

LAITIA KORI

v.

SEBAR ALI

[SUPREME COURT, 1966 (Hammett Ag. C.J.) 23rd June, 1st July]

Civil Jurisdiction

Negligence—negligent driving—personal injury—pedestrian on road without footpaths—duties of driver and pedestrian.

Damages—personal injury—negligent driving—road without footpaths—contributory negligence by pedestrian—apportionment of responsibility.

The plaintiff, while walking along a straight portion of a road, at a place where there was no provision by way of footpaths for pedestrians, was injured by being struck by a motor vehicle driven by the defendant. It was about 6 p.m. and the weather was windy and cloudy with drizzling rain. The plaintiff was walking, with two companions, on the left side of the road, the plaintiff being the nearest of the three to the centre of the road, when the defendant's taxi struck him from the rear.

Held: 1. Where separate provision is not made for pedestrians and motor traffic there is a duty on the part of pedestrians to keep a lookout for traffic, and for drivers, especially when they approach pedestrians on the road from behind, to do so with extra care and to make sure that they are made aware of their approach.

2. The defendant was negligent in not taking care to approach the plaintiff at a speed and in such a manner that he could either stop or swerve in time to avoid colliding with the plaintiff.

3. The plaintiff was guilty of some contributory negligence in walking in the centre of the road at the time and in the manner he did.

4. The apportionment of responsibility was 25% upon the plaintiff and 75% upon the defendant.

Action in the Supreme Court for damages for personal injury caused by negligent driving.

R. I. Kapadia for the plaintiff.

C. L. Jamnadas for the defendant.

The facts sufficiently appear from the judgment.

HAMMETT Ag. C.J.: [1st July, 1966]—

The Plaintiff claims damages for the negligent driving by the Defendant of a taxi whereby the Plaintiff was knocked down and suffered injury.

Many of the facts are not in dispute. On 12th January, 1965, at a little before 6.00 p.m. the Plaintiff was walking home with two companions along a straight portion of the King's Road near Nausori towards their home in the village of Verata. There was no other

A traffic on the road at the time. It was cloudy, windy and drizzling with rain. The Plaintiff and his companions had been to the Rewa Hotel for a drink and between them the Plaintiff and his witness say they had drunk four bottles of beer. He denies he was drunk but conceded that the beer they had shared had had some effect on him. His two companions were walking beside each other on the left hand side of the road whilst he was nearer the centre of the road.

The Defendant approached them from the rear driving his taxi, in which he had a number of passengers.

B It is the case for the Plaintiff that he suddenly realised for the first time that the Defendant's taxi was just behind him, travelling at a fast speed and about to run him down. He says he instinctively leapt into the air. He fell on to the bonnet of the car and was carried forward until the car stopped when he fell on to the road. He lost consciousness and sustained a number of injuries including complicated fractures to both his legs. He was taken to Hospital C where he was an in-patient until December 1965. He was unable to do any work until March 1966 and even now has not yet returned to his full pre-accident ability to do farm work. On the other hand it is agreed that there will be no permanent residual incapacity as a result of the accident.

D It is the case for the Defendant that as he approached the Plaintiff and his companion he sounded his horn and it appeared to him that the Plaintiff moved over further to his right hand side near the crown of the road. He thought the Plaintiff was making room for him to pass between himself and his companions. He said that as he passed a yard or so from the Plaintiff, the Plaintiff suddenly leapt sideways, into the air and on to the bonnett of his car, for no apparent reason at all, and thereby suffered his injuries.

E The road at the scene has a gravel surface and, as is usual in Fiji outside the Townships, there were no footpaths on either side. The Plaintiff says he was walking home along the King's Road as he has often done before and the Defendant concedes that the manner in which the Plaintiff and his two companions were walking along the road in front of him was the normal way in which people do walk on the main roads in the country of Fiji.

F It is of course much safer for pedestrians, when there are no footpaths, to walk on the right hand side of the road. They then face the oncoming traffic and keep well clear of the traffic approaching from behind them. Nevertheless it is the duty of drivers to take reasonable care not to run down pedestrians wherever they may be walking. Again it is common knowledge that on our gravel G surfaced roads pedestrians often walk along that part of the road that is flattened by the tyres of vehicles in preference to those parts of the road where there is loose gravel. They do not necessarily follow the safest part of the road, or keep as far to the side of the road as is otherwise possible.

H It is quite clear to me and I hold as fact that the manner in which the Plaintiff was walking and the route he took was not unusual and was as the Defendant conceded, just how people in Fiji often do in fact walk on our main roads.

Where separate provision is not made for pedestrians and motor traffic there is a duty on the part of pedestrians to keep a look-out for traffic and for drivers, especially when they approach pedestrians on the road from behind, to do so with even extra care than usual and to make sure that they are made aware of their approach.

The Plaintiff and his witnesses all appeared to me to be witnesses of truth. The Plaintiff said he did not hear the Defendant's car approaching him. He had had a few drinks and the noise of the wind in his face may well have prevented him from doing so. After considering the whole of the evidence both for the Plaintiff and the Defendant I accept the version of the facts given by the Plaintiff. I am quite satisfied that he did not hear or know of the approach of the Defendant's taxi behind him until just before the accident. When he found the taxi was bearing down on him he instinctively leapt into the air and by so doing he probably saved his life as he would otherwise have been run over. His reaction was not unreasonable. I hold as fact that the Defendant drove his taxi much closer to the Plaintiff than was consistent with safety and that if the Plaintiff had not jumped into the air he would have been run down by the taxi.

It appears to me that the Defendant should not have steered his car so as to pass so close to the Plaintiff or between the Plaintiff and his companions — as he said he did — without making quite sure that the Plaintiff knew that this was what he was going to do. The Defendant mistakenly assumed that the course the Plaintiff took was a sign that the Plaintiff knew he was approaching which, I am satisfied, he did not in fact know.

In my opinion the Defendant was negligent in not taking care to approach the Plaintiff at a speed and in such a manner that he could either stop or swerve in time to avoid colliding with the Plaintiff. On the other hand I am equally satisfied that the Plaintiff himself was guilty of some contributory negligence in walking in the centre of the road at the time and in the manner he did, instead of on one side of the road as his companions did. I assess the Plaintiff's share in the responsibility for this accident and for the damages flowing therefrom at twenty-five per cent and the Defendant's liability at seventy-five per cent.

On the question of damages, the Plaintiff is a farm labourer, single and aged 26 years working a family farm with his two younger brothers. I assess his loss of income and earnings at £2-10-0 per week from 12th January 1965 to 31st March 1966 and from 31st March 1966 at £2-0-0 per week for 10 weeks which makes a total of £145-0-0. In this period he suffered considerable pain and inconvenience from the complicated fractures he suffered to both his legs and his other injuries and I assess the damages therefor at £300. In addition to this he has suffered special damages agreed at £6-5-6. This makes a total of £451-5-6 for which the Defendant is liable to the extent of £338-9-0, i.e. seventy-five per cent.

I do therefore give judgment for the Plaintiff for £338-9-0 and costs to be taxed or agreed.

Judgment for the plaintiff for 75% of the damages assessed.