

BETWEEN: PETER CHAN & TRACY CHAN

Claimants

AND: HENRY MORRIS
First Defendant

AND: ERICK FRED
Second Defendant

Claimant: Mr. N. Morrison

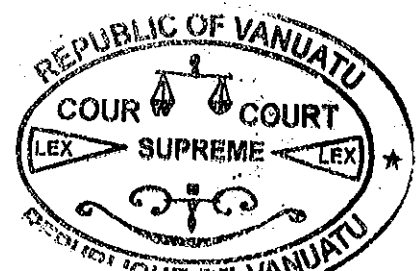
Defendant: Mr. C. Rarumae

Date of hearing: 10 August 2010

DECISION

Introduction

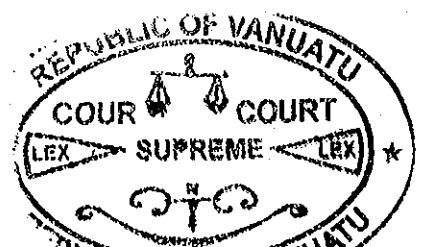
1. At about 2.30 pm on 29 July 2009, along Teouma Road, a Hyundai bus, owned by the Claimants and driven by Mr Simeon, collided with a Mazda bus, owned by the Second Defendant and driven by the First Defendant. The Hyundai bus suffered damage with the costs of repair amounting to VT1,800,000.
2. The Claimants seek to recover those costs from the Defendants on the basis that the collision was caused by the negligent driving of the First Defendant.
3. Negligence is alleged in five particular respects, as set out in the Statement of Claim, with the essential allegation being that the First Defendant was driving at an excessive speed and on the incorrect side of the road. This forced Mr Simeon to take evasive action by pulling to his left onto the incorrect side of the road, but a collision still occurred.
4. The First Defendant denies that he was negligent and counters with the allegation that it was Mr Simeon who was travelling at a very high speed and on the incorrect side of the road.



5. There is no issue with quantum. The sole issue is one of liability.

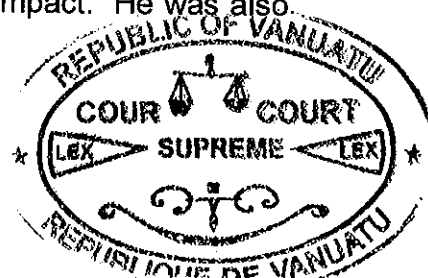
The Evidence

6. In broad terms I have just outlined the evidence of Mr Simeon on the one hand and the First Defendant on the other. That is the contest. Their accounts are diametrically opposed and cannot be reconciled. Each insists that he is telling the truth. Both were experienced drivers, with neither having been involved in an accident before.
7. Mr Simeon's account before me was in line with his sworn statement. He was driving on his side of the road approaching a right hand bend. There was a side road to his right just before the bend. He said that as he got closer to the bend he saw the First Defendant's vehicle coming towards him at high speed, and on the wrong side of the road. Mr Simeon said that he swerved to his left onto the incorrect side of the road in an effort to avoid the collision, but unfortunately the other vehicle pulled back to its right at the same time and the collision occurred. Mr Simeon said that he had no choice but to swerve to his left because there were people walking along the road side on his right.
8. As for the First Defendant his evidence was substantially in line with his sworn statements. I say substantially because I noted one discrepancy, which could be significant, and there were also two other pieces of evidence, perhaps relatively minor in themselves, which he had not previously mentioned in his sworn statements.
9. On the discrepancy aspect the First Defendant in his first sworn statement said that he was travelling on the correct side of the road. As he came around the bend with the intention of turning left into the side road that led to a subdivision he said that he slowed down to make the left hand turn. His speed was not excessive. As he was about to make his turn he saw the bus driven by Mr Simeon travelling very fast. It turned left straight into him causing damage to the right side of his vehicle. However, as I recorded his evidence in Court he said that Mr. Simeon hit him when



he was on the right side of the road and on the left side of his vehicle. So was it the left or the right side of the First Defendant's vehicle?

