

IN THE HIGH COURT OF FIJI AT LABASA
CIVIL JURISDICTION

Civil Action No. HBC 30 of 2016

BETWEEN

WALI MOHAMED of Siberia Road, Labasa, in the Republic of Fiji Islands.

PLAINTIFF

AND

AZAAD CONSTRUCTION LIMITED a limited liability company
having its registered office at Lot 8 and lot 23
Vakamasisuasua sub-division, Labasa.

DEFENDANT

Counsel : Mr. A. Kohli for the Plaintiff
Mr. S. Sharma for the Defendant

Dates of Hearing : 15th& 17th of May, 2017

Date of Judgment : 12th July, 2017

JUDGMENT

- [1] The plaintiff instituted these proceedings by a writ of summons claiming damages from the defendant for the injuries caused to him during the course of his employment.
- [2] The plaintiff has averred in the statement of claim that on 15th January, 2016 while he was painting the roof of a house as directed by the defendant company he suffered an electric shock and fell off the roof. It is averred further that the injuries sustained by the plaintiff was due to the negligence of the defendant and the particulars of negligence according to the statement of claim are as follows;
- i. Failure to provide or maintain a safe and proper system of working, or to instruct their workmen including the plaintiff to follow that system.
 - ii. Failure to provide adequate supervision at all times.
 - iii. Failing to take any adequate precautions for the safety of the plaintiff while he was engaged in his said work.
 - iv. Exposing the plaintiff to a risk of damage or injury of which they knew or ought to have known.
 - v. Failing to provide or maintain any or any safe or proper system of work.
 - vi. Requiring the plaintiff to engage in a dangerous activity done without due regard to his safety.
 - vii. Failing to provide any care for the plaintiff to attend to his surgical treatment abroad.
- [3] The defendant in its statement of claim while denying any negligence on its part averred that the plaintiff was directed to the house at Tuatua, Labasa on 15th January, 2016 to work on the roof and any injuries suffered by the plaintiff was due to his own negligence and recklessness.
- [4] As per the statement of defence the particulars of negligence on the part of the plaintiff are as follows;
- (i) Failing to properly check the electrical lead wire before using;
 - (ii) Failing to take any or any adequate safety precautions before handling the electrical lead wire;
 - (iii) Failing to wear safety equipment on the date of the incident;
 - (iv) Failing to take precautions and care expected of the plaintiff;

- (v) Being reckless and inattentive in the circumstances;
- (vi) Failing to seek assistance to get off the roof soon after the incident;
- (vii) Failing to seek immediate medical attention soon after the alleged incident; and
- (viii) Failing to follow the instructions of the supervisor.

[5] At the pre-trial conference the parties admitted the following facts;

1. The plaintiff was employed as a carpenter by the defendant company.
2. On 15th day of January 2016 the plaintiff was directed by the defendant company to go to the house at Tuatua, Labasa to work on the roof of the said house.

[6] As per the minutes of the pre-trial conference the issues for determination are as follows;

1. Did the plaintiff get injured during the course of his employment with the defendant company on 15th January, 2016?
2. Did the defendant failed in its duty of care to the plaintiff?
3. Was there any instructions or established guidelines provided to the plaintiff?
4. If the answer to the above is yes, then the plaintiff fail to adhere to instructions and established guidelines?
5. Did the plaintiff fail to exercise adequate precautions?
6. How did the injury occur and what was the extent of such injuries?
7. Was the injury caused by the negligence or breach of duty by the defendant?
8. Did the defendant comply with the requirements of the implied terms of the employment in providing a safe working system and take all reasonable means to provide safe and proper working conditions?
9. Is the plaintiff entitled to rely on the doctrine of **res ipsa loquitur**?
10. In the event liability is proved against the defendant, then what should be damages awarded to the plaintiff as:
 - i) General Damages;
 - ii) Interests;
 - iii) Costs.

