

IN THE HIGH COURT OF FIJI  
AT LABASA  
CIVIL JURISDICTION  
CIVIL CASE NO. HBC 68 OF 2016  
CONSOLIDATE CIVIL ACTION NO. HBC 69 & 70 OF 2016

BETWEEN: SAIREEN AFROZA PLAINTIFF

AND: CLAYTON DEAN BABCHUK DEFENDANT

Appearance: Plaintiff - Mr. S. Sharma for the Plaintiff  
Defendant - Mr. A. Sen for the Defendant

Date of Hearing : 24<sup>th</sup> and 25<sup>th</sup> January, 2019  
Date of Judgment : 15<sup>th</sup> February, 2019

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## JUDGMENT

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### Introduction

[1] This is the consolidated actions of HBC 68, 69, and 70 of 2016. All the actions relate to one motor accident involving two cars. In all the actions the Defendant is same. Separate actions are instituted for passenger, driver and for the damage to vehicle No LT 1455. The Defendant had also counter claimed but at the trial he did not pursue his counter claim. The driver of LT1455 was injured with an open wound that needed suturing and passenger of the vehicle also had swellings of her frontal area and bruises on left leg. Defendant had pleaded guilty to careless driving but had not pleaded guilty to driving under influence of liquor.



## Facts

- [2] Following facts are admitted in the pre-trial conference.
1. The Plaintiff is the registered owner of taxi registration LT 1455.
  2. Defendant is the registered owner of the motor vehicle registration number IC 860.
  3. On or about 2.11.2015 the Plaintiff's and Defendant's vehicles were involved with an accident and both vehicles were damaged from it.
- [3] At the trial both Plaintiffs and the Defendant gave evidence and Plaintiff also called a Doctor and a Police officer. Both parties had filed written submissions.
- [4] The Defendant in his evidence said that he admitted the guilt for careless driving and paid the fine following day, but did not admit to charge of driving vehicle IC 860 under influence of liquor and the matter was pending in court. The Defendant was unaware of the next date of the criminal action relating to that charge.
- [5] Saireen Afroza is the owner of vehicle LT 1455 and in her evidence said on the date of accident he and his son set out to go for a funeral of her brother-in-law. Her son Umar Fazil Suleman was the driver of the vehicle which they travelled. Both of them were not wearing seat belts. There were no seat belts on the back seats of the vehicle where she was seated. The Driver of the vehicle did not wear the seat belt, and in his evidence said in law he is exempted from wearing a seat belt as a Taxi driver.
- [6] Both Saireen Afroza and her son said that accident happened early in their journey, and the place of accident was about 4-6 km away from the town.
- [7] Both witness said that Defendant's vehicle came to their side and their vehicle LT 1455 was taken to the edge of the road and stopped it. They said that it was clear to them that IC 860 driven by Defendant was coming directly to their side to collide with them and their vehicle was taken to the edge of the road and could not take further as there was a slope on that side.
- [8] The Defendant's version is that driver of LT1455 came to his side and he drove to opposite side to avoid a collision and at the same time LT1455 also turned to its correct path and two vehicles collided. The Defendant admitted that it would have been easier to turn to left side of the road than right. He also admitted that there was ample space on the left side as the opposed to the right side.
- [9] LT 1455 and IC 860 got damaged and Driver and the passenger of LT 1455 also got injured.

## Analysis

- [10] After collision of the two vehicle Police had arrived on the scene and had taken relevant measurements. The Defendant was charged for careless driving IC 860 along the highway without due care and attention contrary to Section 99(1) and 114 of Land Transport Act, 1988. At the trial no sketch of the scene of accident happened.



- [11] The Plaintiff had admitted that above Traffic Infringement Notice and had paid the fine following day.

Section 17 of Civil Evidence Act, 200 states as follow:

*17.-(1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the Fiji Islands or elsewhere is, subject to subsection (3), admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that the person committed the offence, whether the person was so **convicted upon a plea of guilty or otherwise** and whether or not the person is a party to the civil proceedings.*

*(2) No conviction other than a subsisting one is admissible in evidence by virtue of this section.*

*(3) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in the Fiji Islands-*

*(a) the person is taken to have committed that offence unless the contrary is proved; and*

*(b) without affecting the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person was convicted, are admissible in evidence for that purpose.*

*(4) Nothing in this section affects the operation of section 19 of this Decree or any other written law whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.*

*(5) If in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (3), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document, is admissible in evidence and must be taken to be a true copy of that document or part unless the contrary is shown."*

- [12] The Defendant in his evidence admitted that he pleaded guilty to the said offence of careless driving through admission and payment of fine.

- [13] The case Defendant's counsel submitted along with written submission was decided prior to Civil Evidence Act, 2000 cannot be applied now.