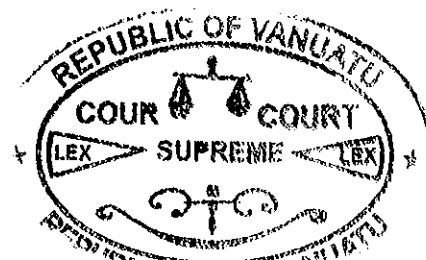
10. As to the new evidence the First Defendant mentioned for the first time in re-examination that in making the turn his view had been obscured by coconut leaves. It is unclear where they might have been, and in that regard I am relying on the photographs of the scene produced by Mr Simeon. It is also odd that he should mention this at that stage of his evidence. And, in answer to a question from the Court he said that he had put his indicator on to indicate his left hand turn. Yet he had not previously mentioned this either and it was certainly not put to Mr Simeon. In those circumstances I am not prepared to place any weight on this evidence from the First Defendant. I am also bound to observe that it does not enhance his credibility.
11. Other evidence about the collision came from Mr Sapa who happened to be walking along the side of the road at the time. He was a security officer, who had been working in that capacity at the Teouma celebration grounds on 29 July 2009 in relation to the independence celebrations. He said that he saw Mr Simeon's bus, with passengers inside, driving from Port-Vila towards the Rentabao area. He also saw the First Defendant driving a bus in the opposite direction. Mr Sapa said that the First Defendant was driving very fast and on the wrong side of the road. That is why the collision occurred.
12. Mr Sapa described how the First Defendant's bus was turned upside down and Mr Simeon's bus was damaged to the front. Mr Sapa said that he provided assistance to several injured passengers. He also said that he went and spoke with the First Defendant who had climbed out of his bus and was sitting on the grass with an injured leg. In a brief exchange he said that the First Defendant admitted to him that he was in the wrong. He used the words, "*hemi wrong blong mi*".
13. In some respects I found Mr Sapa difficult to follow, which was not necessarily his fault but was more to do with the translation process. Even so I am satisfied that his account in all important respects remained firmly intact. Mr Sapa had an uninterrupted view and I infer that he was close to the point of impact. He was also



an independent eye witness, not knowing either Mr Simeon or the First Defendant beforehand. Of further significance, his evidence about speaking with the First Defendant, and of the alleged admission as to being in the wrong, went unchallenged.

Has Liability Been Established?

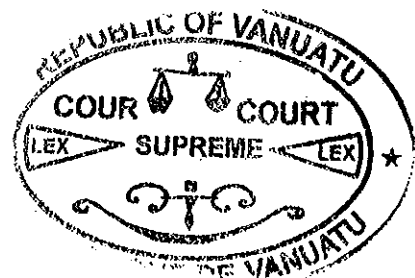
14. As already discussed, I think there are some difficulties with the account given by the First Defendant. If, as he claimed in his sworn statement, Mr Simeon's vehicle caused damage to the right side of his vehicle then that would suggest that he (the First Defendant) had already commenced his left hand turn and there had been no turning back to the right. Otherwise it is difficult to see how the impact could have been to the right side of his vehicle.
15. On the other hand if the correct position was, as the First Defendant stated in evidence, that Mr. Simeon was on the incorrect side of the road, and the First Defendant swerved left, then again it is difficult to see how Mr Simeon would strike the left side of the First Defendant's vehicle.
16. Damage to the left front of the First Defendant's vehicle is consistent, however, with what Mr. Simeon described. The First Defendant was on the incorrect side of the road. Mr. Simeon has swerved to his left. The First Defendant has swerved to his right and there is a collision with Mr Simeon's vehicle hitting the left hand side of the First Defendant's vehicle.
17. A further consideration is that the First Defendant was always intending to turn left into the side road, which inevitably that would mean travelling across Mr Simeon's lane. In other words at some point he would be on his incorrect side of the road. Allied to that is the fact that there appeared to be a relatively short distance between the corner and the side road on his left. In those circumstances I suspect that it would have been tempting for the First Defendant to cut the corner or move across the centre of the road in preparation for the turn. In contrast there were no obvious reasons for Mr Simeon to have been on the incorrect side of the road, given that he was already travelling on the right side of the road and approaching a right hand bend.



18. Ultimately if I was faced solely with the competing accounts of Mr Simeon on the one hand and the First Defendant on the other then because of the matters just discussed I would have preferred the evidence of Mr Simeon. It presents as being more probable.
19. As it is, however, I also have the evidence of the independent eye-witness, Mr Sapa, to help resolve the conflict. Despite my earlier comments about the difficulty in following his evidence, I found him to be a credible witness. He remained adamant that the First Defendant was travelling at speed and on the wrong side of the road. And, in the end I accept what he says, especially as it consistent with, and indeed corroborates, the account given by Mr Simeon.
20. While the First Defendant might have been in a state of shock after the collision I find that he made the admission of being in the wrong as attributed to him by Mr Sapa. I take the view that was a telling admission in the circumstances.
21. It seems highly likely that the First Defendant cut the corner in order to make his turn into the side road. That placed him on the incorrect side of the road and meant that Mr Simeon had to take evasive of action. The other alternative is that the First Defendant proceeded to make his left hand turn without first ensuring that the way was clear. In doing so he cut across the path of Mr. Simeon. Either way he was negligent.
22. As to the allegation of speed it is impossible to say what it might have been in terms of kilometres per hour but I am satisfied that it was excessive in the circumstances. The photographs indicate that there was a relatively short distance between the corner and the point of impact, which would have left little time for Mr Simeon to react.

Result


23. I am satisfied on the balance of probabilities that the Claimants have established that the First Defendant was negligent in the manner alleged, and as specified in the statement of claim. I further find that the First and Second Defendants are jointly and severally liable for the loss caused.



24. There will be judgment for the Claimants in the sum of VT1, 800,000. There will also be costs as agreed, or as fixed by the Registrar, along with interest at 5% from the date of filing until the date of Judgment.

Dated at Port Vila, this 19th day of August, 2010

BY THE COURT


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J. Macdonald
Judge

