

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

Civil Action No. HBC 241 of 2021

**BETWEEN:** **TERESIA SENIANA RABUKU and LEDUA BOLA LESIKILODONI**  
both of Sandhurst Street, Verata, Nausori, Self Employed and  
Clerk respectively.

**PLAINTIFF**

**AND:** **MOHAMMED ZAMEER** of Vuci South Road, Nausori, Driver.  
**1<sup>st</sup> DEFENDANT**

**AND:** **FARZANA GULNAZ** of Suva, Vehicle Owner.  
**2<sup>ND</sup> DEFENDANT**

**AND:** **ACCIDENT COMPENSATION COMMISSION, FIJI** of Lot 1 Daniva  
Road, LTA Office Comp Valelevu.  
**3<sup>rd</sup> DEFENDANT**

**Before:** Mr. Justice Deepthi Amaratunga

**Counsel:** Mr Singh D. for the Plaintiff  
Mr. Gordon R.R for the 3<sup>rd</sup> Defendant

**Dates of Hearing:** 12.11. 2024

**Date of Judgment:** 15.11. 2024

*Catch words:*

*Accident Compensation Commission Act Sections 2,25, 26,28,29, 30(a)- Order 3 Rule 4  
Order 15 rule 6 Order 59 Rule 8, 10 and 11 of High Court Rules 1988 – extension of  
time – leave to appeal.*

# JUDGMENT

## INTRODUCTION

- [1] Plaintiffs filed summons seeking extension of time for leave to appeal and also leave to appeal against Master made on 25.1.2024 where third Defendant was struck off from this action in an interlocutory decision.
- [2] Plaintiffs had instituted this action in against first and second Defendants for personal injury due to motor accident. First and second Defendants were the driver and owner of the motor vehicle which collided with motor vehicle where Plaintiffs were travelling. Third Defendant is Accident Compensation Commission which is a statutory body incorporated which can be sue and be sued.
- [3] Third Defendant filed summons to strike out third Defendant from this action and also to stay the proceedings till Plaintiff make an application for assessment of compensation under 'no fault' basis.
- [4] Master struck off third Defendant from this action and since Plaintiff was unable to serve to First and Second Defendant the writ and it had expired.
- [5] Plaintiff seeking leave to appeal against striking out of third Defendant and extension of time for leave to appeal.
- [7] Third Defendant in the written submission raised preliminary objection that no extension of time for leave to appeal can be granted against interlocutory decision of Master, on the basis that court cannot extend the time period of leave to appeal against Master's interlocutory decision.

## Extension of time for leave o Appeal

- [6] The Order 59 rule 8 of the High Court Rules of 1988 states as follows;
- '8(1) An appeal shall lie from a final order or judgment of the Master to a single judge of the High Court.
- (2) **No appeal shall lie** from an interlocutory order or judgment of the Master to a single judge of the High Court **without the leave of a single judge of the High** Court which may be granted or refused upon the papers filed' (emphasis added)
- [7] Master's decision was an interlocutory order in line with Fiji Court of Appeal decision of *Goundar v Minister for Health* [2008] FJCA 40; ABU0075.2006S (9 July 2008)(unreported). So, leave is required for an Appeal from the Master's

decision of 25.1.2024. The Order 59 rule 8(1) only deals with final orders, so I agree that it is irrelevant to the present application.

[8] Order 59 rules 10 and 11 of the High Court Rules of 1988 states as follows

‘10.-(1) An application to enlarge the time period for filing and serving a notice of appeal or cross-appeal may be made to the Master before the expiration of that period and to a single judge after expiration of that period.

(2) An application under paragraph (1) shall be made by way of an inter-parte summons supported by an affidavit.

