

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

CIVIL APPEAL NO. ABU0003 OF 2001S
(High Court Civil Action No. HBC160 of 1996S)

BETWEEN: RENUKA SHANKAR *Appellant*
 (f/n Shiu Shankar)

AND: CHANDAR GOPALAN NAIDU *Respondent*
 (f/n Krishna Swamy)

Coram: Reddy, P.
 Barker, JA
 Davies, JA

Hearing: 26th February, 2002, Suva

Counsel: Mr. V. Mishra for the Appellant
 Mr. V. Kapadia for the Respondent

Date of Judgment: 1st March, 2002

JUDGMENT OF THE COURT

The Court of Appeal heard the appeal and the cross-appeal from a decision of the High Court (Scott J.) on the 15th of October 2001, and gave its judgment on the 18th of October 2001. Both were dismissed.

Decisions of this Court can only be appealed to the Supreme Court, by leave of this Court on a question of significant public importance, or by special leave of the Supreme Court. (Section 122 of the Constitution.)

Application for leave to appeal to the Supreme Court is dealt with under Part IV of the Court of Appeal Amendment Rules 1999. Rules 65 and 66 are relevant.

In this case the application for leave to appeal to the Supreme Court should have been filed within 28 days of the judgment. This was not done. The 28 days expired on the 15th of November 2001.

The Appellant now seeks leave of this Court, under Rule 66, for extension of time to file her application for leave.

The Summons for extension of time was filed on the 12th of December 2001, that is approximately 2 months after time expired. The Appellant has filed an affidavit in support of her application for extension.

The reasons given for the delay may be summarized as follows:

- 1) At the time of judgment, and thereafter, the Appellant continued to suffer from considerable physical and psychological disability by reason of the original injuries.
- 2) That the Appellant was assaulted and abused on the 20th of October 2000 by one Vimal Prakash, because of a quarrel over some puppies. She was shocked and distressed thereafter.

- 3) That she was asked to obtain a second opinion on the prospects of her appeal.

For these reasons, she was not able to instruct her solicitors until after the time for applying for leave had expired.

The Respondent opposes the application, and, an affidavit in reply sworn by Nisha Dean, has been filed. Annexed to this affidavit are statements of Vimal Prakash and Karuna Sagar. This affidavit is not of much assistance to us as it contains mostly hearsay material.

The delay in this case has not been inordinate. The delay has been explained, and we were disposed to give the Appellant leave, if the proposed appeal raised matters of "significant public importance", and we invited Counsel for the Appellant to state "precisely" the questions to be certified by this Court, and to state the relevant facts.

Since then Mr. Mishra, Counsel for the Appellant has submitted to us for certification questions under Section 122(2)(a) of the Constitution. These are:-

1. *Whether the Learned Judges of the Fiji Court of Appeal erred in law in holding that the High Court was correct in disallowing the Appellant's claim of interest upon damages awarded to her under Section 3 of the Law Reform (Death and Interest) (Miscellaneous Provision) Act on the ground that it had not been specifically pleaded in her Statement of Claim.*
2. *Whether the Learned Judges of the Fiji Court of Appeal erred in law in upholding the High Court's decision in only allowing a multiplier of five on the basis that the Appellant would only have carried on teaching until she married and had children even though:*
 - a) *The Court of Appeal accepted that the Appellant had already been unable to work as a teacher for four years at the time of the hearing of the case in the High Court.*

- b) *She had been a full time teacher for approximately fifteen years and thirty-nine years of age at the time of the accident.*
- c) *Section 38 of the Constitution of Fiji and the law of Fiji forbids discrimination on the grounds of gender.*
- d) *Fiji is a signatory to the United Nations Convention on the elimination of all forms of discrimination against women"*

The Appellant did not seek interest in her Statement of Claim, although in her written submissions to the High Court she did ask for interest. The learned Judge, refused to give interest. He relied on the case of Usha Kiran v Attorney-General, FCA, Civil Appeal No. 25 of 1989. The question of interest was raised again on appeal, and this Court concluded:-

"The question was considered in this court in the case of Tacirua Transport Company Limited v Virend Chand judgment 2nd of March 1995 which noted that Usha Kiran v Attorney-General of Fiji had been followed in Attorney General of Fiji v Waisale Naigulevu FCA 22/1989 delivered on 18 May 1990. In the Tacirua case the court expressed the view that there was no reason for departing from what had become the established practice of the court. We agree with that contention and are not prepared to depart from it in the face of such continued authority."

There is no record of any application by the Appellant, either in the High Court, or before this Court, of an application to amend the pleadings to include a claim for interest.

It has been recognized that the powers of the Supreme Court to grant leave under Section 7(2) of the Supreme Court Act may be less restrictive, than the powers of this Court to grant leave under Section 122(2)(a) of the Constitution. As was said by this Court, in Maika Sogonaivi v The State, Fiji Court of Appeal No. 8 of 1997, at page 4:-

"A "question" on appeal within the meaning the s.122(2)(a) of the Constitution must be one that is realistically capable of argument. Generally speaking, it is not enough

for an applicant to put forward a challenge to existing law already finally settled by long standing authority,....

..... The question at issue, therefore, lacks the requirement in s.122(2)(a) of the Constitution that it be "of significant public importance", and the application for leave must therefore be dismissed.

It may still be open to the accused to apply to the Supreme Court for special leave to appeal under s.122(2)(b) of the Constitution, the limitations to its power to grant it under s.7(2) of the Supreme Court Act 1998 being apparently less restrictive than those imposed on this Court."

We agree with Mr. V. Kapadia, Counsel for the Respondent, that the law and practice relating to the award of interest would be a more appropriate subject of an application for special leave of the Supreme Court under Section 7(2) of the Supreme Court Act 1998, as it may raise a matter of "substantial general interest to the administration of civil justice". The issue is not one of "significant public importance".

In so far as the second question is concerned, this arises from the findings made by the learned trial Judge, that the probabilities were that the Appellant would have given up teaching in about 5 years, from the date of the accident by which time, she would have married and had children. These are findings of facts that the learned Judge made on the evidence before him. While accepting that the evidence on the issue was sparse, nonetheless, the Court of Appeal did not disturb those findings.

The issue which Counsel for the Appellant seeks to debate is fundamentally a question of fact, which turns upon the particular facts of the case, rather than a point of principle which is suitable for determination by the highest Court in Fiji.

We have come to the conclusion that the two questions, formulated do not raise matters of such "significant public importance" that further argument and decision from the Supreme Court would be to the public advantage.

The application for extension of time to file the application for leave is refused.

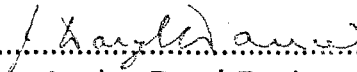
The Appellant to pay the Respondent costs which we fix at \$500.00.



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Hon Justice J.R. Reddy
President



.....
Hon Sir Ian Barker
Justice of Appeal



.....
Hon Justice Daryl Davies
Justice of Appeal

Solicitors:

Messrs Mishra Prakash & Associates, Suva for the Appellant
Messrs Sherani & Co., Suva for the Respondent