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

CIVIL APPEAL NO. ABU 90 OF 2018
[High Court Civil Action No. HBC 131 of 2011]

BETWEEN : RAMENDRA PRASAD

Appellant

AND : TOTAL (FIJI) LIMITED

Respondent

Coram: **Lecamwasam, JA**
Almeida Guneratne, JA
Jameel, JA

Counsel : **Mr. J. Sloan and Ms. M. Muir for the Appellant**
Mr. H. Nagin and Ms. L. Prasad for the Respondent

Date of Hearing: **06 February 2020**

Date of Judgment: **28 February 2020**

JUDGMENT

Lecamwasam, JA

[1] This is an appeal preferred by the Appellant against the judgment dated 23 August 2018 of the High Court at Suva on the following grounds of appeal:-

GROUNDS OF APPEAL

Ground 1

1. *The learned Judge erred in fact and in law by finding that the Respondent was not liable for the full leakageing from its underground tanks and pipes situated in the Appellant's land for the following reasons:-*

    (a) *The learned Judge found that it was not disputed that there was a fuel leakage;*

    (b) *The learned Judge wrongly held that the appellant had to prove that the fuel leakage came from the underground tanks and not the connecting underground pipes thus contradicting the agreed facts set out in the minutes of pre-trial conference;*

    (c) *The learned Judge wrongly held that the appellant had to prove that the disturbance of the existing tanks and pipes by the Respondent's installation of the T10 tank was the sole cause of the fuel leakage and ignored and / or fail to apply the established case law principles referred to him and set out in Ambaram Narsey Properties Ltd v Khan Brothers and Lautoka City Council; Lautoka High Court Civil Action , HBC 139 of 1996L;*

    (d) *The learned Judge wrongly found that the Respondent could not be liable in tort and negligence because a written supply contract had expired when the respondent continued to supply fuel and deal with the appellant, a finding which was wrong because the respondent claim is in tort and negligence and the learned Judge confused the law of contract and the law of tort and negligence;*

    (e) *The learned Judge wrongly interpreted the intent and plain meaning of section 50 of the Environment Management Act 2005 and wrongly applied it as requiring evidence of health related problems in order to claim damages and loss and reimbursement of instruction cause;*

    (f) *The learned Judge ignored, excluded or failed to consider the expert evidence as to the illegal and dangerous installation of the 10,000 litres T10 tank by the*

Respondent in the Appellant's land and the weight of the expert evidence regarding the result of this dangerous installation;

(g) *The learned Judge ignored and excluded the evidence of the appellant's attempt to abate the leakageing fuel and the Respondent's denial of a fuel leakage and inaction until the Ministry of Environment on behalf of the Fiji Government found a few leakages have been proved and ordered the respondent to stop supplying fuel and;*

(h) *The learned Judge wrongly ignored, excluded or failed to consider the case law presented to him which demonstrated amongst other things, the actions that should be taken by an oil company when its equipment leakages.*

<u>Ground 2</u>

2. *The learned Judge erred in fact and in law by finding the fuel leakage was not extensive as the witnesses testified on the weight of the expert evidence demonstrated for the following reasons:-*

   (a) *The judgment wrongly held that there was a fuel leakage but not to the extent as alleged by the appellant;*

   (b) *The learned Judge wrongly substitute his own supposition that fuel leakageing underground would evaporate an assumption without any evidentiary basis that contradicted the expert evidence adduced by both the appellant and the respondent and the testimony before the honorable court;*

   (c) *The learned Judge's incorrect finding on his own supposition unsupported by expert evidence that fuel will evaporate led to the further errors of fact that suggest the learned Judge did not understand that the fuel leakage had occurred underground contrary to the expert evidence of both the Appellants and Respondents expert witnesses;*