Application for leave to appeal (O.59, r.11)

11. Any application for leave to appeal an interlocutory order or judgment shall be made by summons with the **supporting affidavit, filed and served within 14 days of the delivery of the order or judgment.** (emphasis added)

[9] Since neither side could point out specific law, it is the general provision contained in Order 3 rule 4 of the High Court Rules of 1988 that should be relied on for the Summons filed seeking extension of time for leave to appeal against the Master’s Ruling of 25.1.2024

[10] The Order 3 rule 4 of the High Court Rules of 1988 applies. It states as follow;

‘4(1) The Court may, on such terms as it thinks just, by order extend or abridge the period within which **a person is required or authorized by these rules, or by any judgment, order or direction, to do any act in any proceeding**’. (emphasis added)

[11] The consideration for granting leave to appeal outside the time period specified in the law, are set out in Court of Appeal and also in the Supreme Court.

[12] In my opinion though the rules of the court needed to be followed the discretion of the court should not be in favour of dismissal of a matter when there are merits of the application and this is specially so when such merits involve novel issues or important interpretation of law. There are obviously, differences of opinion on the said exercise of discretion, and no rigid rules can substitute this reality.

[13] This discretion is granted in High Court Rules 1988 and can be applied to the rules and time lines on that. It is wrong to apply such rules to statutory provisions which had restricted or curtailed discretion of court. Counsel for third Defendant is misconceived to rely on the provisions contained in Companies

Act 2015 which lacked such provision for extension of time and there are good reasons for such curtailment and I do not wish to venture on those reasons in this judgment. This can be contrasted with the subsidiary legislation under Companies Act 2015 where discretion is allowed for Rules made under the Act.

[14] Emanuel v Australian Securities Commission [1997] HCA 20; 144 ALR 359 Kirby J stated,

‘In many cases which depend upon the meaning of legislation found to be ambiguous, strong arguments can be assembled for the competing points of view. So it has proved in this appeal. We deceive ourselves in such cases if we pretend that there is only one available interpretation. The judicial task is to seek out and to declare the preferable construction of the legislation. Only then does it become the one interpretation which the law holds to be correct.’

[15] There are judgments of the this court as well as Court of Appeal and even Supreme Court of Fiji dealing with the non-compliance of rules relating to Leave to Appeal . If one considers all of them they may not be coherent and there may be some difficulty in reconciling. I do not propose to venture such an exercise in this decision, but suffice to state discretion granted to High Court in Order 3 rule 4 of the High Court Rules 1988 , is unfettered.

[16] Interlocutory orders were often made while the action was pending before the court and finality to Interlocutory orders of the court are essential for progress of the trial. This reasoning will not be always used to all the interlocutory decisions, when the classification is based on Fiji Court of Appeal Case Goundar v Minister for Health (supra). Some interlocutory decisions will have final effect, though they are classified as interlocutory. So the rationale that speedy resolution is required for continuation of the action, cannot be a reason to deny extension of time. In this case Plaintiff could not proceed after striking out of third Defendant as writ was not served to first and second Defendants.

[17] In One Hundred Sands Ltd v TeArawa Ltd [2015] FJHC 487; HBC112.2014 (30 June 2015) Alfred J in the High Court, had quoted following passage from Ratnam vs. Cumarasamy and Another [1964] 3 All E.R. at page 935; (Lord Guest in giving the opinion of the Board to the Head of Malaysia s)

"The rules of court must, prima facie, be obeyed, and, in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of

the rules which is to provide a time table for the conduct of litigation. The only material before the Court of Appeal was the affidavit of the appellant. The grounds there stated were that he did not instruct his solicitor until a day before the record of appeal was due to be lodged, and that his reason for this delay was that he hoped for a compromise. Their lordships are satisfied that the Court of Appeal was entitled to take the view that this did not constitute material on which they could exercise their discretion in favour of the appellant. In these circumstances, their lordships find it impossible to say that the discretion of the Court of Appeal was exercised on any wrong principle." (emphasis is mine)

[18] His Lordship Alfred J in High Court, had used this judgment to refuse an extension of time for leave to appeal against an interlocutory decision and His Lordship Ajmeer J in High Court, had also used the said quote to refuse a similar application for extension time for leave to appeal against a Master's decision, in Mohammed v Khan [2015] FJHC 728; HBC67.2014 (2 October 2015). It should also be noted neither Alfred J nor Ajmeer J considered the Order 3 rule 4(1) of High Court Rules of 1988 in the abovementioned decisions for extend the time period for extension of time for an interlocutory decision.