- [7] The evidence of the plaintiff is that on 15th January, 2016 he was directed by the father of Mr. Sameer, the director of the defendant company to go Tuatua to work on a roof and the day prior to he was injured the plaintiff has changed the roofing sheets and the following day he had gone there to tighten the screws. He had plugged in the electric lead wire and took it to the roof but while working on the roof the screw machine was disconnected and when he attempted to re-connect it he suffered an electric shock and thrown away. The plaintiff waited there for some time and called one Arif, a co-worker and had told him what happened. It is the evidence of the plaintiff that he felt his right hand benumbed and was also painful. It is also his evidence that before plugging in he checked the wire but he did not see any damage in it. After sustaining injuries, according to the plaintiff, he was not taken to the hospital but took him home where his son massaged the shoulder. The plaintiff for the first time had gone to the hospital after five days of the incident on the 20th January, 2016 when Sameer, the director asked him to go the hospital. The plaintiff very seriously alleged that when he requested them to take him to the hospital they took him home. It was revealed in cross-examination on the following day there had been a prayer meeting at the plaintiff's house in which the plaintiff also participated. When he was questioned whether he served the people who attended the prayer session the plaintiff denied. It was suggested to him that he suffered an electric shock while fixing some lights in the shed put up in his house for the prayer meeting the plaintiff denied.
- [8] When the plaintiff was confronted with paragraph 4 of the statement of claim where it states that he suffered an electric shock and fell off the roof while painting the roof the plaintiff said that he was painting where the screws were fixed and he suffered an electric shock while fixing the screws. After the accident the plaintiff had climbed down from the roof with the tools. The plaintiff denied having refused to go to the hospital. It is his position that he wanted to go abroad for treatment but the employer refused the request.
- [9] Witness Mohamed Nafees is the son of the plaintiff who could testify to what transpired after the plaintiff went home on the day of the accident and about the prayer session had at home on the following day. It is his evidence that on 15th January, 2015 the father came home by 12.00 noon and told that he suffered an electric shock. He had then applied Vicks balm and massaged the arm of the plaintiff. He testified further that for the next day prayer session the shed was erected and the wiring was done by one Farook. The witness also said the father

was complaining of pain in the arm and when he asked him to go to the hospital he said that he had to obtain permission from the boss.

- [10] Dr. Maloni Bulanauca is the doctor who saw the plaintiff for the first time On 20th January, 2015 and prepared the report marked in evidence as "P2". It is his opinion that numbness, restriction in movement and pain can be the symptoms of electrocution. He testified further that it is also possible to loose strength in the arm. However, in his report there is no assessment of permanent impairment. Explaining why he did not assess the permanent impairment the doctor said that he had to wait for some time to see the improvement of the patient's condition and also that there was no request from the plaintiff to assess the permanent impairment.
- [11] Witness Shakir Ali is the son of the plaintiff's wife's sister and at the time the plaintiff sustained injuries he was staying with the plaintiff. It is his evidence that about 50 – 60 people participated at the prayer sessions held at the plaintiff's house on the 16th January, 2015 and it was the plaintiff who provided electricity to the shed put up to accommodate the participants. He testified further that while the plaintiff was working on the electricity line to provide electricity to the shed the plaintiff was electrocuted and fell off the chair. He said that while working on the electricity line he was standing on a chair and the witness assisted him. It is also his evidence that the plaintiff with the help of the others cooked Palau for the visitors and the he along with the others mixed it for few times and the plaintiff did not complain that he could not do it. The witness also testified that on the day of the prayers he came home at about 5.30 pm and the plaintiff was greeting the people who attended the function by shaking hands with them. The witness admitted that he advised the plaintiff to complain to the Labour Department when the plaintiff told him that he was electrocuted at the work place. In cross-examination the learned counsel for the plaintiff suggested that he was lying because the relationship between his family and the plaintiff's family was not cordial, the witness denied that he was lying.
- [12] The defendant does not admit that the plaintiff suffered an electric shock while working. It is evidenced that after the alleged eclectic shock the plaintiff climbed down the ladder without the assistance of anyone, brought his tools down from the roof and loaded them into the vehicle which fact has not been denied by the plaintiff. From the plaintiff's own evidence it is clear that he did not fall off the roof after suffering the electric shock. The plaintiff's explanation is that he used his other hand. It is humanly impossible for someone to carry tools and climb

down a ladder only with one hand. There is also evidence that he suffered another electric shock on the following day at his residence which fact has not been contradicted by the plaintiff. The learned counsel for the plaintiff submitted that the evidence of this witness was not at all credible because of the relationship between him and the plaintiff was not cordial. It is the same witness who testified that when the plaintiff told him about suffering the electric shock he was advised by him to report the incident to the Labour Department. If the relationship between the plaintiff and the witness was not at all cordial one cannot expect the witness admit that he advised as to what he should do about the injuries caused to him. The burden of proving which electric shock caused him injuries was on the plaintiff.

