

IN THE SUPREME COURT OF FIJI
Civil Jurisdiction
ACTION NO. 9 OF 1979

BETWEEN:

RAJESH CHAND s/o Balram Plaintiff

- and -

CENTRAL MEAT CO. of Nausori 1st Defendant

ABDUL AZIZ s/o Jaffar 2nd Defendant

Mr. A.B. Ali for the Plaintiff.
Mr. Sweetman for the Defendants.

J U D G M E N T

The plaintiff's claim is for damages for personal injuries sustained by him when he was involved in an accident on the 19th April, 1976 as a result of the alleged negligent driving of motor vehicle registered number AP444 owned by the first defendant and driven by the second defendant.

The defendants admitted the vehicle was owned by the first defendant and was driven at the relevant time by the second defendant who was the servant or agent of the first defendant. The second defendant denied any negligence and alleged the accident was solely caused by the negligence of the plaintiff.

There is no dispute that the accident happened on Ratu Mara Road near Samabula 3 miles between 8 and 8.30p.m on the 19th April, 1976.

The plaintiff said he was trying to cross Ratu Mara Road and had almost done so when he was hit by a vehicle and became unconscious. There was no pedestrian crossing near that point of the road. He says he looked left and right before crossing. He saw a rental car on his left about 3 to 4 chains away coming from the Nausori direction towards Suva. He said before he crossed the road he saw it was safe to do so and he was walking fast. The weather was clear and there was a street light near by but light was not very bright. The plaintiff says road was straight but on his left about a chain away was a bend. He went to the centre line of the road saw the rental car approaching and he waited for some time until it passed and then proceeded across the road and was almost across it when hit from the left. He did not see what hit him but he says he heard it coming and it was not a loud noise but he knew it was a truck by the sound of it. On his right when he started to cross the road was a slight bend in the road. The road was almost straight and he could see up the road for 5 or 6 chains.

The plaintiff never saw the truck which hit him and since he called no other witness who saw the accident he adduced no evidence as to the speed or manner in which the second defendant drove vehicle AP444. The totality of his evidence on the question of negligence was that he was standing on the centre line of the road and when he had almost crossed the road he was run down by vehicle AP444 and suffered injuries. He was adamant that when he proceeded to cross the road he started crossing from the left hand side of Ratu Mara road if one looks towards the Nausori direction. He says he was hit from the left from which he assumed the vehicle was proceeding from the Nausori direction towards Suva.

The defendant's version which I accept is that vehicle AP444 was proceeding towards Nausori. The second defendant says his truck was carrying a load of cattle and his journey was from Sigatoka to the slaughter yard at Nasinu near Nausori. There was a car ahead of

him about 10 or 12 yards which he was following. He says a pedestrian came and hit his vehicle on the front right mudguard near the light. He stopped his vehicle almost at the position where the accident occurred. He found the plaintiff on the road unconscious on his left side of the road about one yard from the white centre line. He said he was travelling about 25 m.p.h. just before the accident and applied his brakes hard before the accident which he says he could not avoid.

Before the accident the second defendant had seen a pedestrian from 2 chains away on the footpath on the right hand side of the road walking towards the Nausori direction on the footpath. He thought this pedestrian was the plaintiff because he saw no other pedestrians on the road at the time. The first time he saw the plaintiff actually on the road was when he was only a yard or two away on the white line in the middle of the road.

Mohammed Rafiq, one of the partners in Central Meat Company was a passenger in the cab of the truck that evening. He confirmed they were travelling towards Nausori with a load of cattle. He heard the sound of a collision but did not see the plaintiff on the road before the accident. He had also seen a pedestrian on the footpath on the right hand side of the road who was walking towards Nausori. He saw no approaching traffic. He said the second defendant applied his brakes and vehicle stopped. He got out of the vehicle, walked around the front of it and found a boy lying near the vehicle and near the centre line on the road. A Fijian bystander helped him lift the boy into the truck and he was taken to the hospital. He was nursing the boy, who was the plaintiff, on his lap and he noticed on the journey to the hospital that the plaintiff's breath smelt of beer or liquor. He confirmed the speed the second defendant said he was travelling and his stopping close to where the accident occurred and that the second defendant was on his correct side of the road.

Neither of the two defence witnesses saw the plaintiff step off the footpath to cross the road. The pedestrian they saw and assumed was the plaintiff was clearly not the plaintiff. He had on his own admission been standing on the centre line of the road for some time before a rental car passed him.

It is also clear to me that the plaintiff is mistaken when he says he was hit by a vehicle coming from the direction of Nausori. I find as a fact that he was hit by vehicle AP444 which was travelling towards Nausori. The plaintiff was hit from his left breaking his left leg and knocking him down causing an injury to his right temple. I believe his recollection is at fault and he had crossed the road from left to right to purchase some cigarettes and had returned and was standing on the white line in the middle of the road waiting for the rental car to pass so he could complete crossing the road. As it passed he did not notice the truck following behind the rental car. He started off across the road and was immediately knocked down by vehicle AP444 which he did not see.

The plaintiff in my view placed himself in a very dangerous position on the centre line of a main road at night in a position where lighting was not good. He never saw the truck which hit him and clearly did not look to his left before continuing on his way across the road. He acted negligently and without regard to his own safety.

I have closely considered the evidence of the second defendant and his witness and am satisfied that there was no contributory negligence on the part of the second defendant. I accept his evidence that he first saw the plaintiff on the road when only a very short distance away. Had he not been following behind a vehicle he might have seen the plaintiff standing on the centre line in time to avoid the accident.

I find as a fact that the plaintiff was solely responsible for his misfortune. He has failed to establish that the second defendant was negligent in the manner of his driving. The second defendant in my view was placed in a position where he could not have avoided the accident.

The plaintiff's claim is dismissed with costs to the defendants.

R.G. Kermode
(R.G. KERMODE)
JUDGE

SUVA,

9 May 1980.