   (d) *The learned Judge wrongly found without evidentiary basis that the amount of the leakage represented only a very small portion of the total capacity of the underground fuel tanks and made incorrect and unsupported factual findings in*

relation to the extent of the fuel leakage and its timing, contrary to the testimony of the witnesses and expert witnesses;

(e) *The learned Judge failed to take into account or understand the timings of the fuel leakage and the expert evidence relating to its probable start date and end date and the effect of the respondent's inaction during that time and;*

(f) *The learned Judge excluded and/or misunderstood the expert evidence from both the appellants and respondents expert witnesses and the oral testimony before him that demonstrated the extent of the contamination of the appellant's land (2000 times higher) between 2006 and 2009 and that 60% of the pollution would remain immobile in the Appellant's land.*

<u>Ground 3</u>

3. *The learned Judge erred in fact and in law by ignoring the expert evidence relating to the damage to the Appellant's land and business and contamination caused by the fuel leakage from the underground tanks and/or pipes and the respondent's subsequent conduct for the following reasons:*

   (a) *The learned Judge ignored or failed to understand the testimony of all the expert witnesses regarding the extend of the fuel leakage and contamination of the land;*

   (b) *The learned Judge ignored the testimony of the expert witnesses as to an oil company's appropriate response to fuel leakages;*

   (c) *The leaned Judge ignored, without proper reasons, the testimony of the Appellant regarding his future plans for the land and the decrease in his business and the cost and safety concerns of storing the Respondent's abandoned underground fuel tanks on the Appellant's land;*

   (d) *The learned Judge ignored the testimony of the Appellant regarding the health and other hazards that have been caused by the Respondent refusing to remove its equipment that it has abandoned on the Appellant's land and the Respondent's failure to comply with the consent order from the Magistrate's court; and*

   (e) *The learned Judge wrongly interpreted the expert report on the level of contamination and cost of remediation as applying to areas outside the appellant's land.*

Ground 4

4. *The learned Judge erred in awarding costs to the Respondent when the learned Judge based his judgment on matters other than those pleaded by the Respondent which alleged only that the appellant had fabricated the fuel leakage.*

Ground 5

5. *The learned Judge erred in law in awarding costs to the Respondent when the Respondent had not brought any evidence before the Court to support its counter claim which was effectively abandoned at the hearing of this matter without any consequences in costs.*

Ground 6

6. *Such other and further grounds of appeal as may arise or become apparent from the record of the High Court of the recorded transcript. .*

[2] At the pre-trial conference the parties admitted the following facts:

1. *The plaintiff is the registered proprietor of the property (land and building) comprised in CT 29781 (the land) and of the business known as "Farmers Freeway Service Station" (the service station). The service station was registered in April 1998 and commenced business operations in or around June 1998.*
2. *The land on which the service station is situated, is on Princess Road in Sawani at the base of Colo-i-Suva mountain rangers along the Sawani river basin, close to Nausori town in the South East of the Island of Viti Levu.*
3. *The defendant is a limited liablity company having its registered office at 10 Rona Street, Walu Bay, Suva and is engaged in the importation, supply and retail of petroleum products including fuels, oils and lubricants.*
4. *The defendant was incorporated in Fiji on 23 November 1979 as Shell Fiji Limited and had his name changed to Total (Fiji) Limited on 3 November 2006.*
5. *At all material times the defendant supplied the plaintiff with its fuel products for sale to the plaintiff's customers in the Service Station business pursuant to*

fuel supply contract dated 12 November 1997 ("the Agreement"), the key of which were:

- a. *The defendant would be the exclusive supplier of petroleum or fuel products to the plaintiff;*
- b. *The defendant would provide to the plaintiff equipment for the storage and supply of fuel and petroleum products on the land;*
- c. *The equipment provided by the defendant and listed in the fuel supply agreement would remain the property of the defendant at all times.*

