

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 156 of 2016

BETWEEN : **MOHAMMED ISHAK** of Lot 16, Nadawa Road, Nasinu.

PLAINTIFF

AND : **LAUTOKA CITY RENTALS** a limited liability company having its registered office at 21 Ravouvou Street, Lautoka.

FIRST DEFENDANT

AND : **ANTONIO MARAWA** of Lot 8, Kaloa Street, Kinoya, Driver.

SECOND DEFENDANT

Counsel : **Plaintiff: Mr D. Singh**
1st Defendant: Mr. Haniff F & Mr Rokodrew V
2nd Defendant: No Appearance

Date of Hearing : **3.6. 2019**

Date of Judgment : **21.6.2019**

JUDGMENT

INTRODUCTION

1. Plaintiffs of this action are administrator of estate of late Hafizan and Mohammed Aizal, a child who is suing through a next friend Mohammed Samir. There are two defendants named in the writ of summons and they are Lautoka City Rentals, as the owner of vehicle LR 2542 and Antonio Marawa the driver of vehicle LR 2542, that was involved in the accident.

FACTS

2. Lautoka City Rentals (first Defendant) acknowledged the writ of summons but Second Defendant did not file any acknowledgment. Affidavit of service to second Defendant was filed on 25.7.2018.
3. Plaintiff had not entered interlocutory judgment against Second Defendant.
4. There was an accident involving motor vehicle LR 2542 and late Hafizan and a child Mohammed Aizal on 4.7.2013. This was admitted in the pre trial conference between 1st Defendant and Plaintiff.
5. 1st Defendant had filed a statement of defence and denied negligence of Driver of LR2542 and also had pleaded contributory negligence of deceased.
6. At the hearing Plaintiffs called a witness to identify medical examination form which was marked as P1 and medical cause of death certificate which was marked as P2.
7. Plaintiff also called a Police officer who drew the sketch scene of accident which was marked as P3. Widower of Late Hafizan also gave evidence but he had not seen the accident and had come to hospital upon being informed of the accident.
8. An eye witness to the accident and daughter in law of deceased, had also given evidence for Plaintiffs.
9. For first Defendant the owner of Lautoka City Rentals gave evidence. Both parties filed written submissions.

ANALYSIS

10. Plaintiff had not entered interlocutory judgment against second Defendant who is the alleged driver of Vehicle LR 2542.
11. Plaintiff had sued first Defendant on the basis that vehicle was driven by second Defendant as servant or agent of him. (see paragraph 3 of the statement of claim).
12. Plaintiff is required to prove that the vehicle LR 2542 was driven negligently, by second Defendant and there was a relationship between first and second Defendant as stated in paragraph 3 of statement of claim..
13. Plaintiff's counsel at the trial called several witnesses including an eye witness but this eye witness did not recognize driver of the vehicle as second Defendant.

14. There was Police constable who had visited the scene soon after the accident she in her evidence said she drew the sketch of the accident but there was no evidence adduced to confirm that second Defendant was the driver of vehicle LR 2542. She only identified document marked P3 as a document he had drawn. In her evidence, only reference to “driver” of vehicle LR 2542 was that he had shown her the point of impact drawn in the sketch. She did not state the name of the Driver or state that it was second Defendant.
15. So, there is no evidence presented to court that second Defendant was the driver of the vehicle which met with an accident that resulted death of late Hafizan and injury to a child.
16. Plaintiff had not proved that 2nd Defendant had driven the vehicle as agent or servant of 1st Defendant, which was the basis of the claim.
17. Lautoka City Rentals is not a legal person, it is only a name of Rental service provider who had registered it as a business entity and it is not an incorporated legal person. There is no master and servant relationship between rental service and any driver of a vehicle given on rent as its agent or servant of the rental service.
18. The owner of Lautoka City Rental had given evidence and also produced document marked D1 which proves that vehicle LR 2542 was given on rent to a person called Kaminieli Makoto on 2.7.2013 and it was returned on 5.7.2013. The accident was on 4.7.2013. So the accident happened while it was on rent to a party who was not named in this action.
19. In **Bans v Jan's Rental Cars (Fiji) Ltd** [1992] 38 FLR 158 Fiji High Court held

'As I see it, the basic question is whether the mere fact that Groot hired the car from the Defendant can give rise to the Defendant's liability. In my view it cannot. In his discussion of liability for torts committed by an agent the learned author of Bowstead on Agency makes no mention of any rule that a hiring company is liable in the way being suggested. On the contrary, under the C heading "Casual Delegation" (15th edition page 393) a large number of cases are cited which tend to establish just the opposite and it is said "there is no question of liability where A is merely driving with B's permission for a purpose of his own in which B has no interest." In the present case the Defendant's business was to rent cars but in my view that does not mean that each hirer is going about the Defendant's business. If the Defendant had asked Groot to perform some small service for him on his way to Sigatoka such a dropping off a packet to a friend of the Defendant and had an accident occurred while the packet was being dropped off then

perhaps it could be argued that at time Groot was driving on the Defendant's business. ‘

20. There is no evidence of even vehicle being rented to second Defendant. The accident had happened while it was rented to a person who was not named.
21. There is no evidence of master and servant relationship between a driver of vehicle given on rent and the owner of such rented vehicle unless it is proved separately. Such relationship does not arise from renting a vehicle as a business as stated in case **Bans v Jan's Rental Cars (Fiji) Ltd** [1992] 38 FLR 158
22. There is no proof that the driver was driving the vehicle as agent of owner. Renting a vehicle does not create such relationship.(See **Ram Pal vs Ise Lun** (1971) 17 FLR 8
23. Plaintiff had failed to prove their claim on balance of probability. The action is dismissed and struck off.
24. Considering the circumstances of the case I will not award any costs.

FINAL ORDERS

- a. Writ of summons and statement of claim is struck off.
- b. No costs.

Dated at Suva this 21st day of June, 2019.

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Justice Deepthi Amaratunga
High Court, Suva