IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI ISLANDS

CIVIL APPEAL NO. ABU00026B OF 1998S
(High Court Civil Action No. HBA0016 of 1996L)

BETWEEN:

VINOD PATEL AND COMPANY LIMITED

Appellant

AND:

YATENDRA PRASAD F/N KESHO PRASAD

Respondent

Coram: The Hon. Mr Justice Jai Ram Reddy, President
The Hon. Mr Justice Ian Thompson, Justice of Appeal
The Hon. Mr Justice Ian Sheppard, Justice of Appeal

Hearing: Monday, 8 May 2000, Suva

Counsel: Mr R. Krishna for the Appellant
Ms A.K. Narayan for the Respondent

Date of Judgment: Friday, 12 May 2000

JUDGMENT OF THE COURT

On 14 October 1987 the respondent was driving a truck on the main Suva/Lautoka road when the tyre of the left front wheel burst and the truck overturned. As a result the respondent suffered a number of injuries. The truck belonged to the appellant; the respondent was driving it in the course of his employment by the appellant. In November 1990 he commenced an action in the Ba Magistrates' Court, claiming that he suffered his injuries as a result of the appellant's negligence. The evidence of a witness who was about to leave Fiji permanently was taken on 10 May 1991. The taking of evidence of the remaining witnesses was not commenced until November 1994 and was not completed until 11 January 1995. The parties were then directed to make their submissions in writing. The respondent did so promptly but the appellant took over two months to do so. A week later the respondent filed further written submissions. Judgment was not delivered until 13 months later, on 15 May 1996. The respondent was awarded $15,000 damages.

In July 1996 a consent order was made staying the execution of the judgment pending appeal to the High Court. The appeal was commenced immediately thereafter. On 15 November 1996 the Deputy Registrar set a hearing date in December 1996, but that was subsequently changed to 21 February 1997. On that date Sadal J. found that the appellant had not been supplied with a copy of the Magistrates' Court record until the previous day and directed the Deputy Registrar to set another hearing date. He set 4 April 1997. On 18 April 1998 Sadal J. ordered by consent the filing of written submissions. Again the appellant was slow to file its submissions; as a result the submissions of the respondent were not filed until 10 July 1997. Sadal J.'s judgment was delivered on 9 April 1998; according to his Lordship's notes on the court file, the delay was due to the file having been misfiled.

The appeal to this Court was then commenced. The appellant delayed its hearing by failing to give security for costs, ordered on 16 July 1998, until application was made by the respondent for dismissal of the appeal for that failure. Only then in December 1998 was security given. Further, the appellant had included in its grounds of appeal questions of fact and had to be ordered to lodge fresh grounds limited to questions of law. That resulted in further delay. The appeal has now been heard, on 8 May 2000, twelve and a half years after the accident and nine and a half years after the action was commenced. Altogether the delays have been most unsatisfactory, particularly in view of the order staying execution of the judgment. They reflect poorly on both the Magistrates' Court and the High Court and also on the appellant's solicitors.

In the course of the proceedings in the Magistrates' Court the appellant admitted that the truck had overturned because the tyre burst. However, it maintained the denial made in its Defence that that was due to its negligence. In particular it denied allegations by the respondent that the rubber of the tyre was worn down to such an extent that in one place the

canvas was visible, that the truck was overloaded and that its yard manager, knowing those facts, nevertheless instructed the respondent to drive the truck on the journey on which the tyre burst. It claimed that the bursting of the tyre was an inevitable accident, in the alternative that the respondent voluntarily assented to the risk of injury and in the further alternative that he was guilty of contributory negligence by driving the truck when he knew that it was overloaded and the tyre was badly worn.

In its Defence the appellant had asserted that the respondent's claim was statute-barred by section 25 of the Workmen's Compensation Act (Cap.94) because he had agreed to accept, and had accepted, $1,040 as compensation under that Act. The learned magistrate dealt with that as a preliminary issue and held that the claim was not statute-barred. He found that the agreement as a result of which the compensation was paid had not been made pursuant to section 16 of the Act, because it had not been approved by the Permanent Secretary or a person appointed by him, so that paragraph (c) of the proviso to section 25(1) did not apply.

