

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CIVIL JURISDICTION

CIVIL ACTION No. HBC 117 OF 2010

BETWEEN : GYAN SINGH of 5 Houn Street, Suva, Fiji, Businessman.

FIRST PLAINTIFF

AND : RAKESHWAR SINGH of Yalalevu, Ba, Driver.

SECOND PLAINTIFF

AND : RONIL PARWESH CHAND of Teidamu, Lautoka.

FIRST DEFENDANT

AND : SIMON GOPAL of 32 Captain Withers Street, Field 40, Lautoka.

SECOND DEFENDANT

AND : SUBHAS CHANDRA of Lautoka.

THIRD PARTY

Appearances : Ms J. Naidu for the plaintiffs

Mrs Prem Narayan for the second defendant

Date of Hearing : 18 October 2017

Date of Ruling : 18 October 2017

R U L I N G

[01] This is a summons filed by the second defendant pursuant to Order 18, r.18 (1) (a) of the High Court Rules 1988 (“HCR”) supported by an affidavit of Simon Gopal, the second defendant (“the application”). The application seeks orders that the statement of claim filed on 8 June 2010 discloses no reasonable cause of action based on the judgment of Judge M. H. Mohamed Ajmeer dated 23 September 2016 when His Lordship held that the second defendant was not the owner of motor vehicle registration number DP 831.

[02] HCR rule 18 (1) (a) provides:

“18.-(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) ...; or

(c) ...; or

(d) ...;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1) (a).”

[03] The plaintiffs did not file any response although they obtain time for that purpose.

[04] The plaintiffs brought this claim against the defendants seeking among other things damages for personal injuries they sustained in an accident where it is

alleged that the first defendant drove the motor vehicle DP 831 with the permission and knowledge of the second defendant. The plaintiffs alleged the second defendant is vicariously liable as he is the registered owner of the vehicle Reg. No. DP 831 that was involved in the accident.

- [05] The second defendant raised a preliminary issue of whether the second defendant was the registered owner of the vehicle DP 831. This was tried as a preliminary issue before me and I gave a ruling dated 23 September 2016, where I decided that the second defendant was not the registered owner of the vehicle registration number DP 831 at the time of the accident.
- [06] The cause of action against the second defendant was that he was the owner of the vehicle DP 831 and the first defendant was driving the vehicle with the permission and knowledge of the second defendant. Since I have decided that the second defendant is not the owner of the vehicle involved in the accident, the claim that the second defendant is liable vicariously cannot sustain.
- [07] Now, following my decision of 23 September 2016, I find that the pleadings do not disclose a reasonable cause of action against the second defendant.
- [08] Having considered the pleadings related to the second defendant alone together with my decision of 23 November 2016 that the second defendant was not the owner of the vehicle (DP 831) at the time of the accident, I find that the pleadings disclose no reasonable cause of action against the second defendant. I would, therefore, strike out the claim against the second defendant on the basis that the pleading discloses no reasonable cause of action. The plaintiff will pay summarily assessed cost of \$500.00 to the second defendant within 28 days of the date of this ruling.

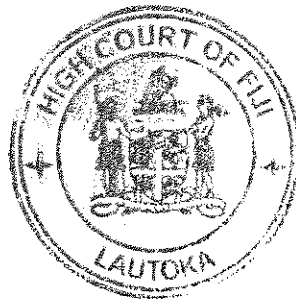
Final Outcome

1. Claim against the second defendant is struck out on the basis that the pleading discloses no reasonable cause of action.
2. Plaintiffs will pay summarily assessed costs of \$500.00 to the second defendant within 28 days.

M.H. Mohamed Ajmeer
..... 18/10/17

M.H. Mohamed Ajmeer

JUDGE



At Lautoka

18 October 2017

Solicitors:

For plaintiffs: M/s Neel Shivam Lawyers, Barristers and Solicitors

For second defendant: M/s Prem Narayan, Solicitor