[19] The quote, in Ratnam vs. Cumarasamy and Another [1964] 3 All E.R. 935 used by both Alfred J and Ajmeer J, did not prohibit enlargement of time. While emphasizing that enlargement could not be readily granted, without any reason, stated 'there must be some material on which the court can exercise its discretion'. This can be either law or fact.

[20] About three decades after Ratnam vs. Cumarasamy and Another [1964] 3 All E.R. 935 was pronounced, Finnegan v Parkside Health Authority [1997] EWCA Civ 2774; [1998] 1 All ER 595 the identical provision to High Court Order 4(1) in UK (O.3 r.5) was extensively considered. In that case (Hirst LJ) number of previous decisions (including Ratnam vs. Cumarasamy and Another [1964] 3 All E.R. at page 935) that had different outcomes were discussed and concluded as follow (p 604)( Per Hirst LJ)

'At the end of the day, the key criteria in the present case were guidelines 2 and 10 as laid down in the Mortgage Corp case, showing that the overriding principle was that justice should be done, and that in considering whether to grant an extension of time the court would look at all the circumstances including the other considerations mentioned in that judgment.

Further held (p 604)

'In my judgment the starting point is RSC Ord 3, r 5 itself, which **explicitly confers the widest measure of discretion** in applications for extension

of time, and draws no distinction whatsoever between various classes of cases....' (emphasis added)

[21] Before arriving at the said conclusions Hirst LJ in *Finnegan v Parkside Health Authority* [1997] EWCA Civ 2774; [1998] 1 All ER 595 at 596 considered number of decisions that discussed the exercise of discretion under O.3 r.5 in UK (analogous to Order 3 rule 4(1) of High Court Rules of 1988) in detail, and I would quote some of them for completeness and also those UK decisions are helpful as guiding principles for the use of discretion under said High Court Rule.

At pages 598-599 (Per Hirst LJ)

'In the leading judgment with which Stuart-Smith and Simon Brown LJJ agreed Bingham MR stated as follows ( [1993] 1 All ER 952 at 959–960, [1993] 1 WLR 256 at 263–264):

'We are told that there is some uncertainty among practitioners and judges as to the appropriate practice in situations such as this. It is plainly desirable that we should give such guidance as we can. As so often happens, this problem arises at the intersection of two principles, each in itself salutary. The first principle is that the rules of court and the associated rules of practice, devised in the public interest to promote the expeditious dispatch of litigation, must be observed. The prescribed time limits are not targets to be aimed at or expressions of pious hope but requirements to be met. This principle is reflected in a series of rules giving the court a discretion to dismiss on failure to comply with a time limit: Ord 19, r 1, Ord 24, r 16(1), Ord 25, r 1(4) and (5), Ord 28, r 10(1) and Ord 34, r 2(2) are examples. This principle is also reflected in the court's inherent jurisdiction to dismiss for want of prosecution. The second principle is that a plaintiff should not in the ordinary way be denied an adjudication of his claim on its merits because of procedural default, unless the default causes prejudice to his opponent for which an award of costs cannot compensate. This principle is reflected in the general discretion to extend time conferred by Ord 3, r 5, a discretion to be exercised in accordance with the requirements of justice in the particular case. It is a principle also reflected in the liberal approach generally adopted in relation to the amendment of pleadings. **Neither of these principles is absolute. If the first principle were rigidly enforced, procedural default would lead to dismissal of actions without any consideration of whether the plaintiff's default had caused prejudice to the defendant. But the court's practice has been to treat the existence of such prejudice as a crucial, and often a decisive, matter.** If the second principle were followed without exception, a well-to-do plaintiff willing and able to meet orders for costs made against him could flout the rules with impunity, confident that he