[13] The learned counsel submitted that the maxim *res ipsa loquitur* which means "the thing speaks for itself" is applicable to the facts of this case.

[14] In the case of **Lloyde v West Midlands Gas Board** [1971] 1 WLR 749 at 755 it was held:

More generally the claimant may be invoke the doctrine known as *res ipsa loquitur* or "the event speaks for itself". This means that under circumstances the claimant may raise a presumption of negligence simply by detailing the manner in which the accident or the loss in question occurred. Negligence will be presumed where the means by which the damage was inflicted were under the defendant's sole control or where, on first sight, no explanation other than carelessness by the defendant is possible.

[15] Lord Griffiths in **Ng Chun Pui v Lee Chuen Tat** [1988] RTR 298; [1988] UKPC 7 made the following observations;

This does not mean that the burden of proof is formally reversed. The claimant has the burden throughout of establishing his case on balance of probabilities and the judge must make an assessment whether there has been lack of due care on all the evidence presented to him. Another way of putting this is to say that the defendant does not formally have the burden of disproving lack of care on the balance of probabilities simply because *res ipsa loquitur* has been successfully raised against him. All *res ipsa loquitur* is to assist the claimant in establishing his case and to raise a prima facie finding of lack of care against the defendant. But in practice

the application of *res ipsa loquitur* may effectively settle a case where neither side can offer a convincing explanation of the event in question.

- [16] In this case the only negligent act, if at all, is providing plaintiff with an electrical lead wire which was damaged. How the accident occurred is within the exclusive knowledge of the plaintiff. For the reasons stated and the decisions cited above the court is of the view that the maxim *res ipsa loquitur* has no application to this case.
- [17] The plaintiff alleges that the defendant did not take him to the hospital but took him home. The evidence is that the plaintiff went to a doctor on 20th January, 2016 that is five days after he sustained injuries. No person who sustains injuries, especially of this nature, will go home without first consulting a doctor. The excuse offered by him was that without permission of the employer he could not go to the hospital which is unacceptable. One does not have to seek permission from the employer to go to hospital. He could easily have gone to the hospital after he was taken home by the employer's driver or he could have gone to the hospital on the following day or on Sunday if he was in such a pain. Assuming that the defendant did not allow him to go to the hospital, there could not have been any restriction on the plaintiff from going to the hospital out of working hours if he really wanted to.
- [18] From the evidence of the plaintiff it is clear that he knew very well that trying to plug in an electrical appliance to the live lead wire was dangerous. In his evidence he testified that if there was someone else with him he could have asked him to switch off the power before plugging in the screw machine. He did not explain why did not do it by himself knowing very well that he could have sustained injuries. Therefore, the court concludes that the plaintiff has also to a certain extent been negligent.
- [19] From the evidence of the plaintiff and the defendant's witnesses it establishes that after suffering the electrical shock the plaintiff was in pain but there is no evidence for how long the pain lasted. The doctor has also observed that there was restricted movement and poor grip strength in his fingers. Since there is no assessment of permanent impairment or any other evidence in that regard the court is unable to assess damages on that basis.
- [20] Taking into consideration the totality of evidence the court concludes that since the plaintiff has not been able to establish that the injuries suffered are of permanent in nature and also whether the injuries suffered at the work place was

aggravated due to the second electric shock he suffered at his residence, the court will only award damages for pain suffering. In the circumstances the court is of the view that \$10,000.00 would be a reasonable amount for pain and suffering.

[21] For the reasons aforementioned the court makes the following orders.

ORDERS

1. The defendant is ordered to pay the plaintiff \$10000.00.
2. The plaintiff is also entitled to interest on the said sum in terms of section 4(1) of the Law Reforms (Miscellaneous Provisions) (Death and Interest) Act 1935 from the date of the judgment until the entire sum is paid in full.
3. The defendant is also ordered to pay the plaintiff \$2000.00 as costs of this action (summarily assessed).



Lyone Seneviratne

Lyone Seneviratne

JUDGE

12th July, 2017