

In the High Court of Fiji at Suva

HBC Action No. 69 of 2012

Between: Saiyed Arif Ali

Plaintiff

And: Yongshan Plastic Manufacturing Company Ltd

Defendant

Appearances: Mr Daniel Singh for the plaintiff

Ms M Tikoisuva for the defendant

Dates of hearing: 4<sup>th</sup> April,2014 and 2<sup>nd</sup> June,2014

### **Judgment**

1. The plaintiff, a labourer at the defendant's factory at Manoca, Nausori claims that he suffered an injury while operating a plastic recycling machine. It is alleged that the injury was caused by the defendant's breach of statutory duty and/or negligence. The plaintiff claims damages(general and special) and loss of earnings. The defendant denies that the injury was caused by its negligence. Alternatively, the defendant states that the accident was caused or contributed by the plaintiff's negligence or that he voluntarily consented to accept that risk and waive any claim in respect of any injury.

#### ***The determination***

2. The plaintiff's case is that his injury was caused by the defendant's breach of statutory duty and/or negligence.
3. The statement of claim recites that the plaintiff was shifting a heavy container placed on top of the plastic recycling machine at a height of 5.5 feet, when the container tilted and crushed his left hand middle finger.

4. The plaintiff alleges that the defendant had been negligent in (i) failing to take adequate precautions for his safety, (ii) provide a competent person in terms of section 9 (1) © of the Health and Safety at Work Act,1996, to train and supervise his work, (iii) exposing him to a risk of damage or injury of which they knew or ought to have known and to a “*shoddy and dangerous work practice*” where a heavy container was kept at a height on top of a machine and had to be moved for the plaintiff “to gain access to the hollow component of the plastic processing machine to retrieve waste plastic material for recycling”.
5. The defendant, in its statement of defence states that the plaintiff was “*not instructed nor authorized or commissioned to attend to the work alleged*”.
6. The question that I have to determine is whether the plaintiff was authorized to shift the container.
7. The defendant operates a plastic manufacturing factory making lunch boxes and garbage bags.
8. The plaintiff,(PW3) in evidence in chief said that on 28<sup>th</sup> May,2009, he started work at 4 pm. His “*boss*” asked him to remove the waste material from the garbage manufacturing machine. There was a blockage of waste material in the tub of the machine. There was a heavy container on top at the edge of the machine. The incident which gave rise to his injury occurred at 6.30 pm, when the plaintiff shifted the container to get the material. Unfortunately, the container slipped and his finger got caught between the machine and container. He shifted the container, as he had often done when there was a blockage. There was no other way of retrieving the waste material. That work was part of his duties. His supervisor had seen him shifting the container on prior occasions.
9. DW1, (*Ravin Kumar, a machine operator in the defendant’s factory*) said that only a Chinese employee and he operated the garbage manufacturing machine. The plaintiff was not allowed to work on that machine. He said that the plaintiff was a “*packer*”. The tub in the machine does not get blocked. The container does not have to be moved.

10. PW2, (*Laisani Naulu*) confirmed that the plaintiff was working in the packing division. In answer to a question in cross-examination as to whether the plaintiff was allowed to operate the machine, PW2 said that the plaintiff was filling in waste material to make garbage bags.
11. I see no reason for the plaintiff to have attended to that task, unless he was requested by his employer to do so.
12. I do not accept the evidence of DW1 that he was not instructed to carry out that work.
13. I turn to consider how the accident occurred.
14. DW1 confirmed the plaintiff's evidence that the container was heavy and kept on top of the machine. The plaintiff said that the container was on the edge of the machine, at an angle. This evidence was not controverted by the defence.
15. In my view, clearly the plaintiff befell the injury in the course of his employment.
16. In my judgment, the defendant was in breach of section 9 of the Health and Safety at Work Act, 1996, in failing to take adequate precautions for the plaintiff's safety and exposing him to a dangerous situation where he had to shift a work machine: a heavy container to retrieve waste material.
17. Mr Singh, counsel for the plaintiff has referred to the case of *Sheik Mohammed Amin v Vishwa Chand & Courts(Fiji) Ltd*, (HBC 39 of 2008) where Calanchini J (as he then was) held that it is the duty of an employer to provide a safe system of work. That judgment was upheld on appeal (ABU 0031 of 2012):

