puisne Judge**

**24<sup>th</sup> January 2024**