would suffer no penalty unless or until the defendant could demonstrate prejudice. This would circumscribe the very general discretion conferred by Ord 3, r 5, and would indeed involve a substantial rewriting of the rule. **The resolution of problems such as the present cannot in my view be governed by a single universally applicable rule of thumb. A rigid, mechanistic approach is inappropriate.** Where, as here, the defendant seeks to dismiss and the plaintiff seeks an extension of time, there can be no general rule that the plaintiff's application should be heard first, with dismissal of his action as an inevitable consequence if he fails to show a good reason for his procedural default. **In the great mass of cases, it is appropriate for the court to hear both summonses together, since, in considering what justice requires,** the court is concerned to do justice to both parties, the plaintiff as well as the defendant, and the case is best viewed in the round. In the present case, there was before the district judge no application by the plaintiff for extension, although there was before the judge. It is in my view of little or no significance whether the plaintiff makes such an application or not: if he does not, the court considering the defendant's application to dismiss will inevitably consider the plaintiff's position and, if the court refuses to dismiss, it has power to grant the plaintiff any necessary extension whether separate application is made or not. Cases involving procedural abuse (such as *Hytrac Conveyors Ltd v Conveyors International Ltd* [1982] 3 All ER 415, [1983] 1 WLR 44 or questionable tactics (such as *Revici v Prentice Hall Inc* [1969] 1 All ER 772, [1969] 1 WLR 157) may call for special treatment. So, of course, will cases of contumelious and intentional default and cases where a default is repeated or persisted in after a peremptory order. But in the ordinary way, and in the absence of special circumstances, a court will not exercise its inherent jurisdiction to dismiss a plaintiff's action for want of prosecution unless the delay complained of after the issue of proceedings has caused at least a real risk of prejudice to the defendant. A similar approach should govern applications made under Ords 19, 24, 25, 28 and 34. The approach to applications under Ord 3, r 5 should not in most cases be very different. Save in special cases or exceptional circumstances, it can rarely be appropriate, on an overall assessment of what justice requires, to deny the plaintiff an extension (where the denial will stifle his action) because of a procedural default which, even if unjustifiable, has caused the defendant no prejudice for which he cannot be compensated by an award of costs. **In short, an application under Ord 3, r 5 should ordinarily be granted where the overall justice of the case requires that the action be allowed to proceed.**' (emphasis added)

[22] So the paramount consideration is injustice to the party seeking leave and merits of the appeal grounds. More weight is given to such grounds though delay and explanation for delay are considered and a cumulative effect is taken. Accordingly preliminary objection of counsel for third Defendant is overruled considering the importance of novel legal provisions and interpretation of that is required and in such a situation I am not inclined to adopt the path of least resistance and to rely on technical issue when interpretation of legal provisions are required. In my mind such an approach create uncertainty as to law and should be avoided.

**Can Accident Compensation Commission be named as Defendant to personal injury or death due to accident in tort actions without pleading of cause of action against it.**

[23] At the outset it should be clear this is not an action for misfeasance or other cause of action (eg negligence) against Accident Compensation Commission. There is no doubt that it can be sued as a corporate body. The issue is whether it can be named as a Defendant by Plaintiff for actions or torts of the others, where, Accident Compensation Commission is legally required to satisfy the judgments by operation of law. The simple answer would be in negative but this issue cannot be looked from the absence of cause of action against Accident Compensation Commission, as of Order 15 rule 6 (2) (b) of High Court Rules 1988, gives discretion to court to add parties.

[24] Long title of Accident Compensation Commission Act 2017 (ACCA) reads;

“An act to establish the accident compensation commission fiji and to make provision for compensation in respect of persons who suffer personal injury or death as a result of an accident in fiji and for related matters”

[25] Accordingly Accident Compensation Commission is a statutory body that can be sued and sue other parties in terms of Section 4(2) which reads;

“(2) The Commission is a body corporate with perpetual succession and a common seal, and is capable of holding real and personal property, and of suing and being sued, and of doing and suffering all such other acts and things as a body corporate may lawfully do and suffer.”

