

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 226 of 2011

BETWEEN: **DAVIND LAL** father's name Jawahir Lal formerly of Nadali,
but presently of Davuilevu Nausori, Businessman

PLAINTIFF

AND : 1. **SHARINA DEVI DUTT**
 2. **SATISH KUMAR**
 3. **VIRENDRA DUTT**
 4. **MAHEN DUTT**
 5. **RAJESH KUMAR**
 6. **RAJENDRA DUTT** all Defendants father's name is Deo
 Dutt and all of Nadali, Nausori.

DEFENDANTS

Counsel : **Mr. Kumar S. for the Plaintiff**
 Mr Sharma T. for the Defendants

Date of Hearing : **27, 28 and 29 June, 2016**

Date of Judgment: **5 December, 2018.**

JUDGMENT

INTRODUCTION

1. The Plaintiff had filed this action seeking damages for injuries from an assault. The 1st Defendant is the wife of the Plaintiff and the rest of the Defendants are all related to her. All the parties live at close proximity. The Plaintiff is having custody of one child while the other child is with 1st Defendant. The Plaintiff was having a belated birthday celebration on the day of the incident, and the child admitted that he also consumed alcohol and this was complained to the Police by 1st Defendant who is the mother of

child. This had resulted the alleged incident in the night where Plaintiff had tried to assault 1st Defendant and her daughter. The brothers of 1st Defendant had come to her rescue where Plaintiff was also assaulted.

FACTS

2. In the Pre trial conference it is admitted that Plaintiff and Defendants were all relatives. The Plaintiff was the husband of 1st Defendant and brother in law to the rest of the Defendants.
3. It is also admitted fact that the Plaintiff was assaulted on 23rd January, 2011.
4. For the Plaintiff he and his child and the person who served summons to 3rd Defendant, gave evidence. All the Defendants gave evidence. The Plaintiff had also submitted written submission. The Defendants did not file any submission.
5. On the day of the incident Plaintiff had a party at his place and his child was also at home.
6. The child admitted that he was in 12 years old at that time, but he was offered alcohol by the Plaintiff.
7. The Plaintiff in his evidence said that he was having a party whole day and during day time he had consumed liquor.
8. According to the Plaintiff when it was getting dark he had gone out to get his vehicle to car park and he said that neighbours started swearing at him. When he parked the car and got down he was approached by the Viren and Satish (2nd and 3rd Defendant) and they had taken him to their compound.
9. The Plaintiff said his legs and hands were tied down and he was put down and Viren had sat on his back. He also said that Satish started punching him, and Rajendra and Mahen also punched him. They had called Sharina and she had kicked him and also spat on him.
10. According to the Plaintiff neither his friends nor the neighbours came to his rescue and his friends had contacted the Police and when the Police came the assailants had left the scene. According to him the assault had lasted about 45 minutes.
11. The Plaintiff stated that he had suffered some serious injuries. He said that he could not drive his mini van. He could not lift heavy object and his eyesight is also getting poor.

His shoulder was also dislocated and it is getting dislocated frequently. He said his eyes, forehead, face, ribs, backside and legs were injured.

