

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 6 of 1980

Between: PRAN GOPAL CHANDA  
(f/n Nishi Kanta Chanda) Appellant

and

1. VIJENDRA KUMAR
2. DALLAS SWINSTEAD
3. FIJI TIMES & HERALD LIMITED Respondents

K.C. Ramrakha & A.S. Singh for the Appellant  
B.N. Sweetman for the Respondents

Date of Hearing: 19 June 1980  
Date of Judgment: 27 June 1980

JUDGMENT OF THE COURT

Marsack, J.A.

The Court has already dismissed, with costs, both appeal and cross-appeal, and we now proceed to give our reasons.

The appeal was brought against the quantum of damages, \$200, awarded by the learned trial Judge by way of damages for libel in respect of an article appearing in the Fiji Times on the 23rd August, 1979. The claim was based on the one-inch headlines to the article, which read "GOVT FIRES TWO TOP CONSULTANTS". The article which followed made it clear that the Government had been compelled to terminate the employment of the two consultants because of certain

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legal provisions; and there was no suggestion that the reason for their dismissal had been in any way misconduct or inefficiency on their part. The learned trial Judge held that the Fiji Times in the caption intended to convey to its readers that the two consultants had been summarily dismissed. He found as a fact that the caption to the article was defamatory of the plaintiff and entitled him to damages. He went on to hold that, as to the quantum of damages, the article itself went a long way towards mitigating a defamatory statement. In the upshot he held that the damage done to the plaintiff's reputation was in his view slight, and the appellant could be fully compensated by an award in moderate damages and costs. The appellant contended that the sum awarded by way of damages was totally inadequate and that the injury to appellant's reputation by the "flaring headlines" called for a substantially greater award.

In his argument Mr. Ramrakha drew attention to the judgments in three cases in Fiji in which damages awarded for libel affecting the personal reputation of the claimant had been the equivalent respectively of \$1,000, \$1,000 and \$3,000. In his submission he argued that in those cases the injury to the reputation of the plaintiff was to a great degree on all fours with that of the appellant in this case.

The general principle with regard to the review by a Court of Appeal of an award of damages made by a judge alone is set out in Gatley on Libel and Slander, 6th Ed. para.1450 citing certain judgments there:

"The Court of Appeal will not readily interfere unless the Judge has misapprehended the facts or applied a wrong principle of law. It will otherwise reject his figure only in 'very special' or 'very exceptional' cases when he has made a wholly erroneous estimate of the damages suffered."

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The cases cited fully support what the learned author has said as to the principle to be followed in such appeals; in our opinion that principle properly applies to the matter under consideration in this appeal.

In the present case it cannot be contended that the learned trial Judge applied a wrong principle of law. No submission was made in the course of the argument for appellant that the learned trial Judge had in fact misinterpreted the law or failed to apply it correctly. The one possible exception to this in Mr. Ramrakha's argument would be the reference by the learned trial Judge to the character of the appellant, which appears in these words in his judgment:

"It is unlikely in my view that the Fiji Authorities would grant a permit to an accountant who had been involved in the Flour Mills of Fiji case and had been granted immunity from prosecution for the part he had played in the affairs of that company."

In fact this comment related to the finding that Appellant would not be staying long in the country, so that his reputation here would be of little consequence to him. In any event, in our opinion the learned trial Judge was quite entitled to make this comment. The law is in our view correctly stated in Duncan & Neill on Defamation, para.18.16:

"In an action for defamation the plaintiff complains of injury to his reputation caused by the publication of the alleged libel or slander. As a matter of commonsense therefore it is relevant to consider the reputation which the plaintiff bore before the publication took place."

Accordingly, we are unable to say that the learned Judge has in his judgment applied a wrong principle of law.

That being so, and nothing having been put before us to show that the judge had in any way misapprehended the facts, we have concluded that there is no justification for interference on our part with the award of damages. Furthermore, it is very unlikely, if it had been our duty to assess the damages at first instance, that our award would materially have differed from that made by the learned trial Judge.

With regard to cross-appeal, Mr. Sweetman argued that even if the headline was defamatory the article itself was not; that article making it abundantly clear that the dismissal was rendered necessary for legal reasons. He quoted authorities holding that the whole article must be read in order to ascertain whether or not it is defamatory. If, in counsel's submission, any person reading the paper had read the whole article, he would have realised that the word "fires" in the headline merely meant "dismisses", with no slur whatever on the reputation of the persons dismissed. We are, however, satisfied that the learned trial Judge was correct when he held that the headline itself was defamatory; and that the impression on the reader thereby caused would by no means necessarily have been erased by a casual reading - otherwise, perhaps, than a careful study - of the article beneath that headline. In the result we could find no reason for disturbing the finding of the learned trial Judge.

For these reasons both appeal and cross-appeal were dismissed with costs.

(sgd.) T. Gould  
VICE-PRESIDENT

(sgd.) C.C. Marsack  
JUDGE OF APPEAL

(sgd.) G.D. Speight  
JUDGE OF APPEAL