6. *Around the end of 1997 and beginning of 1998 and pursuant to the agreement the defendant installed the following equipment on the land:*
   - a. *4 underground fuel tanks*
   - b. *5 fuel dispenser units*
   - c. *Shell light*
   - d. *All the support equipment needed for the operation of the Service Station including the pipes to transfer fuel from the tanks to the fuel pumps ("the defendant's equipment").*
7. *Pursuant to the agreement each time the plaintiff purchased fuel from the defendant, the defendant would deliver fuel to the plaintiff via the defendant's fuel tankers and the defendant would then fill the four underground fuel tanks with the volume of the fuel ordered by the plaintiff. The volume of the four underground fuel tanks was distributed to the fuel pumps connected to the fuel tanks through pipes installed by the defendant.*
8. *The obligation for servicing and maintaining the fuel tanks, the pipes and the fuel dispensers rested with the defendant and at all material times the defendant undertook these servicing and maintenance tasks.*
9. *In or around September 2007 the defendant agreed to locate and install a new fuel storage tank on the land and in or about September 2007, the defendant and/or its agents installed on the land at the Service Station an additional underground fuel tank with the capacity of 10,000 liters ("T10 Tank") for the purpose of storing diesel fuel.*

10. After the installation of the T10 Tank by the defendant the Service Station had a total of 5 underground fuel tanks installed on the land by the defendant.

11. The plaintiff terminated its business dealings with the defendant on or around 10 June 2009.

12. The defendant's equipment remained on the land after the termination of the fuel supply agreement by the plaintiff as the plaintiff did not allow the defendant to remove the same and claimed storage charges from the defendant before the equipment could be removed.

13. On 14 November 2009 the defendant instituted proceedings in the Suva Magistrate's Court against the plaintiff for removal of the defendant's equipment without payment of storage costs claimed by the plaintiff.

14. On 31 January 2010, by consent of the plaintiff and the defendant, all of the defendant's equipment except the underground fuel tanks were removed by the defendant.

15. On 29 September 2010, the following orders were made by the Suva Magistrate's Court:

(a) That Defendant was to remove its fuel tanks from the Service Station within one month of the order being made;

(b) The plaintiff's experts were at liberty to conduct necessary tests on the fuel leakage during the removal of the fuel tanks by the defendant; and

(c) The defendant was to pay the plaintiff legal costs in the sum of FJD1000.00.

16. The defendant has appealed the orders of the Suva Magistrate's Court made on 29 September and the appeal has remained unheard to date.

17. The plaintiff commenced the within proceedings in the Suva High Court on 6 May 2011 by way of a writ of summons.

[3] In the background of the evidence and the light of the grounds of appeal urged, I shall now proceed to ascertain the judgment of the High Court bears scrutiny.

[4] I begin by summarizing the findings made by the learned Judge viz:

a) There was a fuel leakage but it was of a negligible quantity.
b) It was the Appellant's burden to prove that the leakage was from the underground fuel tank and not from the underground fuel pipes.
c) For the plaintiff/appellant to successfully maintain his claim he must establish by evidence that allowing the underground tanks to remain, caused, health-related problems and if so, the extent of the damages (therefore implying that, there was no such evidence)
d) On the aspect of the 'evaporation' I shall refer to later, if necessary, in my final determination.
e) *"According to the findings of the various reports the installation of the T10 tank has not been done properly. As a result, the position of the tanks could have shifted slightly. However, there is no evidence that the installation of the T10 tank caused damage to the other tank which resulted in extreme damage…"* (finding of the learned Judge at paragraph [33] of his judgment).
f) *"The allegation of the plaintiff is that the cause for the damage is the negligence of the defendant (paragraph [35] of the learned Judge's judgment)... Therefore the plaintiff cannot make any claim against the defendant based on negligence"* (paragraph [36] of the judgment of the High Court).

[5] I now proceed to analyze the correctness or otherwise of the impugned judgment in the light of the submissions made by the respective Counsel (both oral and written) in the light of the aforesaid findings made by the learned Judge. It was in the background of these admitted facts that the learned judge found that the Appellant had failed to prove that the leakage occurred from the pipe.

