

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

CIVIL APPEAL NO. ABU0076 OF 2000S  
(High Court Civil Action No. HBC0643 of 1996)

BETWEEN:

DOMINION INSURANCE COMPANY LIMITED

*Appellant*

AND:

KAY LYNETTE BAMFORTH AND MARGARET  
ANNETTE WILSON

*First Respondent*

AND:

FUEL SUPPLIES (PACIFIC) LIMITED

*Second Respondent*

AND:

RAVIN CHAND

*Third Respondent*

AND:

MOHAMMED SHAMEEM

*Fourth Respondent*

Coram:

Reddy J R, President  
Eichelbaum, JA  
Gallen, JA

Hearing:

Tuesday, 14 May 2002, Suva

Counsel:

Mr. A.K. Narayan for the Appellant  
Mr V. Maharaj for the 1st Respondent  
Mr Gavin O'Driscoll for the 2nd Respondent

Date of Judgment: Friday, 17 May 2002

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JUDGMENT OF THE COURT

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The appellant in this case seeks leave to appeal out of time to the Supreme Court of Fiji. The appellant also seeks a stay of execution. The decision from which the appellant seeks leave to appeal was delivered by the Court of Appeal, Fiji on the 19th of February of this year when that Court made some adjustments to the judgment of the High

Court but in the main, upheld the judgments in favour of the first respondents, the original plaintiffs. The proceedings arose out of a motor accident and involved *inter alia* a conclusion that the time limit fixed under the provisions of section 11(3) of the Motor Vehicle Third Party Insurance Act Cap.177 was directory rather than mandatory. The Court of Appeal held that if there was substantial compliance with the time limit contained in this section the purpose of the provision would have been achieved. Against that decision the appellant seeks leave to appeal.

We accept that the question of law which the appeal seeks to raise is one of importance and could potentially affect a number of people in Fiji both directly and indirectly. While therefore we are concerned at the delays faced by the respondents we consider it is a proper case for leave to be granted to appeal and leave will be granted.

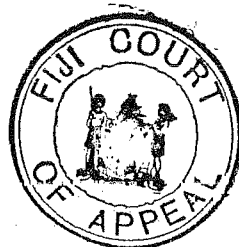
The appellant also seeks a stay of execution. Having regard to the circumstances the appellant is entitled to such a stay and we grant it subject to the condition that the total amount payable under the judgment appealed from to the respondents is to be paid into Court to be invested by the Registrar on appropriate interest bearing security until the matter is finally disposed off.

In view of the delays to which the case has already been subject we request consideration be given to as early a fixture as possible before the Supreme Court.

Having regard to the circumstances and that the application is made out of time we think it is appropriate there be no order for costs.

**Result**

Time extended to the date of filing of the Notice of Motion for leave. Leave granted to appellant to appeal to the Supreme Court of Fiji subject to the condition that the total amount payable to the respondents under the judgment appealed from is to be paid into Court and invested by the Registrar on appropriate interest bearing security pending final disposition of the appeal. No order for costs.



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Reddy J R, President

*[Handwritten Signature]*  
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Eichelbaum, JA

*[Handwritten Signature]*  
.....  
Gallen, JA

**Solicitors:**

Messrs. A.K. Narayan and Company, Ba for the Appellant  
Messrs. Maharaj, Chandra and Associates, Suva for the 1st Respondent  
Messrs. Khan and Company, Suva for the 2nd Respondent