

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
APPELLATE JURISDICTION

CIVIL APPEAL NO. HBA 22 OF 2019

[Ba SCT CLAIM NO 244. OF 2018]

[M C APPEAL NO. 05 OF 2019]

BETWEEN : **MADHU LATA CHAND**
APPELLANT/ORIGINAL CLAIMANT

A N D : **ZAINAL SAIYAZ ALI**
RESPONDENT/ORIGINAL RESPONDENT

Appearances : The claimant/appellant in person
Mr Zoyab Mohammed for the respondent
Date of Hearing : 01 November 2019
Date of Judgment : 04 November 2019

J U D G M E N T

Introduction

[01] This is an appeal against the judgment dated 25 June 2019 of the Learned Magistrate (*the Magistrate*) by which he dismissed the appellant's appeal against the order dated 4 December 2018 of the Small Claims Tribunal (*SCT*) by which it dismissed the appellant's claim.

[02] At the hearing both parties made oral submissions.

Background

[03] In July 2018, Ms Madhu Lata Chand, the claimant/appellant (*the appellant*) purchased a gear box for her car Registration No. DI 370 from Zainal Saiyaz Ali, the respondent/respondent/respondent (*the respondent*). She paid \$850.00 to the respondent. The appellant's husband who is a mechanic fitted the gear box to the

appellant's car, but it did not work. The appellant asked for the refund of the money she paid. The respondent refused.

- [04] As a result, the appellant lodged a claim in the Small Claims Tribunal against the respondent claiming a sum of \$1,098.45, which includes the money paid for the gear box and other expenses.
- [05] The SCT heard the matter. The parties gave evidence and called their witnesses. The Referee also had a scene visit to inspect the car to which the gear box was fitted. He, after analyzing the evidence adduced by both parties, dismissed the appellant's claim without cost.
- [06] Thereafter, the appellant appealed the Tribunal's decision to the Magistrate on the ground that the decision was unfair and bias.
- [07] The Magistrate, having heard the appeal, dismissed the appellant's appeal and ordered that the parties shall bear their own costs. The appellant appeals to this court.

The decision in the courts below

Small Claims Tribunal

- [08] The findings of the SCT, after the hearing of the claim, were that:

"Tribunal heard the oral explanation of the Claimant and Respondent

...

Prior to the GEAR BOX fitted by Claimant/Witness 1, in the first instance the Claimant and her husband had purchased a GEAR-BOX from the Respondent in BA on the day their car broke down in Wailailai, Ba whilst travelling towards Tavua direction..

...

Tribunal understands that the Claimant and her husband went and bought a GEAR BOX from the Respondent.

...

When arrived at Karavi, the Claimant's husband fitted the GEAR-BOX they bought from the Respondent. They started but it switched on and [after] a while switched off.

The Claimant informed the Respondent of the problem who advised to bring the GEAR-BOX back to him. However, the Claimant requested Respondent to come over to KARAVI and fix it.

The Respondent was accompanied with JAINENDRA SINGH a mechanic with 17 years of experience.

Upon arrival the Claimant husband started the car Reg. No. DT 370.

The Respondent then sat as driver, whilst Respondent/Witness 1 on the left front passengers side whilst the claimant's husband sat at the rear.

The Respondent drove down the KARAVI feeder road to the junction of the King's Road. It was 5 – 10 minutes drive. On their return [t]he Respondent Witness 1 drove back.

When they arrived back the Claimant's husband did not complain, as the car was working.

...

The Tribunal noted that the Claimant never called her husband to be a witness.

The Claimant had mention[ed] that she consulted 4 different experienced mechanics.

These were to be helpful but unfortunately neither of them were called.

...

Having heard the explanation from the Claimant and Respondent and Witnesses the Tribunal believed and is satisfied with the evidence of the Respondent and direct the following orders.

... "

[09] Based on those findings the SCT made the following decisions on December 2018:

1. THAT *there is insufficient evidence to justify the claim.*
2. THAT *this claim is dismissed accordingly.*

Magistrate Court

[10] The Magistrate heard the appellant's appeal against the SCT's decision. He, having identified the relevant law and the case authority concerning an appeal from SCT observed that:

"...

10. *In addition, the case of Wati v Waqabaca Truck Hire and Machinery [2005] FJHC 101 clearly states that an error of law is not a permitted ground of appeal nor is an appeal allowed on the merits of the case.*
11. *For purpose of appeal from SCT, the appellant must establish to the Court any irregularity or unfairness in the manner or way in which proceedings were conducted at the Tribunal. If Jurisdiction was raised as an issue of appeal, how it was exceeded. In the present matter jurisdiction is non-issue.*
12. *As I see it the referee had exercised his discretion to deliberate on the merits of the case after hearing the evidence of both litigants and after giving them the opportunity to adduce evidence relevant to their case. There is nothing procedurally wrong or unfair to the appellant that this Court can point out.*
13. *As I see it, the appellant had failed to establish that proceedings in the SCT were conducted in a manner that was unfair and prejudicial and it affected the outcome of the proceedings.*
14. *Therefore this Court will not interfere with the SCT findings and order.*
15. *I therefore dismiss the appeal.*
16. *Parties will bear their own costs.*

17. *Twenty-eight (28) days to appeal.*

..."