[6] The Appellant contended that the leakage was caused by the careless installation of the 'T10' tank.

[7] On behalf of the Respondent, its Vice President (Sales and Marketing) testified that after receiving the complaint they took steps to fix the leakage, and there was a slight seepage of fuel from pipelines. He denied that the leakage was from the tanks.

[8] As per item 8 of the agreed facts, the tanks and pipes both belong to the Respondent. Therefore, it is irrelevant whether it was the tanks or the pipe that leakage as the installation and maintenance of the tanks, pipes and all the related equipment was the property and responsibility of the Respondent.

[9] The learned judge found that the Appellant had produced detailed and extensive evidence, to establish that there was a fuel leakage as alleged by him.

[10] The learned judge said as follows:

> *[29] From the above it appears that the plaintiff has tendered extensive evidence in his attempt to establish that there was a fuel leakage as alleged by him. It is not disputed that that there was a fuel leakage. As I have stated earlier the position of the defendant is that the fuel leakage was in the pipes which was later fixed. As per the investigations of the Department of environment fuel leakage occurred when the tank was full. When there was lot of sales as claimed by the plaintiff the fuel tanks could not have been full all the time. Therefore, the leakage could not have been extensive.*
>
> *[30] For the plaintiff to collect 60 to 80 liters of fuel the leakage must be extensive. There is no evidence that the fuel storage tanks were re-filled every day. The plaintiff does not have any evidence to show that the leakage was not from the pipes or not only when the tanks are full. The burden is on the plaintiff to establish that the leakage was not from the pipes but from the tanks.*

[11] These findings of the learned judge are challenged by the Appellant on the basis that they are contrary to the admitted facts.

[12] In paragraph [30] of the judgment the learned judge says that the for the plaintiff to have collected 60 to 80 liters of fuel (per day) the leakage must "be extensive" However, he concluded that there is no evidence that the fuel storage tanks were re-filled every day, and that the plaintiff does not have any evidence to show that the leakage was not from the pipes ,or not only when the tanks are full, and that the burden is on the plaintiff to establish that the leakage was not from the pipes but from the tanks.

[13] In my view, this conclusion did not reflect the evidence, and it imposed an unfair burden on the Appellant. How could the Appellant establish with certainty whether the leakage was from the tanks or the pipes, when even the expert evidence was not certain of where the leakage was coming from. They attempted to repair the pipes several times. In this background, I do not think there was any basis for the learned trial judge to place such a burden on the Appellant, and conclude there was no negligence on the part of the Respondent.

[14] The Respondent's evidence was that their examination revealed that the leakage was from the pipeline joint. Upon discovery, it was repaired at the Respondent's cost. The Respondent later carried out a detailed accounting check by comparing the quantity received by the appellant as against the quantity sold. Its investigations revealed that the value of the stock was less than $120.00, which the Respondent said was a 'negligible percentage' of the overall output from the tanks, and was within the tolerance limit. The Respondent's position is that the Appellant refused to accept that the leakage was 'negligible'.

[15] In my view, this is not a tenable position in the light of the expert scientific evidence. Pollution of the environment is a regulated matter and the provisions of the Environment Management Act 2005 regulate the activities of the parties in this case.

[16] The following definitions contained in the Environment Management Act 2005 are relevant to the determination of the appeal.

