IN THE FIJI COURT OF APPEAL

Civil Appeal No. 44 of 1984

Between:

SURUJ LAL
s/o Nimeshwar Maharaj — Appellant

and

1. JOSEPH MICHAEL CHAND
2. SUVA CITY COUNCIL — Respondents

Date of Hearing: 13th November, 1985

Delivery of Judgment: 14 11.85

JUDGMENT OF THE COURT

Mishra, J.A.

This is an appeal against a decision of the Supreme Court, Suva, which awarded $52,000 in damages against the appellant and the Suva City Council, the second respondent and apportioned them 75% and 25% between them respectively. The appeal is against both the quantum as well as the apportionment.

The claim related to a house built by the appellant and sold to the first respondent part of which collapsed after heavy rain owing to faulty foundations.

A building inspector employed by the Council had, at the site, approved the foundations without proper inspection to ensure compliance with the specifications.

The house, as originally built, had stood on two levels part of it being one-storeyed on high ground and the rest two-storeyed against a slope. The latter had sank and broken away from the rest. The specifications approved by the Council had required the foundations of this part to be laid in solid soapstone but the appellant, having dug to a certain depth, had found no soapstone. He had, therefore, disregarded the specifications and allowed, the piles to rest in clay which eventually became the cause of the disaster.

There being no soapstone close to the surface, rebuilding the two-storeyed portion at the original site proved to be economically prohibitive. The first respondent, therefore, with the approval of the Council, extended the single-storeyed portion and the whole house now is on the same level, substantially a different structure but approximately of the same size and same value. The learned Judge held this to have been a prudent decision. The main issue before the court, therefore, was to restore the first respondent, in terms of money, to his position before the house collapsed.

A quantity surveyor had, soon after the damage, obtained quotes from four contractors for the restoration of the collapsed part. These ranged from $43,355 to $49,400, their average being $44,839. The Contractors would not have been aware of the absence of soapstone within reasonable depth and the learned Judge held that the actual cost of rebuilding at the same site would have been considerably greater. According to the evidence of John Hill, a builder, it could have been anywhere been $40,000 and $80,000 depending on how deep one would have to go to reach soapstone. The Judge accepted his assertion

that rebuilding on the same site was economically not feasible. He also accepted his estimate of the cost of extension to the single-storeyed portion as $50,000 and of repairs to the cracks in the existing structure as $2,000.

The first respondent produced an itemised account to show that his actual cost of reconstruction had been $55,953.96. This included $5,670 for personal labour and $10,800 for the use of his car. Many invoices had been lost and documentary support was not available of several items. A revised itemised account was produced at the trial in which the total figure was reduced to $50,478.96. The problem of documentary support for several items, however, remained. Construction had taken more than two years, progress of work depending largely on availability of funds. Most of the figures, though only estimates, were accepted by the Judge as reasonable. Excluding from this total the $7,800 claimed for the use of car and a sum attributable to personal labour the Judge found $40,000 to have been the actual cost incurred by the first respondent. He added to it interest at 10% which gave him a figure of about $52,000.

He said :-

> " Whichever way this issue is considered all the evidence points to the figure of $52,000 as being a reasonable estimate of the plaintiff's loss. "

The appellant submits that the Judge erred in accepting estimates of items of expenditure where invoices or other records were not produced in support. Very little cross-examination of the first respondent was directed at these items, the main challenge being to the inclusion of expenditure relating to the use of his car.

There was, in fact, evidence before the Judge of runs made by the first respondent to convey workmen to and from work which he may well have accepted. It would also have been reasonable, in our view, to allow the first respondent a reasonable sum for his own time and labour even though he was unable to produce any detailed record to support his claim. The learned Judge, however, disallowed these items altogether in arising at the figure of $52,000.

Apart from the first respondent's own evidence of expenditure incurred by him, which the Judge did not accept in its entirety, there was before him other evidence, not seriously challenged, of the actual value of work done, at the current prices of materials and labour, an estimate which the Council itself accepted as correct.

We do not, therefore, accept the appellant's submission that the Judge acted on wrong principle or that his finding was so erroneous as to justify its being disturbed by this court.

As for apportionment between him and the Council the learned Judge found the appellant to have been the instigator of the deviation from the approved specifications, the Council's building inspector playing a comparatively minor role in failing to perform his duty effectively. As was said in Ritchie v. Dunedin Corporation and Another (1953 N.Z.L.R. 899 at 908) :-

> "The correct approach to the problem has been laid down by Denning, L.J., in Davies v. Swan Motor Co. (Swansea), Ltd., James, Third Party (/1949/ 2 K.B. 291; /1949/ 1 All E.R. 620): "Whilst causation is the decisive factor in determining "whether there should be a reduced amount payable to the plaintiff,

> "nevertheless, the amount of the reduction does not depend solely on the "degree of causation. The amount of the reduction is such an amount "as may be found by the court to be 'just and equitable', having regard "to the claimant's 'share in the responsibility' for the damage. This "involves a consideration, not only of the causative potency of a particular factor, but also of its blameworthiness. "

The appellant in the instant case was clearly the more blameworthy of the two and, in our view, the learned Judge's decision is not one that warrants the intervention of this Court.

The appellant submitted that in a country like Fiji where the standard of education among small builders is not high the courts should impose upon local bodies a heavier duty of care in matters of inspection and supervision. We see no substance in the submission. Nothing in this case points to ignorance or lack of education as a factor in the deliberate act of deviation from the specifications by the appellant who is a builder of considerable experience and knew exactly what was required of him.

The Council's own estimate of the first respondent's loss being $52,000, Mr Parmanandam for the Council, made no submissions as to quantum and, as to apportionment, supported the Judge's finding of lesser blameworthiness on the Council's part.

There was no appearance for the first respondent who has since received full payment from the Council.

The appeal is dismissed with costs to be taxed in default of agreement.

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