[26] Accident Compensation Commission is legally obliged to satisfy any personal injury or death as a result of ‘accident’ in Fiji. Section 29 of ACCA states;



“29.—(1) Subject to the provisions of this Act, where a judgment is issued or delivered in **Fiji awarding compensation for any personal injury or death as a result of an accident in Fiji, the Commission must pay to the person entitled to the benefit of such judgment any sum payable** thereunder including any amount payable in respect of costs and the sum payable by virtue of any written law in respect of interest on that sum.

(2) No sum is payable by the Commission under subsection (1) in respect of any judgment while execution thereon is stayed pending an appeal.

(3) The Commission is not liable to make any payment with respect to any judgment of any foreign court or tribunal awarding compensation to any person for any personal injury or death as a result of an accident in Fiji.

(4) Where a judgment is obtained in respect of liability of any person for any personal injury or death as a result of an accident in Fiji and where such liability is covered under a policy of insurance issued by an insurance company, then the Commission must satisfy the judgment in accordance with this section, and the insurance company must pay to the Commission such amount paid out by the Commission within the time prescribed by regulations, provided however that the insurance company is only required to make such payment as is covered under the policy of insurance.” (emphasis added)

[27] So Accident Compensation Commission is statutorily obliged to pay judgments obtained under common law for personal injury or death resulting from ‘accidents’ subject to the provisions of ACCA.

[28] In order to make Accident Compensation Commission to pay such awards of the court it is required to comply with the provisions under ACCA, as the payment is ‘subject to ‘ ACCA.

[29] Plaintiff in the written submission had relied on Supreme Court decision of Sun Insurance Co Ltd v Lata [2019] FJSC 21; CBV0006.2018 (30 August 2019) and at paragraph 36 held,

‘A trawl through other Commonwealth countries will throw up many more examples. I need only cite the Singapore White Book, (Singapore Civil Procedures 2018 Vol 1, (Sweet & Maxwell, 2018) at para. 15/6/13, which cites *Gurtner v Circuit* [1968] 2 All E.R. 328 CA (Eng) for the rule that the **right to intervene and be added as a party exists where the proprietary or pecuniary rights of the intervener are directly affected by the proceedings or where the intervener may be rendered liable to satisfy any judgment either directly or indirectly**; the effect of which is to include any case in which the intervener is directly affected not only in his legal rights but also in his pocket. Thus the Motor Insurer’s Bureau will be allowed to be added in an action arising out of a road traffic

accident, since any judgment in the action can be legally, though indirectly, **enforceable against them**. A surety who would be directly affected by the determination of the question whether a payment made to a creditor is a fraudulent preference ought to be made a party to the proceedings, *Re Intendent (A Bankrupt)* [1970] 1 W.L.R. 1015.”(emphasis added)

[30] In *Gurtner v Circuit* [1968] 2 All E.R. 328 CA (Eng), which allowed Insurance Bureau to be added as party under Order 15 rule 6(2)(b) of R.S.C of UK (which is analogous to Order 15 rule 6(2)(b) of High Court Rules of 1988 cannot be taken out of context. The facts of that case are peculiar though not uncommon. Plaintiff was injured by a motor accident and Defendant could not be located as he was resident of another country. The insurance company was also in liquidation, but there was an executive agreement between Minister and Insurance Bureau to satisfy and award for third party insurance. Strangely, in that case, court allowed substituted service to Defendant c/o Insurance Bureau. So Insurance Bureau sought to intervene in the action in terms of Order 15 rule 6(2)(b) of R.S.C of UK. This is in sharp contrast with the action of Plaintiff in case before me.

[31] In that case defendants could not be located and substituted service was granted by the court and it was also served to the Insurance Bureau and after investigation of the accident Insurance Bureau had made an application under Order 15 rule 6(2) of R.S.C of UK to be intervened to contest the substituted service and this was allowed by the court. Court of Appeal (UK) observed that substituted service could not be served to Insurance Bureau and obviously action could not proceed on default judgment.

