

IN THE SUPREME COURT OF FIJI  
Civil Jurisdiction  
ACTION NO. 72 OF 1980

Between:

HARNAM SINGH s/o Bhagat Singh

PLAINTIFF

- and -

DHARA s/o Mangal

DEFENDANT

Mr. H.M. Patel for the Plaintiff.

Mr. V. Parmanandam for the Defendant.

JUDGMENT

The plaintiff's claim against the defendant is for damages for injuries sustained by him due to the defendant throwing a stone at him.

The defendant does not deny throwing the stone which hit the plaintiff on his head, but he claims to have acted in self defence. He further alleges he was assaulted by the plaintiff and the plaintiff's friends and counterclaims for damages.

On Friday the 21st July, 1978, at about 3 p.m. on the Luto Feeder Road in Tailevu, a number of Indians were engaged in laying water pipes when there was an argument in which the defendant and the plaintiff were involved.

I have two versions as to what happened that afternoon. One related by the plaintiff and his witnesses

and that related by the defendant. I am in no doubt at all that the story told by the plaintiff and his witnesses is factual and that that told by the defendant, particularly relating to the stone throwing incident, has been fabricated by him in an effort to establish that he was assaulted by the plaintiff and his friends.

The defendant, who is a farmer, lives on his farm which adjoins the Lutu Road at or near where the stone throwing incident took place.

The defendant and the plaintiff's uncle Magar Singh who were neighbours used a common gate which both had erected to obtain access to their respective properties. On the morning of the 21st July the plaintiff was driving his truck. His uncle was in the truck and when they came to the gate the plaintiff stopped the truck and his uncle got down and opened the gate. He then got back into the truck. The defendant was nearby at the time and started using abusive language. Magar Singh got down from the truck again and went and spoke to the defendant. A heated argument developed over the use of the gate by the plaintiff.

The plaintiff and Magar Singh left the scene but returned later between midday and 1 p.m. to the gate. Magar Singh went into the defendant's compound where some water pipes were stored while the plaintiff remained outside gate. When Magar Singh came back he and the plaintiff went into the defendant's compound and loaded some pipes onto the truck. They returned to Lutu Road where pipe laying was still in progress.

At about 3 p.m. the defendant approached the plaintiff who was near his truck on Lutu Road where the pipe laying was in progress and started quarrelling with the plaintiff. He was complaining about the opening of the gate. The plaintiff said he told his uncle that they should go and that they would take legal action against the

defendant. The plaintiff says the defendant then said "you can see me now" and punched the plaintiff on his left eye.

Magar Singh's version as to what was said by the plaintiff at that time is that he said "Let's go we will sort it out later" whereupon the defendant said "why see later see about it now" and punched the plaintiff. The plaintiff retaliated and there is no doubt that several blows were exchanged by the parties.

Magar Singh then held the plaintiff and one Gopi Chand, who had been working on the pipe laying nearby, held the defendant and led him away a distance of about 3 chains towards the defendant's home and left him. The defendant shortly afterwards picked up a stone and threw it. It hit the plaintiff's truck. He then picked up and threw another stone which hit the plaintiff who was standing near his truck on the head and he fell down unconscious.

Gopi Chand who was called as a witness confirmed that he took the defendant away shortly after the fight had started to the defendant's compound about 3 chains away and left him there. He said that the defendant returned later and threw two stones one of which hit the plaintiff on the head. He said that when he took the defendant away there was no suggestion that anyone was about to assault the defendant.

The defendant admits that on the morning of the day in question he met Magar Singh and the plaintiff and spoke to them about the gate. Apart from telling them to shut the gate so his cattle would not get out he makes no mention of the heated argument Magar Singh related.

He confirmed that he met them again in the afternoon of that day and alleged that Magar Singh threatened to pull out the gate and throw it away. He related a discussion and argument about pipes on

his land. He confirmed that the plaintiff came up to his uncle Magar Singh and said "uncle lets go away from here. We will see him at the shop" whereupon the defendant said to the plaintiff "you are seeing me here". He said that the plaintiff then approached him, punched him twice on the face and once on the chest and he fell down. He said Gopi Chand held him and led him away a short distance of 20 feet. He said he was dazed. He said the plaintiff then ran towards him and as he "was not right in the head", he picked up two stones and threw them one of which hit the plaintiff. He said Magar Singh then chased him with a stick and he, the defendant, then ran to his house. He received injuries on his face.

I am satisfied that the defendant was the aggressor and that he assaulted the plaintiff who retaliated and a fight developed in which the defendant received minor injuries.

The defendant was led away from the scene onto or towards his compound.

I do not believe the defendant when he says the plaintiff rushed towards him after the fight. I am satisfied that the truth is that the defendant after being led away returned and from a distance of about 1 1/2 chains threw two stones one of which hit the plaintiff on the head causing him serious injury.

There is no truth in the allegation stated in the defence that the plaintiff and his friends assaulted the defendant and that in self defence he threw a stone at the plaintiff and his friends.

