

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION

Civil Action No. HBC 48 of 2012

BETWEEN : **INTERCITIES BUSES SERVICES LIMITED** a limited liability company having its registered office at 7 Nayau Street, Samabula, Suva.

PLAINTIFF

A N D : **HAROON'S GENERAL HARDWARE STORE** of 15 Vaileka Street, Rakiraki.

1ST DEFENDANT

A N D : **SHAHIDA KHATOON** of 15 Vaileka Street, Rakiraki.

2ND DEFENDANT

Appearances : Mr Pita Katia for Plaintiff
Mr Mosese Raratabu for 1st & 2nd Defendants

Date of Hearing : 3 July 2017

Date of Judgment: 3 July 2017

J U D G M E N T

Introduction

[01] The Plaintiff's claim arises out of an accident that occurred at Vitawa Road junction in Rakiraki, where the vehicle driven by the First Defendant from the side road had hit the Plaintiff's vehicle travelling along the Kings Road. The Plaintiff claims a sum of \$50,378.49 as special damages.

[02] The Defendants' defence is that the accident was inevitable as a result of the mechanical defects.

[03] At trial, the Court ordered the Defendants to begin their case as they have pleaded inevitable accident. The counsel for the Defendants then informed that the Defendants will rely on the Magistrate Court's judgment where the accused (the First Defendant) was acquitted, and he further informed that the Defendants will not call any other witnesses to prove their defence.

[04] As a result of my ruling, the burden of proof was shifted to the Defendants to establish the defence of mechanical defects.

Background

[05] The statement of claim avers that: Intercities Buses Services Limited, the Plaintiff was the registered owner of a bus registration no. FS 731 ("Plaintiff's Vehicle") and had authorized Arun Lal as employee to drive the vehicle. The Plaintiff's Vehicle was insured by Sun Insurance Company Limited. Haroon's General Hardware Store, the first Defendant was the registered owner of vehicle registration no. DT 065 ("*Defendant's Vehicle*") and had authorized the second Defendant as employee to drive the vehicle. On 20 January 2011, at Vitawa Road junction in Rakiraki, the Defendant's Vehicle pulled out suddenly onto the King's Road and collided into the side of the Plaintiff's Vehicle, causing the Plaintiff's Vehicle to tumble onto its side and slid along the road. The Plaintiff claims damages from the Defendants.

[06] The Defendants in their amended statement of defence pleaded that the collision occurred due to mechanical defects which was beyond the knowledge of the Defendants. The Defendants want the claim dismissed with costs.

Defendant's Evidence

- [07] The Defendants had to begin their case first by reason of the Court order that the Defendants must commence their case first as they have pleaded the defence of mechanical defects, having admitted the collision.
- [08] When called for evidence, counsel appearing for the Defendants advised the Court that Defendants would be relying on the judgment of the Magistrate's Court, where the accused was acquitted on all traffic charges including Dangerous Driving Occasioning Grievous Bodily Harm. He also advised that the Defendant would not be calling any other witnesses.

Discussion

- [09] In this case, I need to consider whether the Defendants have established the defence of mechanical defects to get rid of the liability to pay damages caused to the Plaintiff's vehicle as a result of the collision.
- [10] The Defendants heavily rely on the judgment of the Magistrate's Court in Traffic Case No. 43 of 2011, where the accused (the second Defendant) was acquitted on all traffic charges including dangerous driving. In his judgment the Learned Magistrate states at para 38:

"Finally, I found the rough and fair sketch plan was supportive to the Defence case in particular as to why the bus had 65 meter breaking distance, if it travelled at approximately 60km per hour?"

There was a clear lack of commitment and thoroughness between the investigating officer and the LTA authorities in this matter. I hold that there are serious doubts in this case and prosecution has failed to prove its case".

- [11] It is to be noted that the second Defendant was not acquitted on the ground of mechanical defects. She was acquitted because the prosecution had failed to prove the charges beyond reasonable doubts –

the Learned Magistrate has given benefit of the doubts to the second Defendant.

[12] The Defendants did not call any other witnesses to prove the mechanical defects. The defence of mechanical defects has emerged in the amended Statement of Defence. It is, in my opinion, an afterthought defence. There is no sufficient evidence in Court proving on the balance of probability that the accident occurred due to mechanical defects. As such, I find that the Defendants have failed to prove that collision that occurred on 20 January 2011 was an inevitable one as a result of the mechanical defects in the Defendants vehicle. This follows that the Plaintiff succeeds in his claim. Accordingly, I grant judgment in favour of the Plaintiff for the sum of \$50,378.49. However, I decline to award interest and costs.

Final Outcome

1. There will be judgment in favour of the Plaintiff for the sum of \$50,378.49.
2. Interest and costs declined.

M.H. Mohamed Ajmeer
..... 3/7/17

M.H. Mohamed Ajmeer

JUDGE

At Lautoka

3 July 2017

Solicitors:

M/s Siwatibau & Sloan, Barristers & Solicitors for Plaintiff

M/s Iqbal Khan & Associates for Defendants

