

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION
CIVIL CASE NO. HBC 16 OF 2018

BETWEEN: ENESI RUSAQOLI PLAINTIFF

AND: SUSHIL CHANDRA PRASAD DEFENDANT

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

Date of Hearing : 11th February, 2019

Date of Judgment : 15th February, 2019

JUDGMENT

Introduction

[1] The Plaintiff is seeking damages for the personal injury due to road accident happened on 11.3.2017. The action was instituted on 14.5.2018. The Plaintiff was walking on the side of the road and vehicle driven by Defendant collided with him and he was thrown away due to the impact. The Plaintiff's scalp on right forehead, had laceration of 4 cm and there was no fracture. There were multiple abrasions on the left side of his body. The Plaintiff was kept under observation in the hospital following day and discharged.

He did not attend to clinics of the hospital after 26.4.2018 and there is no medical report to substantiate any permanent impairment due to accident.

Facts

- [2] The Defendant was the driver and owner of the motor vehicle registration number FG 725 that collided with the Plaintiff.
- [3] The collision happened on 11.3.2017 while he was a pedestrian on Labasa-Bulileka Road near FSC bend before the bend when approaching from Labasa Town. The Plaintiff was walking towards the Town on the right side of the Road. The vehicle was going opposite direction.
- [4] The point of impact is disputed and the Defendant state that Plaintiff suddenly entered main road.
- [5] The Plaintiff denies that and state that there was more than 1.5 m from the edge of the main tar sealed road which had also marked white line as the end of the road where vehicular traffic needs to be.
- [6] The Plaintiff after collision with the vehicle had fallen to the bonnet of the vehicle and then thrown and fallen on the side of the road.
- [7] According to an eye witness the Defendant had not driven the vehicle straight just before the accident and he had observed that the vehicle was veering to left and again to right.
- [8] The eye witness was on the vehicle that was behind the vehicle driven by the Defendant and after the accident Defendant had not stopped the vehicle and or applied brakes and had attempted to flee the scene.
- [9] The accident happened on Saturday evening and the eye witness who gave evidence and another person had shouted loud calling the Defendant to stop. The Defendant had then stopped the vehicle. Then the vehicle had gone a distance away but had turned and come back to where the accident happened.
- [10] The eye witness also said there were some passengers inside Defendant's vehicle and they were drunk and there were open bottles of alcohol inside the vehicle and Defendant also smelled liquor.
- [11] The Defendant had taken the victim to the hospital and eyewitness also followed them to the hospital and it had taken a while for the Police to arrive.

- [12] There is no record of alcohol level of the blood of the Defendant and or time of the testing, though the Defendant stated that such a test was carried out.
- [13] The Plaintiff was admitted to the hospital and open wound on the scalp was sutured and he was scanned and kept on observation on the following day and discharged thereafter since there was no internal injuries and or fractures.
- [14] The Plaintiff was a security guard at the time of the accident and he said that he did not resume work for 6 months.
- [15] The Plaintiff's last visit to clinics on 26.4.2018 had indicated complete healing of wound and there was no sign of any other prevailing condition that needed medical attention.

Analysis

- [16] The Defendant admits the collision with Plaintiff, but denies that it was due to his negligence. The accident happened at dusk where accidents are prone due to sun setting and human eye is getting adapted to dark. The Defendant being the driver of the vehicle which can cause injury to pedestrians and other road users should be careful in driving during such time. He should be more vigilant about pedestrians at that time, as loss of concentration of can cost dearly to others.
- [17] According to the Defendant Plaintiff had suddenly entered the main road from pedestrian path. According to Defendant the accident happened inside white line on main tar sealed road. The Plaintiff was walking on the correct side of the road. He could see the vehicle clearly in front. It had come from front. The Plaintiff was walking to his place of work to assume duties as a security office. It is unlikely that he would step on to road so as to collide with oncoming vehicle.
- [18] According to the Defendant he had driven his vehicle very slow around 20 km per hour. In his evidence he did not state that he applied brakes. He admitted that the vehicle did not stop at the place of accident and he had to take a turn and come back to the place of accident.
- [19] In the cross-examination the Defendant stated that it was too late to brake as the Plaintiff suddenly entered main road. If so even after collision he should have applied brakes. It is a spontaneous reaction in any reasonable person and absence of that shows negligence on the part of the Defendant.