I find as a fact that the defendant was the aggressor throughout. It was most unfortunate that the throwing of a stone should have caused such serious and permanent injury to the plaintiff. Nevertheless there was no justification for throwing the stone. It was not thrown in self defence. It was an assault on the plaintiff and the defendant must be held liable for the

injury suffered by the plaintiff as a result.

The plaintiff when hit with the stone on the head fell down unconscious. When admitted to hospital in Suva he was conscious and initially paralysed on his right side. He had a compound depressed fracture of the skull.

At the time of hearing, medical evidence discloses that the plaintiff has a permanent weakness in his right arm which would handicap him in his work as a farmer. There is some weakness in his right leg which is not serious. He has suffered from migraine headache since the injury and these may continue for some years. There is a possibility of epilepsy developing but this will decrease as time goes by without an attack. It is three years since the assault and there has been no signs of any epilepsy to date. The plaintiff's memory has also been impaired.

The plaintiff is a dairy farmer with a large farm which he farms himself with two labourers. He is 41 years of age.

I will deal first with the plaintiff's claim for special damages.

I accept that the plaintiff had to hire a labourer to do work that he had previously been doing \$200 is not an unreasonable sum and I allow the claim for that sum. I do not however, allow the claim for a supervisor. The plaintiff cannot have two men to replace him. The claim is also for \$200. If a supervisor was warranted then a labourer was not and vice versa. The plaintiff also claims \$500 which he paid to a relative for board and lodging in his house. He lives at Vunidawa and had to live in Suva while seeking medical attention.

Mr. Sohan Singh confirms he was paid \$500 for providing board and lodging for the plaintiff and his family. The plaintiff did not attempt to establish what



his usual living expenses were at home from which it could be determined what additional expense he was put to. Nor do I know how many of his family were also furnished with board and lodging. Accordingly I do not allow the claim.

He also alleges that his shirt and trousers were damaged but he did not state how they came to be damaged. A fight of such short duration would not normally cause such damage nor would a stone which hit his head. There could have been copious blood from the head wound but that could be washed out of his clothes. I do not allow this claim.

The only other claims I do allow are as follows :

C.W.M. hospital fees	..	\$6. 00
X-Rays	..	\$12. 00
Doctor Sharma	..	\$105. 00
		<hr/>
		\$123. 00

The medical report (\$3.00) is not damage arising out of the accident but was required for this action. The plaintiff also produced a certificate from the City Pharmacy purporting to evidence that the plaintiff spent \$200 on medicine which the chemist states in the certificate was for the injury to the plaintiff's skull. He was not called as a witness and his statement that the medicine was for the injury sustained by the plaintiff is not evidence.

I am not satisfied that it was necessary for him to pay \$200 for medicine as a result of the injury he received. The plaintiff received most of his treatment in hospital. Dr. Sharma who treated the plaintiff was not asked about any medicine prescribed by him. I do not allow this claim.

The plaintiff also claims \$100 for 20 days use of Sohan Singh's van. If the plaintiff elected to travel by van and not by bus that is his choice but he cannot expect the defendant to pay the total cost anymore than he can have him pay for his board and lodging while in Suva. I disallow this claim.

I appreciate the plaintiff's problems in establishing his actual expenses. I allow a total of \$323 special damages. My award of general damages will I consider compensate him for pain and suffering permanent partial incapacity, and general inconvenience and expense which I have no doubt was incurred as a result of his injury but which cannot now be ascertained or established.

I have found it difficult to arrive at a figure for general damages. Kemp and Kemp in their Quantum of Damages on this occasion has not been of much assistance.

The plaintiff is a self employed farmer. He has a large farm and before his injury worked himself and employed two labour. He is now 41 years of age with a permanent weakness in his right arm which will be a handicap to him as a farmer but is not of sufficient seriousness as to prevent him from driving a vehicle and working at farming jobs other than work requiring strength in the right arm such as lifting and pulling, etc. There is some slight weakness in the right leg which does not appear to cause the plaintiff much trouble. He has suffered from migraines and will continue to do so for some time. There is a possibility of epilepsy developing but the chances may be slight. His memory has been impaired according to one doctor although the plaintiff considers his memory is still good. He has had to undergo two operations. He otherwise appears to be in good physical shape.

I do not consider that there will be any loss of future earnings. Work which he cannot physically do because of his weak right arm can be done by his labour while he undertakes some of their lighter work. Nevertheless the weakness on his right side especially his arm is a permanent handicap and will prevent him doing many tasks required of him as a dairy farmer.

I award the plaintiff the sum of \$5,000 for general damages for permanent partial incapacity caused by the unlawful assault on him by the defendant and for pain and suffering already experienced and likely to experience in the future.

There will be judgment for the plaintiff for \$323 special damages and \$5,000 general damages making a total of \$5,323 and costs of this action.

The defendant's counterclaim is dismissed with costs.

*R. G. Kermodé*  
(R.G. KERMODE)  
J U D G E

SUV,

*at . September 1981.*