> *"land" includes messuages, tenements or hereditaments, corporeal and incorporeal, buildings and other fixtures, paths, passageways, watercourses, easements, plantations, gardens, mines, minerals and quarries, the foreshore and seabed or anything resting on the seabed;*
>
> *"pollutant" means dredged spoil, solid or liquid waste, industrial, municipal or agricultural waste, incinerator residue, sewage, sewage sludge, garbage, chemical waste, hazardous waste, biological material, radioactive materials, wrecked or discarded equipment, <u>oil or any oil residue</u> and exhaust gases or other similar matter; (*emphasis added*)* .
>
> *"pollution incident" means the introduction, either directly or indirectly, of a waste or pollutant into the environment, which results in harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of water, air or soil, reduction of amenities or the creation of a nuisance;*
>
> *"protecting the environment" means the establishment of measures to ensure the protection of human health, safety, property, legitimate uses of the environment, species of flora and fauna, ecosystems, aesthetic properties and cultural resources, or preventing nuisance or risk of harm to any such value, on a sustainable basis;*

[17] The definitions in the Act indicate the extensive meanings given to environmental pollution, so as to capture within the reach of the Act a wide variety of activities and persons.

[18] Section 50 of the Act is a reflection of the "polluter pays principle", and is meant to act as a deterrent and ensure all-round concern for the human life, as well as the environment.

[19] In paragraph [33] the learned judge said that according to the findings of the various reports tendered by the parties, the installation of the T10 tank had not been done properly, and as a result the position of the tanks could have shifted slightly. Despite this, the learned judge concluded that there was no evidence that the installation of the T10 Tank caused damage to the other tanks which resulted in extensive leakage of unleaded and premix fuel. In his view, without evidence of the source of the leakage, the court was unable to ascertain the quantity of the leakage. But, the installation of the tanks was the sole responsibility of the Respondent, and the learned Judge's findings was not correct.

[20] I find that in determining whether the Respondent was negligent or not, it was not necessary for the court to know the exact source of the leakage, because it could have been only from the Respondent's tanks, because there were no tanks owned by anyone else which had been stored underground in the Appellant's land.

[21] The learned judge rejected the Respondent's evidence showing the amounts of fuel leakage. He found that it would not have been possible for the plaintiff to collect as much as 10,000 liters within a period of few months considering the fact that part of the fuel leakage would certainly have been absorbed to the soil and another portion of it would have *'evaporated'*. The Appellant challenges this finding. In any event the leakage is recognized as a *'pollution incident'* under the Act. Therefore, this finding was not correct.

[22] Section 50 of the Act states:

> *50.-(1) A person who has <u>suffered loss which includes</u> contracting health-related problems as a result of any pollution incident may institute a civil claim for damages in a court, which may include a claim for-*

(a) economic loss resulting from the pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;

(b) loss of earnings arising from damage to any natural resource;

(c) loss to or of any natural environment or resource;

(d) costs incurred in any inspection, audit or investigation undertaken to determine the nature of any pollution incident or to investigate remediation options.

(2) A claim under this section may be set off against any compensation paid under section 47(2). [Emphasis Added].

[23] In the light of this strict statutory provisions, which prescribe serious punishment for offences committed under the Act, a court must take cognizance of the pollution incident so that the language and the spirit of the protections given under the Act, are effective.

[24] It is clear even from the Respondent's written and oral submissions that the Respondent acknowledged that there was a leakage and it had to be monitored. In fact, in paragraph 2.4 of the Appellants written submissions, it states that the Respondent used to send its team practically on a daily basis.

[25] In November 2008, the Environmental Department directed the Appellant to suspend supplying fuel. The Respondent submits that it was due to this order, that it was prevented from supplying fuel to the Appellant, and that it is "not responsible" for the losses of the Appellant. I am of the view that this is an untenable contention. The leakage occurred from property belonging to the Respondent, although it took place on the Appellant's land. If the leakage was negligible, as concluded by the learned judge, it is unlikely that the Department of Environment would have directed the Appellant to stop supplies.

[26] The learned Judge found that the fuel leakage was negligible and that the Appellant had not proved that it was from the tanks.

[27] If so, I asked myself the question as to what difference that could make whether it was from the underground fuel tank or the underground fuel pipes.

[28] Then, there arises the issue that the installation of the T10 tank had not been done properly (though there was no evidence of extreme damage).