[32] In *Gurtner* (supra) judgments were fulfilled by Insurance Bureau on an undertaking given to executive of the government which had no legal basis for implementation by the court, unlike ACCA in Fiji. In that case it was the application of intended party who sought to be added as party to the action, and it was allowed.

[33] In sharp contrast to above case Plaintiff had not stated in the statement of claim on what basis it had named Accident Compensation Commission as a party. Its only mention is paragraph 3 of the statement of claim which state that the vehicle involved in the claim for personal injury to Plaintiff had a ‘coverage pursuant to Motor Vehicle Accident Compensation Scheme under ACCF’.

[34] In this action first and second defendants were not served and writ was not renewed and its validity period had expired. So there is no provision in such a situation to keep the action alive by making Accident Compensation Commission as a party without describing as the basis of such party being added.

- [35] Under ACCA there is no provision for Plaintiff to make Accident Compensation Commission a Defendant solely based on the alleged 'coverage'. In fact there is no coverage but a statutory 'levy' is charged from the vehicle owners and a fund is created for the purpose. Other than this income Section 30(9) of ACCA states
- “(9) **Parliament must ensure that adequate funding is made available** to the Accident Compensation Fund for the **provision of compensation** for personal injury and death as a result of an accident in Fiji.(emphasis added)
- [36] So ACCA is a social legislation for the benefit of parties who suffer injury or death from 'accidents' in Fiji and funded by levies and also provision for funding from the public. So the obligation set out in Section 29 of ACCA is statutory to pay judgment sum for personal injury or death for 'accidents'.
- [37] Word 'Accident' is defined in interpretation provision contained in Section 2 of ACCA as "accidents" means an accident which is set out in the Schedule; and the Schedule had defined Accidents as
- a. Accidents 'cause by motor vehicles.'
  - b. Accidents 'arising out and in the course of employment.'
  - c. Accidents in school premises during 'school event or activity.'
- [38] So ACCA created a statutory body that is legally bound to satisfy a judgment 'awarding *compensation for any personal injury or death as a result of an accident in Fiji*'.
- [39] There is no provision in ACCA to make Accident Compensation Commission which is a legal personality created under said Act to be made a Defendant, by Plaintiff on the basis of levies paid to Accident Compensation Fund. Levies paid under as statute does not by virtue of such payment create legal obligation similar to insurance cover which is contractual upon payment due premium for such cover.
- [40] So, the position relating to Accident Compensation Commission is not completely analogous to an insurer under third party insurance as it is not contractual, but statutorily determined. So there is no provision to make Accident Compensation Commission a Defendant, only because a vehicle owner involved in the said accident had paid 'levies' for the said vehicle under ACCA which is the only basis that can be deduced from statement of claim. This is an obligation of every vehicle owner to comply and the collection of levy is vested with Land Transport Authority in terms of Accident Compensation (Levies) Regulation 2017. Levies are mandatory collection of money similar to payment of Tax and clearly distinguishable to a fee or premium paid as consideration for contractual obligation for specific benefit or risk in insurance. So by virtue of payment of 'Motor Vehicle Accident Levy' in

terms of Regulation 3 of Accident Compensation (levies) Regulations 2017 there is no legal basis for addition of Accident Compensation Commission as a Defendant to an action for recovery of compensation for personal injury or death resulting from an 'accidents' stated in ACCA.

[41] According to the pleadings there is no basis on which Accident Compensation Commission was made a Defendant but its only mention is found in paragraph 3 which reads

“The 2<sup>nd</sup> Defendant is the registered owner of the said motor vehicle registration number .... Which had a compensation coverage pursuant to the Motor Vehicle Accident Compensation Scheme under ACCF’.

[42] As there is no mention about third Defendant anywhere in the statement of claim. The basis of addition of third Defendant (Accident Compensation Commission) was on the basis of alleged 'coverage' which in fact is only a payment of levy imposed by a Regulation made under ACCA and for the reasons given earlier payment of levy is not sufficient to add any entity funded by such levy.

[43] So I cannot see any merit in the leave to appeal against Master's decision which struck off third Defendant, though such striking off was made on the basis that there was no cause of action against third Defendant.