12. He was shown the Medical Examination Form and Plaintiff admitted his signature in that and said that it was signed before he was examined by the medical officer. It was the Plaintiff's consent to be examined by the medical officer.
13. According to the said medical examination form no admittance to hospital was needed and prognosis was that no follow up needed. He had complained about muscular skeletal pain to the medical examiner and medical examination was about 10.05 pm on 23.1.2011. There were some scratches on his neck and eye brow swelling noted in the medical examination form.
14. According to the said medical examination form injuries are compatible with moderate force and minimal damage is noted, with no requirement for follow up.
15. The child of the Plaintiff, Shahil also gave evidence said he could not remember the year or date of the incident but admitted that he consumed alcohol on that day. He also said his father and friends were drinking in the house, on the day of the incident during day and in the night his father was assaulted by his uncles.
16. The last witness in his evidence said he served the summons to all the Defendants and 3rd Defendant told him that if he finished Plaintiff on that day the matter would have ended. He said that he had not informed this to the Police but informed the Plaintiff.
17. 1st Defendant in her evidence said Plaintiff was her ex husband and on the day of the incident she went to her brother's place (Rajendra Dutt) with her daughter at 8.30 pm and Plaintiff and friends started swearing at her.
18. Her daughter had replied to the swearing and one person chased her and tried to grab her. She was sent home but Plaintiff had come and held her. When they were chased they had gone to Satish Kumar's compound. Satish and Viren lived together and the daughter had called Viren for help and when Viren came the Plaintiff had released her. She also said that the reason for the Plaintiff to swear at her was her complaint on that day regarding her child who was living with the Plaintiff consuming alcohol.
19. She also said she could smell alcohol when Plaintiff grabbed her and he could not even stand properly. She said the house where she stayed is also in the same compound about 15m away and she could see the Plaintiff drinking whole day. She had seen Plaintiff

offering beer to her child who was with the Plaintiff and this prompted her to complain to Police.

20. She said only Viren and Satish came to rescue her from the Plaintiff. She said that while she was living with Plaintiff he beat her and had requested her son to pour hot water on her, and this resulted she obtaining Domestic Violence Restraining Order (DVRO) and moving out from the house.
21. She also said in cross examination Plaintiff violated DVRO when he held her neck but she did not complained that to Police.
22. Satish Kumar said he was at his house when he heard a noise and went outside about 8-8.30 pm in the night. Then 1st Defendant had complained that the Plaintiff had attempted to beat her. He denied assaulting but said that he called Police on the instruction of Viren.
23. Mahen Dutt in his evidence denied that he was present at the time of the incident as he was away from home from 10 am to 10.30 PM on the date of the incident and had known about it only following day.
24. Rajesh Kumar said he was in deep sleep around 7.30 PM on the date of the incident.
25. Rajendra Dutt in his evidence said he was at his house but said since there were some visitors and he was entertaining them he could not hear or see the incident. He said he watched a movie. He said his house was about 20m from the Plaintiff.
26. Virendra Dutt in his evidence said that on the day of the incident at around 8.30 PM daughter of the 1st Defendant had come running to her to complain that Plaintiff and his friends chased her and her mother. He had run for rescue and had seen Plaintiff holding 1st Defendant.
27. According to Viren the Plaintiff had fallen on the ground when he tried to hit him and he had not assaulted him.

ANALYSIS

28. In the statement of claim the Plaintiff is claiming for personal injuries from an assault. At the pre trial conference the fact of Plaintiff being assaulted was admitted, but there is no admission as to persons who had assaulted or to the injuries he suffered from the assault.
29. From the Plaintiff's evidence as well as his child who is living with him all the Defendants had participated in the assault.