[29] Then came the final crunch on the High Court judgment which I have re-capped in paragraph [2] (g) of my judgment.

[30] It is clear from the foregoing analysis on the basis of the learned judge's own findings that there was negligence on the part of the Respondent, his concern being shifted to the question of damages claimed in consequence flowing therefrom.

[31] Accordingly, I have no hesitation in saying that negligence on the part of the Respondent had been established. In that regard, I hold that the learned Judge had erred and misdirected and/or non-directed himself on the law, and the attendant principles impacting thereon.

[32] On the application of the legal principles to the very findings made by the learned Judge I wish to say this:-

(a) There was no "*causa causam*" involved but "*causa sine qua non*" which had led to the damage complained by the Appellant.
(b) The appellant did rely on the court's ruling in the **<u>Abraham Narsey's</u>** case which I found to be in favour of the Appellant as submitted by Mr. Sloan. However, I went further in tracing the principles of negligence in tort beginning with **<u>Donahue v Stevenson</u>** [1932] UKHL 100, (the seminal ruling of the House of Lords as per Lord Atkin) going upto **<u>Re Polemis & Furness, Withy & Co Ltd</u>** [1921] 3 KB 560 (CA),ruling in the **<u>The Wagon Mound no 1</u>** [1961] AC 388 (House of Lords).
(c) On a reading of those decisions, I have reached the conclusion that there was negligence on the part of the Respondent for which reason I reverse the judgment of the High Court.

[33] In the result while I feel no constraint in saying that, the learned judge having gone wrong on the question of negligence, his focus being on the "extent of damage" for the reasons I have adduced above, in so far as the assessment of damages is concerned, I remit that matter to "the Master".

[34] The Appellant claimed several reliefs in the court below. As I have decided to remit this matter of assessment of damages to the Master, I will deal with some aspects of the reliefs in this judgment. The reliefs claimed were:

> *"a. Damages for contamination of land (July 2008 to January 2009) – FJD $468,675.00;*
>
> *b. Damages for continued contamination of land February 2009 to date) FJD 1,500,000.00;*
>
> *c. Economic losses to the plaintiff resulting from the pollution incident including loss of business and reduction in trading capabilities – in accordance with section 50 of the Environment Management Act – (December 2008 to July 2009 – FJD 950,000.00;*
>
> *d. Storage costs for the storage of the defendant's equipment on the land from June 2009 to date – FJD 281,977.88 at the date of this action and continuing;*
>
> *e. Damage for nuisance incurred due to the defendant's refusal to remove its underground fuel tanks from the land – in accordance with section 50 of the Environment Management Act – FJD 250,000.00;*
>
> *f. Costs of the plaintiff's travel to and from Australia to deal with the contamination incident – FJD 10,000.00;*
>
> *g. Exemplary and punitive damages for reckless conduct in addition to the damages set out above;*
>
> *h. Costs of engaging experts and preparation of reports and associated expenses relating to the contamination – in accordance with the Environment Management Act – FJD 29,000.00;*

i. $1000.00 costs ordered by the Magistrate's Court following the consent of the defendant's solicitor to the orders made by the Magistrate's Court on 29th September, 2009;

j. The continuing legal costs of the plaintiff in respect of Suva Magistrate's Court Civil Action No. 342 of 2009 and its appeal on an indemnity basis;

k. Special damages;

l. General damages;

m. Interests on the above claims; and

n. Costs of this action on indemnity basis

[35] In regard to prayers a and b, since I have found that the Respondent was negligent, and it was this that caused the contamination of the Appellant's property, the Appellant is entitled to damages on this basis. The measure of damages will be considered by the learned Master.

[36] In respect of economic losses suffered by the Appellant, the learned Master will consider the matter in accordance with section 50 of the Environment Management Act.