At the hearing in the Magistrates' Court the respondent gave evidence and called two other witnesses; he also tendered in evidence a written report on his injuries by a doctor who had left Fiji permanently. One of the two witnesses he called was an ophthalmologist; he gave evidence of total loss of effective vision in the respondent's left eye. The other witness was the forklift driver who, as an employee of the appellant, loaded the truck for the journey in the course of which the tyre burst. He said that it was a nine-ton truck and that the goods loaded onto it weighed about 11 tons. He said that the appellant's yard manager, Jitend Patel, ordered the loading of those goods. The witness also gave evidence that he had noticed that the casing of the tyre was visible and had pointed it out to the respondent and to Jitend, that the respondent had told Jitend that he could not drive the truck with the tyre so defective but that Jitend had told him

that, if he did not drive it as instructed, he would be sacked. He said that, when the respondent protested, Jitend said "Take on my risk" and the respondent took the truck. The respondent gave essentially similar evidence. He said that two or three days earlier he had told Jitend that the tyre was not good; the forklift driver said in his evidence that, when he pointed out to the respondent that the tyre was defective, "it appeared that it was the first time [the respondent] saw it". If that amounted to a discrepancy between the accounts given by the respondent and the forklift driver (which, in our view, was not necessarily so) it was the only one.

The appellant called two witnesses. The evidence of the first was that the appellant owned a number of trucks, vans and cars which it used for its business and that it had a Maintenance Division in Suva where it employed mechanics to ensure that its vehicles were properly maintained. He gave no evidence expressly relating to the maintenance of the truck of which the tyre burst or of its condition on the day concerned. The second witness was a motor mechanic employed by the appellant. He said that his job included checking the condition of the appellant's vehicles, including the tyres, and that on the day before the tyre burst he had serviced the truck and conducted a general check of it. He said that he did not see anything wrong with the tyres. Under cross-examination he admitted that it was possible to miss a worn patch on a tyre, that the only way to check a tyre thoroughly was to jack up the wheel and that he had not done that. Jitend did not give evidence; the Court was told that he had left Fiji and was living in New Zealand.

The learned magistrate wrote a full and generally well-reasoned judgment. He accepted the evidence of the respondent and the forklift driver, noting that the facts stated by the mechanic in his evidence had not been put to either of them. In accepting their evidence he implicitly found that the tyre was seriously defective and that Jitend knew that but instructed the

respondent to drive the truck and threatened him with dismissal if he did not do so. He observed that Jitend's knowledge was to be imputed to his employer. Having had regard to the magnitude of the risk to which the respondent was subjected and the gravity of the possible injury that he might suffer, he found that the appellant had failed in its duty of care as the respondent's employer to safeguard him from unreasonable risks. He found also that, as the respondent had driven the truck only because of the duress to which he was subjected by Jitend, he had not voluntarily assumed the risk of injury and was not guilty of contributory negligence. In respect of the defence of inevitable accident, he observed that, as the burden of proof of lack of care rested on the respondent, that defence was "irrelevant". He found that the breach of the appellant's duty was the cause of the respondent's injuries, that one of them was damage to the nerves of his left eye which had resulted in loss of the effective vision of that eye and that the injuries had resulted in 61% permanent residual incapacity. He noted that the respondent had been paid the compensation under the Workmen's Compensation Act but, as the maximum amount of damages which can be awarded in an action in a Magistrates' Court was less than he regarded as the appropriate award for the injuries, he awarded him that amount, $15,000.

The grounds of the appellant's appeal to the High Court were, first, that the learned magistrate had wrongly held that the accident was due to "the **sole** negligence" (emphasis added) of the appellant, second, that he should have held that there had been an inevitable accident, voluntary acceptance of the risk of injury or contributory negligence on the respondent's part, third, that he should have held that the claim was statute-barred, fourth, that he should have found that the respondent's eye was not injured in the accident and, fifth, that the quantum of the damages was inordinately high. In view of the inclusion of the word "sole" in the phrase "the sole negligence" used in the first ground, it is doubtful whether the appellant raised the issue whether it should itself have been found to be negligent at all.

