

IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction
Civil Appeal No. 12 of 1984

Between:

- 1. MOTOR CORPORATION OF FIJI LTD. APPELLANTS
- 2. SARWAN SINGH s/o Moti Singh
- 3. FEROZ

- and -

- 1. RAJENDRA PRASAD s/o Bhagauti RESPONDENTS
Prasad
- 2. VIMAL PRASAD s/o Bhagauti Prasad

W. Morgan for the Appellants
P. Knight for the Respondents

Date of Hearing: 23rd November, 1984

Delivery of Judgment: 23rd November, 1984

JUDGMENT OF THE COURT

Speight V.P. (Orally)


On the face of the record this was said to be an appeal against a default judgment for a liquidated sum. There appears to be confusion and on our reading of the file, there is no such judgment and technically speaking there is nothing which needs appealing against but somewhere things seemed to have gone astray as a result of which a writ of execution was issued out of the Court at Labasa against the appellants to recover some \$11,000. The difficulty is that according to the record, no judgment was properly entered. Certainly none was sealed. If execution was issued it should not have been.


As far as we can see judgment by default was entered on behalf of the Prasad Brothers against the Motor Corporation Ltd. and Others on liability only with damages to be assessed. This was on the 18th January, 1984. Then on the 20th March the matter came before Sadal J. The best information is on page 9 of the Case of Appeal as a result of which one can guess that the Judge must have said that the Prasads were entitled to judgment under items (a) and (b) for the value of the car and lost income.

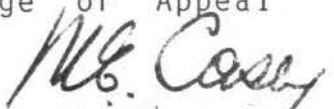
We were told from the bar by Mr. Morgan that counsel instructed by him was in attendance with witnesses to contest the amounts claimed but the Judge seems to have treated these two items as liquidated sums. If this was so he was clearly wrong. They required proof and if judgment had been entered (and we do not believe it was), then we would allow the appeal.

We think the true position is that there has been no judgment and the matter should go back to the Supreme Court at Labasa for a hearing on assessment of damages. Alternatively, if there is anything in the record which we have not seen which could be construed as an assessment of damages that is quashed and similarly any steps taken by way of execution are irregular and must not continue.

Counsel are agreed that there will be no order for costs.


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Vice President


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Judge of Appeal


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Judge of Appeal