[37] In paragraphs [39] and [40] of the judgment the learned says that when the Appellant discovered the leakage, in order to minimize the damage and to prevent any further leakage, he should have closed down the two tanks in which the fuel was leakageing, immediately informed the Respondent, and then claimed damages for loss of sales in the event the Respondent failed to repair the leakage. This finding reveals that the learned trial judge did have in mind that the Appellant would or could have suffered economic loss if sales had to be stopped. In fact, after the government directed the Appellant to stop sales during a specific period, the Appellant says he suffered loss. Accounts were produced in court. At the time fuel leakage was detected, the FSA agreement between the parties had expired. However, even at that time, the tanks continued to be owned by the Respondent.

[38] In respect of storage costs for the storage of the defendant's equipment on the land from June 2009 to date, and for Damages for nuisance incurred due to the defendant's refusal to

remove its underground fuel tanks from the land. In view of the above admission at the pre-trial conference, it is the Plaintiff who had not allowed the defendant to remove the equipment (due to reasons best known to him). As this is a contested matter before the Magistrate's Court which is in appeal, I do not wish to make any observations in that regard. Therefore I decline to make any award under this head.

[39] Even in terms of clause 5 of the agreement, although the onus was on the Appellant to be responsible for the storage of the products sold by him, in accordance with the relevant laws and regulations at the time, the tanks, pipes and related equipment continued to be owned by the Respondent.

[40] In regard to the claim for exemplary and punitive damages for reckless conduct in addition to the damages set out above; this court sees no basis to award costs under this head, despite the finding of negligence on the part of the Respondent, due to the conduct that ensued between the parties.

[41] In regard to costs of engaging experts and preparation of reports and associated expenses relating to the contamination, in accordance with the Environment Management Act, the learned Master is entitled to consider reasonable costs under this head.

[42] In regard to damages for nuisance incurred due to the defendant's refusal to remove its underground fuel tanks from the land, it is pertinent to advert to the agreed facts of the minutes of the pre-trial conference wherein at paragraph 12 it is recorded thus:-

> *"The defendant's equipment remained on the land after the termination of the fuel supply agreement by the plaintiff as the plaintiff did not allow the defendant to remove the same and claimed storage charges from the defendant before the equipment could be removed".*

[43] Although the Plaintiff says that he was getting medical treatment in Australia and had to travel back to Fiji especially because of the alleged fuel leakage, he has not proved this as special damages by the production of an air ticket or any other medical grounds to the satisfaction of court and therefore the learned High Court Judge had not erred in respect of the cost of the Plaintiff's travel.

[44] This court is mindful of the principles usually followed when it is faced with the task of overturning the trial judge's finding on the facts.

Conclusion

[45] Accordingly, I order as follows:-

i) That the appeal be allowed and the judgment of the High Court is set aside;
ii) The Registrar is directed to send this matter to the Master for determining the quantum of damages due to the Appellant;
iii) The Respondent is to pay to the Appellant a sum of $5,000.00, as costs in the court below and the sum of $10,000.00 in this court within 28 days of this Judgment.

Almeida Guneratne, JA

[46] I agree with the reasoning, conclusion and the proposed orders contained in Lecamwasam, JA's judgment.

Jameel, JA

[47] I agree with the conclusions and orders proposed by Lecamwasam JA.

<u>The Orders of the Court are:</u>

1. *The Appeal is allowed and the judgment of the High Court dated 23 August 2018, is set aside.*
2. *The Registrar is directed to send this matter to the Master for determining the quantum of damages due to the Appellant as directed by this court.*
3. *The Respondent is ordered to pay to the Appellant a sum of $5000.00 as costs in the court below and $10,000.00 as costs in this court within 28 days from the date of this judgment.*

....
Hon. Justice S. Lecamwasam
<u>Justice of Appeal</u>

....
Hon. Justice Almeida Guneratne
<u>Justice of Appeal</u>

....
Hon. Justice F. Jameel
<u>Justice of Appeal</u>