

IN THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION

Civil Case No. HBC 284 of 2015

BETWEEN : ARUN KUMAR

PLAINTIFF

AND : DINESH CHAUHAN & COMPANY LIMITED

DEFENDANT

Coram : The Hon. Mr Justice David Alfred

Counsel : Mr D. Singh for the Plaintiff

: Ms. K. Singh, Mr E Narayan with her, for the Defendant

Dates of Hearing : 22 and 23 August 2018

Date of Judgment : 9 October 2018

JUDGMENT

1. According to the Amended Statement of Claim, the Plaintiff says as follows:

- (1) He was employed by the Defendant as a mechanic at their job site.
- (2) On 28 August 2013 in the Defendant's premises the Plaintiff during the course of his employment was injured when a supervisor of the Defendant started the truck on which he was working and caused the cab to fall down on him.
- (3) The particulars of the Company's breach of statutory duty and the negligence of the Defendant its servants and/or agents were appended.
- (4) The Plaintiff will rely on the principle of "res ipsa loquitur" as evidence of the Defendant its servants and/or agents failing to provide any safe or proper system of work or place of work to prevent the cab falling on him.
- (5) The particulars of the injuries suffered by the Plaintiff were then set out.
- (6) The Schedule of Special Damages are as follows:
  - (a) Cost of medicines \$100
  - (b) Transport expense \$8
  - (c) Transport expenses to CWM Hospital \$96
  - (d) Transport expenses for family visiting Plaintiff in hospital \$480
  - (e) Cost of transport to see solicitor \$54
  - (f) Loss of 1/3 gross wages for 51 weeks \$4043.28
  - (g) Loss of gross wages for 70 weeks \$16,608.80.
- (7) Wherefore the Plaintiff claims:
  - (a) General Damages
  - (b) Special Damages
  - (c) Loss of future earnings
  - (d) Cost of future care
  - (e) In the alternative, Workmen's Compensation.

2. The Defendant in its Amended Statement of Defence says as follows:

- (1) It admits the Plaintiff was employed by the Defendant and was involved in an accident on 28 August 2013.

- (2) The Defendant's employees or agents have not been joined as parties to this action.
  - (3) The Plaintiff was contributorily negligent, the particulars of which were set out.
3. The Minutes of the Pre-Trial Conference dated 21 February 2018 record, inter-alia, the following:

**Agreed Facts**

- (1) The Plaintiff was employed by the Defendant and on 28 August 2013 was involved in an accident.

**Matters in Issue**

- (1) Whether the Defendant was negligent and breached its duty of care to the Plaintiff.
  - (2) Whether there was sole or contributory negligence on the part of the Plaintiff.
4. The hearing commenced with Dr Vueta Vou Scott (PW1) giving evidence. He is a surgeon at the CWM Hospital (hospital). He referred to the hospital report (Exhibit P1) dated 24 December 2014 which was issued by Dr Ronal Kumar who is now in New Zealand. From the medical report the Plaintiff was working and the cab of the truck fell on him and he sustained a compression fracture to the vertebra – L1. He has since left his work. Both Dr Ronal and PW1 are accredited assessors.
5. Under cross-examination PW1 said he examined the Plaintiff on the previous Wednesday (15 August 2018) and found Dr Ronal's report consistent with what he found. The examination confirmed that the Plaintiff cannot sit in a normal height seat.
6. At this juncture Mr Singh informed the Court that he agreed to all the Defendant's medical and adjuster's reports being tendered as exhibits.
7. The next witness was the Plaintiff (PW2) who said he is unemployed and was born on 30 June 1963. He was told to change the primary pump. After doing so, the



yard supervisor asked if he could start the truck, which he did. At that time the Plaintiff was still on the engine. The truck moved, bumped into another vehicle and the cab of his truck fell on him. He was taken to hospital where he was warded for 16 days. He never returned to work as he was not in any condition to work. He spent \$1,000 on medical expenses and \$2,000 on travelling expenses. He cannot do any hard labour now.

8. Under cross-examination, the Plaintiff said he started working with the Defendant in 2005 as a mechanic. The normal procedure is to lift the cab and put a stand so it will not fall. He asked the supervisor to start the vehicle. At that time the Plaintiff was sitting on the engine. If the vehicle was in neutral gear nothing would have happened. It was normal for him to sit on the engine and to ask the supervisor to start the engine. There was nothing else to be done for his safety except to lift the cab and putting the stand. The Defendant followed their procedure. He had to be where he was to be able to see if the diesel was going into the nozzle. He had fully recovered from his previous hand injury. He had to buy medicines, and travel by taxi, but the receipts were lost in a landslide.
9. With this the Plaintiff closed his case and the Defendant opened their's.
10. The first witness was Dr Emosi Taloga (DW1) an orthopaedic specialist at the hospital. He produced his medical report on the Plaintiff dated 16 January 2018 as Exhibit D1. If he were aware of a previous impairment he would say award 10% of 90% i.e. 9%.
11. The next witness was Avinesh Kumar (DW2). He was employed by the Defendant as the operations manager/yard supervisor. The Plaintiff who was alone, asked him to start the engine. He asked the Plaintiff if the gear was in neutral or engaged and he replied it was in neutral. DW2 started the engine and as soon as he did that the truck moved and bumped into another vehicle and the cab fell on the Plaintiff. He said his job is to see everything is done in a proper way.
12. Under cross-examination DW2 said on the day of the accident he was the operations supervisor of the Defendant. His job was to supervise everyone that

the job was done properly. He looked after the yard. He gave a statement to the private investigator and told him what he knew about the accident. He was the transport supervisor and transport manager for 10 years.