- [20] If the vehicle was driven at a speed of 20 km per hour there is no reason to go pass the place of collision and it should have stopped immediately, had he applied brakes even after the accident.
- [21] The Defendant was unable to give an explanation as to why he had to turn back and come to the spot of the accident if he was vigilant and was unable to take measures to stop the vehicle. According to Defendant, he had seen the accident, vividly as the Plaintiff was fallen to the bonnet of the vehicle and then thrown to the side due to collision. This also proves that the vehicle was driven at a speed and no reasonable measures were taken to avoid or mitigate the collision.
- [22] In the analysis of the manner of the accident and the subsequent behaviour of there is proof that the Defendant was driving the vehicle dangerously had no regard to the pedestrians. Even after an accident he could not stop the vehicle immediately and he had not applied the brakes and had gone pass the place of accident as if he was attempting to flee the scene of accident. This behaviour is typical of a guilty minded person due to some reason to hide at that point.
- [23] The accident had happened prior to the bend and Defendant had complete visibility of the pedestrian before the accident. Not only the Defendant had driven the vehicle negligent and dangerous manner prior to the accident but even after the accident his behaviour is deplorable. After the accident he had tried to flee the scene instead of taking care of injured, which indicate that he did not want to face the Plaintiff and or others at that point.
- [24] When the Defendant was cross examined as to whether he was under the influence of liquor at the time of the accident he replied if so he would flee the scene, without taking the injured to the hospital.
- [25] The Plaintiff was later tested for drunken driving but with negative results. It was not done soon after the incident.
- [26] The Defendant did try to flee the scene and since the people around had shouted had to turn the vehicle and come back to the place of accident.
- [27] This subsequent behaviour also indicates that the Defendant was aware of the negligent and dangerous manner that he drove. If not there was no reason for him not to stop the vehicle after the accident.
- [28] So the Plaintiff's version of the events on balance of probability is proved. He had taken due precautions and had walked on the pedestrian path outside the white line that

show the edge of the main road. The Defendant had driven the vehicle negligent and dangerous manner causing injury to the Plaintiff.

- [29] On the balance of probability it is proved that Defendant had driven the vehicle in negligent and dangerous manner.
- [30] Having arrived that the Defendant was negligent and the accident happened due to entire fault of the Defendant next issue is assessment of damages.
- [31] The Plaintiff's head and left side of the body had injuries. There was a 'V' shape laceration on the scalp of the head and it was sutured. There were multiple small abrasions on the left side of the body.
- [32] Plaintiff was admitted to surgical department of the Labasa hospital and he suffered from amnesia. He was kept in the hospital following day for observation.
- [33] According to the medical report 'radiological investigations and neuro-oberstions were normal' after the accident
- [34] He had come to the hospital three times and last visit to surgical clinic, it was on 26.4.2017 and it was recorded in the medical report (P1) as '... his wounds had healed so the sutures were removed and he did not develop any new symptoms. Therefore, he was discharged from surgical clinic.'
- [35] The Plaintiff in the evidence said he could not engage in his employment for 6 months, but this was not proved from the evidence presented, and there is no claim for loss of employment under special damages. This is an exaggeration of injury and he could have easily employed as a security officer on or prior to 26.4.2017 considering the injuries.
- [36] The Plaintiff said that his right shoulder developed a pain after this accident, but there is no medical evidence of such a complaint or that he took medicine for such a thing.
- [37] There were multiple injuries on his left side and right shoulder according to the Plaintiff was due to an issue with a nerve that had got affected due to the accident. He said that he was told by the doctors that it would heal with time. He said that he cannot lift heavy items from that hand as he used to do prior to the accident.
- [38] The wife of the Plaintiff gave evidence and she said that Plaintiff is not complaining of pain now. In the cross examination she said sometimes Plaintiff complains of pain on his head. There are no visible scars from the accident and wounds have fully healed.
- [39] The court has to award damages that would compensate the injury. There is no proof of future loss due to any permanent impairment. Considering the nature of the accident

and the type of injury and suffering for general damages for past pain and suffering is assessed at \$ 15,000.

[40] Special Damages there is no dispute as to payment of cost of \$54.50 as cost for medical report. The Plaintiff said that he had to travel hospital for clinics by taxi and one way of taxi would cost around \$7 to come to hospital. He had attended clinics for 3 days. Considering that he was hospitalized for two days. For travelling I award a cost of \$75. The plaintiff also said that he took medicine but did not keep receipts. There is no evidence that he suffered from a illness that needed medication other than pain relieving tablets. There is no evidence that he attended any private clinics. So no special damages allowed for medication.

[41] Both special and general damages will also incur an interest of 6%

[42] The Plaintiff is also awarded a cost of \$3,000 as costs summarily assessed.

[43] **Calculation**

Special Damages

Medical Report	-	\$ 54.50	
Travel	-	<u>\$ 75.00</u>	
Total		\$ 129.50	

Add

Interest at 6% from date of accident 11.3.2017 to date of judgment 15.2.2019(706 days)		\$ 15.03	
			\$ 144.53

General Damages

Pain and suffering	-	\$ 15,000	
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Add

Interest 6% p.a. from (date of writ 14.5.2018 to 15.2.2019) (267 days)	-	\$ 658.35	<u>\$15,658.35</u>
			\$15,802.88
Total (rounded off)			<u>\$15,803.00</u>

Final Orders

- i. The Defendant is ordered to pay the Plaintiff a sum of 15,803 as damages.
- ii. The cost of the Plaintiff is summarily assed at \$3,000 to be paid within 21 days.




Depthi Amaratunga
Judge