Sadal J.'s judgment is brief in the extreme. He affirmed the magistrate's finding that the claim was not statute-barred. He then said that "the other part of the case [was] entirely a question of fact - credibility of witnesses" and that he saw no reason for disturbing the magistrate's findings. Addressing the issue of the quantum of the damages, he allowed the appeal to the extent of reducing the amount awarded by the amount of the compensation already paid to the respondent.

The grounds of the present appeal are, first, that his Lordship wrongly held that "the other part of the case [was] entirely a question of fact - credibility of witnesses", second, that he drew wrong inferences and failed to give reasons for his decisions in respect of the defences of inevitable accident, voluntary acceptance of the risk of injury and contributory negligence and, third, that he wrongly held that the claim was not statute-barred by section 25 of the Workmen's Compensation Act. There is no cross-appeal. As this is a second appeal, the appeal can be allowed only on a question of law.

We turn first to the last ground of appeal. So far as is relevant in this appeal sections 16 and 25(1) of the Workmen's Compensation Act read:

> *"16(1) - The employer and workman may, with the approval of the Permanent Secretary or a person appointed by him, in writing, in that behalf, after the injury in respect of which the claim to compensation has arisen, agree, in writing, as to the compensation to be paid by the employer....."*

> *"25(1) - Where the injury was caused by the personal negligence or wilful act of the employer or of some other person for whose act or default the employer is responsible, nothing in this Act shall prevent proceedings to recover damages being instituted against the employer in a civil court independently of this Act:*
> *Provided that -*
> .....

(c) an agreement come to between the employer and the workman under the provisions of subsection (1) of section 16 shall be a bar to proceedings by the workman in respect of the same injury independently of this Act."

Unless, therefore, there was such an agreement as is specified by section 16(1), section 25(1) expressly preserves an employee's right to recover damages from his employer under the common law.

No evidence was presented in the Magistrates' Court, and the appellant did not allege, that the agreement under which the compensation was paid had been approved by the Permanent Secretary or by a person appointed by him. Nevertheless counsel for the appellant argued that paragraph (c) of the proviso to section 25(1) acted as a bar to the claim because the respondent was represented by a solicitor when he entered into the agreement. The learned magistrate rejected that submission and held that, unless an agreement was approved as required by section 16(1), that paragraph did not apply to it. Quite clearly he was correct in doing so. A copy of the letter written by the respondent's solicitor agreeing to the quantum of the compensation was tendered in evidence. It made clear that the compensation was to be paid only in respect of the appellant's obligations under the Workmen's Compensation Act. So clearly the respondent was not barred from seeking a common law remedy.

In respect of the first ground, it is clear that the issues which Sadal J. was required to address involved not only questions of fact but also questions of law, that is to say whether as a matter of law the facts found established negligence and negatived the three defences expressly raised. He undoubtedly erred in stating that it was necessary for him to address only questions of fact and in not addressing the questions of law. However, as noted above, the learned magistrate did address all the questions of law and did so fully except in respect of the defence

of inevitable accident. Section 13 of the Court of Appeal Act confers on this Court, for all the purposes of and incidental to the hearing and determination of an appeal under Part III of that Act, all the power, authority and jurisdiction of the High Court. So, if we are satisfied that Sadal J., if he had addressed those questions of law, should have decided that the learned magistrate did not err in respect of them, we can, and should, decide accordingly ourselves. We have stated above the basis on which the learned magistrate decided them and we are satisfied that in respect of the defence of contributory negligence and voluntary assumption of risk, he did not err in his application of the law to the facts as he found them to be.

The nature of the defence of inevitable accident is that the event which has occurred was not avoidable by any precautions which a reasonable person would have taken in the circumstances. Possibly when the learned magistrate said that it was irrelevant, he was saying in an abbreviated manner that, because it is a denial of a duty of care and an employer owes such a duty to his employee, it need not have been pleaded. The case of *Esso Petroleum Co. Ltd. v. Southport Corporation* [1956] AC 218 which he cited supports that. However, quite obviously the defendant was entitled to show, if it could, that it had taken proper care and reasonable precautions but the accident had happened in spite of that. Nevertheless, the facts which the learned magistrate found clearly established that the appellant had not taken reasonable precautions. Accordingly, if Sadal J. had addressed his mind to the question of law relating to the defence of inevitable accident, as he should have done, he would have been obliged to find that the appeal could not succeed on that ground provided that he upheld the learned magistrate's findings of fact.