18. Lord Hope in *Robb v Salamis (M & I)*, [2007] 2 All ER 97 at pg 109 said:
- The employer must anticipate that it may not be possible to predict the precise ways in which situations of risk may arise, especially where the risk is created by carelessness. The employer is liable even if he did not foresee the precise accident that happened (see Miller v South of Scotland Electricity Board 1958 SC (HL) 20 at 34 per Lord Keith of Avonholm). As Lord Reid said Hughes v Lord Advocate (1963) 1 All ER 705 at 708, (1963) AC 837 at 847, the fact that an accident was caused by a known source of danger but in a way that could not have been foreseen affords no defence. (emphasis added)*
19. There was no evidence to support the defendant's claim that the plaintiff contributed to the injury.
20. The plaintiff said in the aftermath of the injury, his hand was swollen and turned black. He was in great pain. His employer did not give him any medicine. There was no first aid box in the factory, as confirmed by PW2.
21. In support of the injuries suffered, the plaintiff relied on the medical assessment contained in the Workmen's Compensation Form, as entered by PW1, (Dr Virisila Ciri Tinai). The form stated the plaintiff had a "blunt injury of left middle finger with area of bruise underneath the finger", was temporarily incapacitated for six weeks and awarded 2% permanent incapacity.
22. PW1, in evidence in chief said that the plaintiff's finger was bruised under his finger nail. He wanted to amputate his finger, but the plaintiff opted for the removal of his nail. His ability to grip objects was affected.
23. It transpired in cross-examination that PW1 was a Senior Medical Officer who had specialized in Pathology, not Orthopedics. He said that the plaintiff was referred to an orthopedic surgeon, but had not followed it up.

24. DW2(Mr Taloga, Registered Orthopedic Surgeon) produced a medical report of the plaintiff. He said that he examined his middle finger. He got the plaintiff to do various exercises. There was no permanent disability and loss of pulp on his finger.
25. In re-examination, DW2 said that it was not necessary to conduct a grip test on the plaintiff, as his injury was only on the tip of the finger.
26. I prefer the evidence of DW2. He is a specialist in Orthopedics as against PW1, who was specialised in Pathology.
27. Dr Taloga's medical report reads:
- Mr Ali is a **right hand dominant** machine operator working in plastic garbage bag making factory when he injured his **left middle finger in June 2009**. He had sustained a blunt injury to the tip of the left middle finger.*
- He was treated at the Wainibokasi Hospital with oral antibiotics and wound dressing.*
- Mr Ali tells me that he was able to return to work after one year from the injury as a salesman for a chemical company.*
- Mr Ali complains of pain over the finger and has to miss work 2-3 days per week. He tells me that he has to take Panadol and Brufen tablets regularly for the relief of is symptom. He consults the doctor at the Nausori Health Center on a regular basis for his problem.*
- The examination of the left hand did not show any deformity of the fingers or the nails. There was no noticeable scar seen over the tip of the middle finger. The joint motions were not restricted. There were no areas of inflammation or tenderness.*
- The examination of Mr Ali today did not show any residual permanent disability from the work related injury to the left middle finger. (emphasis added)*
28. The plaintiff is entitled to damages for pain and suffering.

29. Mr Singh has cited several cases in support of his claim for general damages of a sum of \$ 5000. The facts are not comparable to the present case. The cases cited deal with instances of amputation of the finger and other severe injuries.
30. I award the plaintiff a sum of \$ 2000 as general damages for pain and suffering.
31. A claim is made for future earnings. The plaintiff, in cross-examination stated that he had initially worked for the defendant for three years and left in July,2005. He worked again with the defendant from May,2008, till April,2009. No documentary evidence was produced in support.
32. The plaintiff's evidence on that point was disputed. DW1 said that the plaintiff had worked for two to three months in 2008 and later from May,2009.
33. In my view, the plaintiff is not entitled to future earnings considering that he was employed in a casual unskilled form of employment with no secure tenure.
34. The plaintiff claims special damages for medicines and transport expenses to hospital. In his evidence in chief, the plaintiff stated that he went twice to Nausori Health Centre and twice to Wainibokasi hospital. I would allow a sum of \$ 20 for purchase of medicines and \$ 24 for travelling expenses.
35. The plaintiff has claimed interest. He is entitled to interest at 6% per annum on general damages from 4<sup>th</sup> April,2012, (date of service of writ ) to 4<sup>th</sup> April,2014,(date of hearing). I would disregard interest on special damages.

**36. Orders**

- a. I make order that there shall be judgment for the plaintiff against the defendant in a sum of \$2284 made up as follows:

(i)	General damages	2000.00
(ii)	Interest on general damages	240.00
(iii)	Special damages	44.00
	Total	\$ 2284.00

- b. The plaintiff is entitled to post judgment interest.
- c. The first and second defendants shall pay the plaintiff costs summarily assessed in a sum of \$ 2000 .

24<sup>th</sup> February, 2016



*A.L.B. Brito-Mutunayagam*

**A.L.B. Brito-Mutunayagam**  
Judge