[11] The Magistrate, based on his observations, dismissed the appellant's appeal with the order that the parties bear their own costs.

Grounds of Appeal

[12] The appellant appeals the Magistrate's decision on the following grounds:

1. *The Magistrate presiding the case upheld the decision of the Referee is unfair in making such decision.*
2. *I paid him \$900.00 for the gear box which turn out not to be good and functional.*
3. *After the mechanic fitted the ear box it was not working.*
4. *My witness who was the mechanic I believe was not testified properly.*
5. *I want my money to be refunded.*

The Law

[13] The Small Claims Tribunal Act 1991 as amended ('SCTA'), S. 33 (so far as relevant) states:

[SCT 33] Appeals

33 (1) *Any party to proceedings before a tribunal may appeal against an order made by the tribunal under section 15(6) or section 31(2) on the grounds that-*

(a) *the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or*

(b) *the Tribunal exceeded its jurisdiction.*

(2) *An appeal brought pursuant to subsection (1) shall be made;*

(a) if against an order made by a Resident Magistrate exercising the jurisdiction of a tribunal to the High Court; and

(b) in any other case, to the Magistrates Court.

The issue

- [14] The only issue on appeal was whether the Magistrate was correct in upholding the Referee's decision that dismissed the appellant's claim as there was no sufficient evidence to justify the appellant's claim.

Discussion

- [15] The appellant lodged a claim in the SCT against the respondent for the refund of money she paid to the respondent for a gear box she bought from the respondent. Appellant's husband who is mechanic fitted the gear to their car. Subsequently, she complained that the gear box did not work and claimed refund of the money paid for the gear-box.
- [16] The tribunal made order dismissing the appellant's claim. The tribunal found that there was insufficient evidence to substantiate the claim.
- [17] The appellant appealed the tribunal's decision to the Magistrate.
- [18] Section 33 of the SCTA provides a right to appeal against the Referee's order (not an order made by a Magistrate exercising the jurisdiction of a tribunal) to the Magistrates Court on two grounds: 1. *the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings;* or 2. *the Tribunal exceeded its jurisdiction.*
- [19] The monetary jurisdiction of a tribunal is \$5,000. An order of a tribunal must not require payment money exceeding \$5,000 (see: SCTA, section 33 (3)).
- [20] The appellant brought a claim for the refund of money (\$1098.45), which is well within the monetary jurisdiction of a tribunal. The tribunal dismissed a claim brought within its monetary jurisdiction. Therefore, the ground of appeal that the tribunal exceeded its jurisdiction does not arise, and this ground was not urged.

- [21] The appellant appealed the order of the tribunal to the Magistrates Court on the ground that the Referee's decision was unfair and bias. Seemingly, the appellant has relied upon the ground that the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings.
- [22] Both parties had presented their case to the tribunal. The tribunal had adjourned the hearing for more than 8 occasions in order to give reasonable opportunity presenting their respective case. The appellant and her witness (a mechanic with 14 years of experience) gave evidence. The respondent gave evidence and he called his mechanic with 17 years of experience.
- [23] The tribunal gave the opportunity to the appellant to call her husband who fitted the gear to the car as a witness but she did not.
- [24] The Referee has had scene visit. He visited to the place where the car was parked where the appellant, the respondent and the respondent's mechanic were present. The respondent's mechanic checked the gear-box pointed out to the Referee that someone had opened it and oil had spilt around. Then the Referee observed that: the claimant should have towed the vehicle back to the respondent the day they encountered the breakdown, instead they towed to Lautoka or the claimant should have arranged for the respondent to come over to check the fault rather than engaging her mechanic.
- [25] A tribunal may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit. All evidence and information so received or ascertained must be disclosed to every party (see: SCTA, s. 26 (2)).
- [26] Before making its order, the tribunal received other evidence and made other investigations and inquiries by way of scene visit and inspection of the vehicle to which the gear-box was fitted. This course of action was available to the tribunal under section 26 (2) of the SCTA.
- [27] The tribunal made the order after carefully considering the evidence tendered by and on behalf of the parties and have received real evidence through scene visit

and inspection. Moreover, the tribunal gave equal opportunity to both parties to present their respective case.

Conclusion

[28] Upon perusal of the copy record, I find that the tribunal had conducted the proceedings in a manner which was fair to the appellant and that there is nothing I can see that would prejudicially affect the result of the proceedings. The tribunal was entitled to make the order dismissing the appellant's claim. The Magistrate was correct in his finding that the appellant had failed to establish that proceedings in the SCT were conducted in a manner that was unfair and prejudicial and it affected the outcome of the proceedings. The appeal is without merits. I would, therefore, dismiss the appeal and confirm the judgment of the Magistrate dated 25 June 2019. The appellant is to pay the summarily assessed costs of \$250.00 to the respondent.

The result

1. Appeal dismissed.
2. Magistrate's order dated 25 June 2019 confirmed.
3. Appellant shall pay summarily assessed costs of \$250.00 to the respondent.

M.H. Mohamed Ajmeer
4/11/19

M.H. Mohamed Ajmeer

JUDGE



At Lautoka

04 November 2019

Solicitors:

For respondent: Zoyab Shafi Mohammed Legal