13. The next witness was Anirudh Kumar (DW3) a private investigator. He was instructed by New India Assurance Co. Ltd to conduct an investigation on the injuries received by the Plaintiff whilst employed by the Defendant. He compiled an investigation report after interviewing the witnesses.
14. Under cross-examination, DW3 said DW2 did not tell him what gear the truck was in at the time of the accident. Heavy trucks should be parked in gear.
15. With that the Defendant closed its case and the Counsel began their submissions.
16. Counsel for the Defendant said there was no dispute as to the accident. The Plaintiff followed the normal procedure to change the pump. He said he told the supervisor to start the truck. It was the Plaintiff's responsibility to check if the gear was in neutral or engaged. The Plaintiff was solely responsible.
17. With regard to quantum, the Counsel said she left it to the Court to decide which medical report to accept. She said the Plaintiff's whole person impairment (WP1) was 10%. General Damages should be between \$10 to 15,000.
18. The Counsel for the Plaintiff then submitted. He said if the gear was in neutral the accident would not have occurred, because it would not move. This was confirmed by DW3. The Adjuster's report did not state that DW3 asked the Plaintiff if the gear was in neutral or not. It was as plain as a pikestaff that the truck was in gear. The investigator's report shows that Jagat specifically told DW2 to check if the gear was in neutral before starting the engine.
19. The Counsel said general damages should be \$50,000 for the injuries. There was a risk of future unemployment. Costs should be \$5,000.
20. At the conclusion of the arguments, I said I would take time for consideration. Having done so I shall now deliver my decision.



21. I shall first deal with the issue of LIABILITY. There is really no dispute as to how the accident occurred which is the supervisor started the engine, the vehicle moved and its cab fell on the Plaintiff. The Plaintiff said he asked the supervisor, DW2 to start the engine to enable the Plaintiff to see if the diesel was going through the nozzle. What he did was normal practice.
22. I think it is as clear as daylight that an experienced yard supervisor/operations manager would have checked himself if the gear was in neutral or engaged before starting the engine. He cannot pass the buck to the Plaintiff. Indeed as the Adjuster the Defendant's own witness DW3 said heavy vehicle should be parked in gear. Therefore the sole responsibility lies on the shoulders of DW2 to have checked that the gear was in neutral before he started the engine. More so as the Adjuster's report concludes that a worker, Jotish confirmed that the witness since deceased told him that he told (DW2) to check the gear if it was on neutral before starting the engine of the truck. If on ascertaining it was not it would have been his bounden duty to have moved the gear lever into neutral before he started the engine. I say his bounden duty because DW2 himself said in his evidence that it was his job to supervise everyone that the job was done properly. Therefore it was also his responsibility to ensure the cab was placed on its stand when the Plaintiff was carrying out his work.
23. Before of these two failures on the part of DW2, the Defendant as the employer is vicariously liable. I find on the evidence that there was no contributory negligence on the part of the Plaintiff. In the result I find and I so hold the Defendant is solely liable for this accident and I therefore enter judgment for the Plaintiff.
24. I shall now turn to the issue of QUANTUM.

Exhibit P1 states as follows:

- Compression fracture of Lumbar 1 Vertebra with no Spinal Cord compression symptoms.
- Whole person impairment is 23%.

Exhibit D1 states as follows:

- Review of the Lumbar spine x-ray taken on 11/12/2017 showed an anterior wedge compression fracture of L1 with loss of anterior height of approximately 48%.
- Injury rated at 10% impairment of the whole person.

25. Based on the two medical reports (Exhibits P1 and D1) award a sum of \$40,000 as general damages for pain and suffering and loss of amenities to the Plaintiff for the injuries he has sustained.
26. For the loss of earnings I note the Plaintiff's evidence that he earned \$230-235 p.w was not challenged by the Defendant's Counsel. He also said it was only after more than 6 months that he could move freely. He was in no condition to work. Indeed under cross examination he said how could he look for a job when he is unable to work. I will therefore award the Plaintiff the loss of earnings he has specifically pleaded for in his schedule of damages which comes up to \$20,692.08. This is because I take into consideration the medical evidence before the Court.
27. For the other special damages I shall award a global sum of \$750.
28. There will be no future loss of earnings as no proof of the same as been provided.
29. In the result I order the Defendant to pay the Plaintiff:
  - (a) \$40,000 as general damages with interest thereon at the rate of 6%p.a. from the of issuance of the writ to the date of judgment.
  - (b) \$20,692.08 as loss of earnings with interest thereon at the rate of 3% p.a from the date of the accident to the date of judgment.
  - (c) \$750 as special damage with interest thereon at the rate of 3% p.a from the date of the accident to the date of judgment.
  - (d) Interest at the rate of 4% p.a. on the judgment sum (\$61,442.08) from the date of judgment to the date of payment.
  - (e) Costs of this action summarily assessed at \$3,500.

Delivered at Suva this 9<sup>th</sup> day of October 2018.



David Alfred

**JUDGE**

High Court of Fiji