[44] Master had considered relevant provisions of ACCA, before striking out of third Defendant and based said strike out for lack of cause of action pleaded in statement of claim. A party can be named in an action without pleading of cause of action which is loosely called as 'nominal' party. When I raised this at hearing counsel for third Defendant stated that there are no High Court Rules of 1988 that allow such 'nominal' parties. This is not correct position of law.

[45] A party can be added as a Defendant even against the wishes of Plaintiff and such addition can be done through proper application by such party or in *ex mero motu* in terms of Order 15 rule 2 and 3 of High Court Rules 1988 ,which state;

“(2) Subject to the provisions of this rule, at any stage of the proceedings in any cause or matter the **Court may on such terms as it thinks just and either of its own motion or on application**–

(a) Order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;

(b) Order any of the following persons to be added as a party, namely–

- (i) any person who **ought to have joined as a party** or whose **presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon**, or
  - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy which **in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.**
- (3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter”

[46] So there is provision in High Court Rules of 1988 for a party to be added on the instigation of court or on application of such party and the basis of such addition is not always depend on availability of cause of action against such party. Tunnel Vision cannot dictate interpretation of wide discretion given to court in terms of Order 15 Rule 6 of High Court Rules 1988.

[47] A party can be sued, without cause of action against such party, due to statutory requirements such as Section 12 (2) of State Proceedings Act 1951.

[48] The discretion of the court can be exercised in order to add a party in terms of Order 15 rule 6 (2) (b) of High Court Rules 1988.

[49] Supreme Court in Sun Insurance v Lata (supra) stated *‘that the right to intervene and be added as a party exists where the proprietary or pecuniary rights of the intervener are directly affected by the proceedings or where the intervener may be rendered liable to satisfy any judgment either directly or indirectly; the effect of which is to include any case in which the intervener is directly affected not only in his legal rights but also in his pocket.’* On this basis ‘Motor Insurer’s Bureau’ was allowed to be added on the application of Insurer’s Bureau’s application. So can ACCA be also added as a party if ACCA makes an application? My short answer will be it will be superfluous in this action to make such application considering the statutory provision contained in ACCA. I cannot think of a reason in this action for Accident Compensation Commission to seek it to be added as party to an action, based on Section 29 of ACCA as it could take over the conduct of proceedings on behalf of Defendants in terms of Section 28 of ACCA and the authority to act on behalf of Defendant is deemed under said provision. I do not exclude a rare instance

of intervention by Accident Compensation Commission. This is where discretion of court required under Order 15 Rule 6 of High Court Rules.

[50] Under ACCA the position of Accident Compensation Commission, as to actions instituted claiming death or injury due to ‘accidents’ are clear and there is no requirement to add it as a Defendant. Section 28 of ACCA states,

*“Proceeding for personal injury or death in a court or tribunal*

28.—(1) Any person who institutes a proceeding, claim or action in a court or tribunal, whether for the person or on behalf of another person, which seeks to claim damages or compensation for personal injury or death as a result of an accident in Fiji **must serve a copy of all pleadings and documents on the Commission.**

(2) Any person against whom a proceeding, claim or action is instituted in a court or tribunal for damages or compensation for personal injury or death as a result of an accident in Fiji must—

- (a) immediately notify the Commission and provide the Commission with all pleadings and documents;
- (b) provide all such other particulars or information and take all such steps as the Commission may require; and
- (c) not, without the written consent of the Commission, make any offer, promise, payment or settlement or any admission of liability or quantum of damages or compensation in any such proceeding, claim or action, and the Commission is not bound by any such offer, promise, payment or settlement or any admission of liability or quantum of damages or compensation.