- [14] The evidence of Saireen Afroza and her son is that their vehicle was taken to the edge and stopped to avoid collision of the Defendant's vehicle that was coming straight for head on collision. Both of them had seen the vehicle IC 860 and taken precaution and had even stopped at the edge of the road.
- [15] The Defendant's version cannot be accepted. He was charged for careless driving and also for driving under influence of liquor. He had already admitted that he had driven the vehicle carelessly. His explanation was that it was convenient for him to plead guilty than contesting a criminal action that would take several court appearances.
- [16] In cross examination he said that he did not want to plead guilty to a thing that would have serious consequences such as suspension of driving licence. He said he pleaded guilty so that he need not come to court to defend and it is more costly and time consuming.
- [17] He had not taken easy path of turning the vehicle away from incoming vehicle if it was coming to his path. This is the reaction of a reasonable man, when there was a slope on other end.
- [18] The Defendant also admitted that there was more space on the left edge of the road than right side which had even a slope.
- [19] He had promptly admitted the guilt for driving carelessly and on the balance of probability it is proved that Defendant had driven vehicle registration No IC 860 negligently and without due care to other road users including Plaintiffs .
- [20] Both Saireen Afroza and her son were injured in the accident. The injuries to Saireen Afroza were not severe according to the medical report marked as P5 she had walked to the examination room in distress and injuries were '*swelling of her frontal area and bruises on anteromedial aspect of left leg*'. These type of injuries are not serious and pain and suffering was minimal. There was no follow up regarding the injuries. There is no permanent impairment. For said past pain and suffering I assess a damage of \$1,000. There was no seatbelt at the back seat of the vehicle and so there was no contributory negligence on herself. There was no negligence on the part of driver of LT 1455 as to the cause of the accident.
- [21] The Driver of vehicle LT 1455, Umar Fazil Suleman who was the Plaintiff in HBC 70 of 2016 and he sustained following injuries, according to his medical report marked as P6

*'... walked into the ER Department with active bleeding noted from his forehead injury. He informed us that his forehead hit one part of the damaged vehicle.*

*Examination of his injury revealed a 10 cm long and 0.8 cm deep laceration that extended to the scalp. Swelling was also observed around the wound site. '*



- [22] The laceration was sutured and he was prescribed analgesia and wound review and suture removal was one week from the date of treatment. There is no evidence of any permanent impairment from the injury.
- [23] Considering the nature of injury, for past pain and suffering a sum of 10,000 is granted. He was not wearing a seat belt at the time of the accident for this I attribute a 10 % contributory negligence. Whether he is exempted from wearing a belt would not be applicable in civil action and it is a matter for criminal prosecution. So the award for past pain and suffering after deduction for contributory negligence is \$9,000.
- [24] Since there is no admission as to the ownership of LT 1455 at the time of accident Saireen Afroza needed to prove that at trial. This was not done.
- [25] Apart from ownership, the claim for damages for the vehicle needs to be proved. What was the damage to the vehicle was not proved. This can be easily done through either calling a person who did the repair for the vehicle and or through photographic evidence soon after the accident.
- [26] These were not produced. It is unrealistic to produce quotation marked P3 for 27,519.35 for a used Taxi. This was obtained 2.12.2015 a month after the accident, and it had no vehicle number. Without proving what parts of the vehicle were damaged a quotation without even the vehicle number on it does not prove damages, to LT 1455 from this accident
- [27] The receipt P2 also obtained 26.2.2016 more than 3 ½ months from the accident and it also does not show a vehicle number. There is no proof of the damage to the vehicle LT 1455. What parts of the vehicle resulted damage from the accident needs to be proved and this was not proved. So no damage can be assessed for the vehicle.
- [28] No special damage is proved except standard fee for two medical reports at 54.50 each.
- [29] An interest of 6% is awarded for both special damages and general damages.
- [30] **Calculation**

**Saireen Afroza**

Special Damage – Medical Report	-	\$	54.50
Add - interest 6 % pa from date of accident to date of judgment (i.e. 1.11.2015 to 15.2.2019)(1192days)	-	\$	10.68
General damage for past pain and suffering	-	\$	1,000.00
Add interest 6% pa from date of writ to date of judgment (30.12.2016-15.2.2019)(776days)	-	\$	<u>127.56</u>
<b>Total</b>	-	\$	<b><u>1,192.74</u></b>



**Umar Fazil Suleman**

Special Damage- Medical Report	-	\$	54.50
Add interest at 6% p.a from date of accident to date of judgment (i.e. 1.11.2015 to 15.2.2019)(1192days)	-	\$	10.68

**General Damages**

Past Pain and suffering	-	\$	10,000.00
Less 10% for contributory negligence (1,000)	-	\$	9,000.00
Add interest at 6% pa from date of writ to date of judgment (30.12.2016-15.2.2019) (776days)-1,148.05	-	\$	<u>1,148.05</u>
<b>Total</b>	-	\$	<b><u>10,213.23</u></b>

**Final Orders**

- [31] a. The Plaintiff is ordered to pay
- i. Saireen Afroza a sum of \$1192.74
  - ii. Umar Fazil Suleman a sum of \$10,213.23
- b. The cost of this action is summarily assessed at \$2,000.



  
**Deepthi Amaratunga**  
**Judge**