30. On the balance of probability it is proved that Plaintiff had verbally abused his ex wife and her daughter and not satisfied with that had tried to physically attack her by grabbing her. This had happened when she was walking with her daughter to her brother's place in the night.
31. Some words exchanged between Plaintiff and daughter before and that resulted she being chased by Plaintiff. She had run to the house and alerted her uncles Satish and Virendra, who had come for 1st Defendant's rescue. When they came the Plaintiff was already holding 1st Defendant from neck and she was released but the Plaintiff was assaulted by Defendants.
32. According to the evidence of Virendra and Satish they were also assaulted by the Plaintiff. The Plaintiff was with his friends but they were not residents of the compound and would not have desired to get involved in the fight due to the lack of support for them and had gone away from the scene. So it can be presumed that there was a fight with exchange of blows between Plaintiff and Defendants.
33. The Plaintiff said he was taken to Defendants' compound and assaulted. He said that Viren had sat on his back after throwing on the ground and had tied the hands and legs. Accordingly Viren, Satish, Mahen, Rajendra, and Rajnesh had punched him while his ex wife had kicked and spat on him.
34. When the evidence is taken as totality on the balance of probability it is proved that Plaintiff was assaulted by the Defendants. This was due to the Plaintiff verbally abusing the 1st Defendant who is the sister of other defendants, and her child. This happened in the night and also attempting to physically attack her by grabbing her around 8.30 PM.
35. Though the Plaintiff had released 1st Defendant when Viren and Satish had arrived, they had assaulted the Plaintiff.
36. The Plaintiff in the statement of claim at paragraph 10 indicated several injuries and they are not supported by a medical report. The medical examination form issued soon after the incident and examination by medical officer indicated only some scratch marks on his neck and swollen eye brow. These injuries are compatible with an assault.
37. It is to be noted that there is no proof of dislocation of shoulders, forehead and facial injuries, injuries to chest, injuries to eyes, stomach, head, buttock, legs and hands except the scratch marks on neck and swollen eyebrow, reported soon after the incident in Medical Examination Form.

38. The prognosis of the medical officer was that no follow up needed. This also proves that though Plaintiff was assaulted these were no serious injuries to him.
39. The parties are related due to the marriage and Plaintiff had come to live on the compound as a result of the marriage, but marriage had broken down. The fact that Plaintiff is living on the land despite the 1st Defendant and Plaintiff being separated would have caused some animosity towards him and behaviour of the Plaintiff during the day of incident had aggravated it. The Police was summoned regarding offering alcohol to minor, on that day.
40. The child in his evidence admitted consuming alcohol with Plaintiff.
41. The Police complaint had annoyed the Plaintiff and that resulted verbal and also physical attack on 1st Defendant and her daughter around 8.30pm. When the daughter had complained the 1st Defendant's attack to Satish he had Viren had come to rescue her, and they had a fight with Plaintiff where they were also injured, according to their evidence.
42. On the balance of probability it is unlikely that other brothers who were living in close proximity would not have joined. Only Mahen Dutt said he was out whole day from morning till about 10.30, this again cannot be accepted. He said he did not know about the incident till following day. This cannot be considered as true in the analysis, considering close proximity they lived.
43. Rajnesh Kumar said he was at home Rajendra Dutt also said he was at home and on balance of probability their denial of knowledge about the incident at that time cannot be accepted, on balance of probability.
44. In the circumstances I admit that Rajnesh, Mahen and Rajendra along with Satish and Viren and Sharina Devi Dutt had assaulted the Plaintiff.
45. According to the medical examination form the Plaintiff was not admitted to the hospital and no follow up needed.
46. The Plaintiff who is an interested party in this action who will benefit from any award for injury is tend to exaggerate the injuries. This will be more when there is animosity between the parties.
47. In the circumstances on the balance of probability is proved that the Plaintiff was assaulted by 1st, 2nd 3rd, 4th, 5th and 6th Defendants.

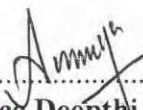
48. Considering the nature of the injuries suffered I award general damages in the sum of \$3,000, considering circumstances of the case. The Plaintiff who were restrained from DVRO had initiated the verbal and physical attack on 1st Defendant and her child and Defendants had come to rescue.
49. The Plaintiff had failed to prove any special damages. On the evidence there was no proof of such a need for continued medical treatment for the assault.
50. The behaviour of the Plaintiff attacking two females in the night without any provocation is a deplorable action and there is no need to grant any aggravated damages.

FINAL ORDERS

- a. The Plaintiff is granted a general damage of \$3,000 for the assault to be paid by 1st 2nd 3rd 4th 5th and 6th Defendants
- b. I have also awarded an interest of 3% on the said sum from the date of writ to the date of judgment.
- c. Considering the facts of the case no costs awarded.

Dated at Suva this 5th day of December, 2018.




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Justice Deepthi Amaratunga
High Court, Suva