**(3) No court or tribunal is to hear or determine or make any orders in any proceeding, claim or action for damages or compensation for personal injury or death as a result of an accident in Fiji until the court or tribunal is satisfied that the Commission has been served with all the pleadings and documents in respect of any such proceeding, claim or action and has been given an opportunity to appear in, be heard and to defend any such proceeding, claim or action.**

**(4) The Commission may—**

- (a) undertake settlement of any proceeding, claim or action in a court or tribunal against any person for damages or compensation for personal injury or death as a result of an accident in Fiji;
- (b) **take over the conduct and control of any such**

**proceeding, claim or action in a court or tribunal; and (c) defend or conduct any such proceeding, claim or action in a court or in a court or tribunal; and tribunal, and the person against whom any such proceeding, claim or action in a court or tribunal is instituted is deemed to have authorised the Commission to have conduct and control of any such proceeding, claim or action.**

(5) A court or tribunal, with respect to any proceeding, claim or action for damages or compensation for personal injury as a result of an accident in Fiji must, upon an application by the Commission, require any person who is injured by any such accident to undergo such medical examination as the Commission requires in order to ascertain the nature and extent of injuries sustained by that person, and where the person refuses or fails to attend any such medical examination, the court or tribunal must stay any such proceeding, claim or action until such time when the person undergoes the medical examination.”(emphasis added)

- [51] So it is superfluous to add again Accident Compensation Commission as Defendant as it is deemed to have authorized by Defendants to conduct and control of the proceedings and this should be read with Section 29(1) of ACCA where statutorily ACCA obliged to satisfy a judgment obtained subject to ACCA. It seemed that Plaintiff had added third Defendant in order to avoid service to first and second Defendants and avoid service, which had fatal consequences due to validity of the writ being expired without service.
- [52] There is an obligation on the part of the courts to ensure that Accident Compensation Commission is *‘served with all the pleadings and documents in respect of any such proceeding, claim or action and has been given an opportunity to appear in, be heard and to defend any such proceeding, claim or action.’* In High Court since pretrial is held with Master this fact must be ensured. If Accident Compensation Commission does not want to take over the proceedings in order to defendant, it is statutorily empowered to do so, without being added as party to any action. It is a statutory right of Accident Compensation Commission and cannot be denied on application.
- [53] Section 5 (2) ACCA allows a party to institute an action for damages under common law after making an application to Accident Compensation Commission. This may be due to rejection of ‘amount prescribed’ under ‘no fault compensation scheme’ in terms of Section 19 of ACCA. But a party is not precluded from institution of action without an application to Accident compensation Commission in terms of Section 26 of ACCA.
- [54] Section 26 (1) of ACCA allows Accident Compensation Commission to make an assessment based on ‘no fault compensation scheme’ after institution of the action. So Section 25 and 26 (1) should be read together and there is no

conflict between the said provisions. Due to limitation Act 1971 a party may seek Litigation prior to expiration of time period for action and or due to oversight or any other factor. As a social Legislation such a party is not precluded from their rights under common law, subject provisions under ACCA.

- [55] In this application Plaintiff had added third Defendant and there was no basis for such addition. On the available facts Master had exercised discretion correctly despite Order 15 rule 6 (2) (b) of High Court Rules of 1988 was not discussed. Having discussed it, there are no merits in this application seeking extension of time. Apart from this there are no sufficient reasons given for delay which I do not consider as determinative in this summons.
- [56] For the reasons given above the summons filed on 24.07.2024 for extension of time for leave to appeal out of time is refused.
- [57] By virtue of statutory fiction created by Section 28 (4) (c) of ACCA when Accident Compensation Commission decided to defend a party it required no sanction from such party to defend.

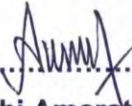
### **CONCLUSION**

- [56] This summons seeking extension of time to leave to appeal has no merits as Accident Compensation Commission cannot be named as third Defendant on the basis of payment of Motor Vehicle Levy paid by owner.

### **FINAL ORDERS:**

- a. Extension of time for leave to appeal and leave to appeal against Master's decision of 25.1.2024 struck off.
- b. No costs.



  
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**Deepthi Amarātunga**  
Judge

**At Suva** this 15<sup>th</sup> November, 2024.

### **Solicitors**

Daniel Singh Lawyers  
Gordon & Co. Lawyers