However, Mr Krishna has submitted that, although the learned judge purported to uphold those findings, he was not entitled to do so because he failed to state adequate reasons

for doing so. He has referred us to the judgment of the Fiji Court of Appeal in *Rajendra Nath v. Madhur Lata,* Civil Appeal No.11 of 1984, decided on 13 July 1984. That case was concerned with the duty of a court or administrative tribunal to give reasons for its decisions; it was dealing with the duty of the primary decision - maker. Another case relied on by Mr Krishna, *Sun Alliance Insurance Ltd. v. Massoud* [1988] VR 8,18,19 was similarly concerned with the decision of a primary decision- maker; but the Full Court of the Supreme Court of Victoria held in more general terms that a court from which an appeal lies is obliged to state adequate reasons for its decision and that possibly that obligation existed even where there was no right of appeal. However, it observed that what constituted adequate reasons depended on the circumstances of the particular case. At page 19 the Court, having stated that adequate reasons should be given, said:

> **"That does not mean that on every occasion a judge will be in error if he fails to state reasons. The simplicity of the content of the case or the state of the evidence may be such that a mere statement of the judge's conclusion will sufficiently indicate the basis of a decision."**

In the present instance the primary decision - maker was the learned magistrate. In his judgment he examined the evidence and gave his reasons for finding the facts on which the decision was based. Sadal J. was not the primary decision - maker but an appeal lay to this Court against his judgment. He had received detailed and extensive submissions from counsel directed towards both questions of law and questions of fact. In our view he undoubtedly had an obligation to give his reasons for upholding the learned magistrate's findings of fact. What he said in his judgment was:

"The other part of the case is entirely a question of fact - credibility of witnesses. I see no reason for disturbing his findings."

Although unsatisfactorily economical in expression, it is, in our view, clear that His Lordship was giving as his reasons for upholding the findings of fact his satisfaction with the learned magistrate's assessment of the credibility of the witnesses and his acceptance that the facts found were consistent with the evidence of the witnesses whom the learned magistrate found to be credible. As noted above, the learned magistrate had examined the evidence carefully and given reasons for his assessment of the credibility of the various witnesses, the facts he found had been consistent with their evidence. In those particular circumstances we have come to the conclusion that Sadal J. did adequately state his reasons for upholding those findings of fact. That is not to say, however, that we would encourage judges exercising the High Court's appellate jurisdiction to express their reasons in such a brief fashion. If they do so, they run the risk of failing to state adequately the reasons for their decisions in the particular circumstances of the particular cases, in which event the judgments, if challenged, will be overturned. We do not suggest that lengthy statements of reasons are always required; often they are not. But they should be framed in such away that the reasons are readily apparent and are unlikely to be misunderstood.

For the reasons stated above we have come to the conclusion that the learned judge did not err in law by failing to state adequately his reasons for upholding the findings of fact made in the Magistrates' Court. Although he did err in law by failing to deal with questions of law raised in the appeal before him, for the reasons we have stated above we are satisfied that the learned magistrate did not err in respect of those questions. Consequently, if Sadal J. had addressed his mind to those questions, which he should have done, he would have been bound

to find that the learned magistrate had not erred in respect of them.

Accordingly the appeal must be dismissed. The appellant is to pay the respondent's costs of the appeal; in view of the need for the respondent to apply to strike out the appeal before the appellant gave security for costs as ordered, to deal with amended grounds of appeal and to prepare its written submissions without having first received the appellant's, we fix the costs, including disbursements, as $1,000.

Orders:

The appeal is dismissed.

The appellant is to pay to the respondent his costs, fixed as totalling $1,000 including disbursements.

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Mr Justice Jai Ram Reddy
President

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Mr Justice Ian Thompson
Justice of Appeal

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Mr Justice Ian Sheppard
Justice of Appeal

FIJI COURT OF APPEAL

Solicitors:

Messrs Krishna and Company, Lautoka for the Appellant
Messrs A.K. Narayan and Company, Ba for the Respondent

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