

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 384 of 2017

BETWEEN: MOSESE NAQOU TUILAU of Suvavou Village, Suvavou, Lami, Taxi Owner.

PLAINTIFF

AND: JIUJIUWA TAWATAU of Qauia Village, Qauia, Taxi Driver.

FIRST DEFENDANT

AND: VULI SIGANI TURAGABECI and MAATA LIGA TURAGEBECI of Qauia Village, Qauia,
Taxi Proprietors.

SECOND DEFENDANTS

BEFORE: Justice Vishwa Datt Sharma

COUNSEL: Mr. Singh D. - for the Plaintiff
Ms. Singh K with Mr Nand R. - for the Defendants

DATE OF DECISION: 18th September, 2019 @ 9.30 am

RULING

*[Defence objection as to tendering into evidence of medical report as Plaintiff's exhibit
when author of the report not present in court as a witness in the proceedings]*

INTRODUCTION

1. Counsel representing the **Defendants** in this matter raised an **objection** that the **medical report** written by Dr. Vueta Scott Vuadromo contained within the Plaintiff's Bundle of Documents at annexure '6' cannot be tendered into evidence as an **exhibit through Plaintiff's witness 'PW3'** on the following grounds:
 - (i) This witness (PW3) cannot tender the medical report;
 - (ii) Questions will be put and not from this witness instead;
 - (iii) The author of the medical report is Dr. Scott and cannot be tendered through this witness.
 - (iv) Objected to the tendering of the report as the Plaintiff's exhibit.
2. The **Plaintiff's** counsel submitted otherwise and cited *sections 5 and 11 of the Evidence Act*. He further stated that there are **case authorities** to this effect. That this witness (PW3) has been in employment as a medical records officer at CWM hospital for the past 25 years. Therefore, he can tender the medical report.

THE LAW

3. *Section 5 of the Civil Evidence Act 2002* provides as follows:

Power to call witness for cross-examination on hearsay statement

'5. Rules of court may provide that where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call the person as a witness, any other party to the proceedings may, with the leave of the court, call the person as a witness and cross-examine the person on the statement as if the person had been called by the first-mentioned party and as if the hearsay statement were evidence in chief.'

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- Section 11 of the Civil Evidence Act 2002* states as follows:

Proof records of business or public authority

'11.-(1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

(2) A document is to be taken to form part of the records of a business or public authority if this is produced to the court with a certificate to that effect signed by an officer of the business or authority to which the records belong.

(3) For the purpose of subsection (2)-

(a) a document purporting to be a certificate signed by an officer of a business or public authority is deemed to have been duly given by the officer and signed by him or her; and

(b) a certificate is to be treated as signed by a person if it purports to bear a facsimile of the person's signature.

(4) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or authority to which he records belong.

(5) In this section-

"records" means records in whatever form;

"business" includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual;

"officer" includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records; and

"public authority" includes any public or statutory undertaking, any government department and any person holding a public office.

(6) The court may, having regard to the circumstances of the case, direct that all any of the above provisions of this section do not apply in relation to a particular document, or record, or class or description of documents or records.'

Further *Section 6 of the Civil Evidence Act 2002* provides as follows:

Considerations relevant to weighing of hearsay evidence

'6. In estimating any weight to be given to hearsay evidence in civil proceedings, the court must have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence, and in particular to the following-

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
- (c) whether the evidence involves multiple hearsay;
- (d) whether any person involved had any motive to conceal or misrepresent matters;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.'

ANALYSIS

4. *Section 5 of the Evidence Act 2002* permits to make the rules of the court to adduce hearsay evidence of statements made by person without calling him as a witness. However, *Section 6 of the Civil Evidence Act 2002* it provides at sub paragraph (a) *whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;*
5. Whereas *Section 11 of the Evidence Act* says that a document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof and so forth. This particular section does not include and/or mention anything about the Medical Reports. Therefore, this section does not assist the Plaintiff's submissions to admit the said medical report as an exhibit into evidence.

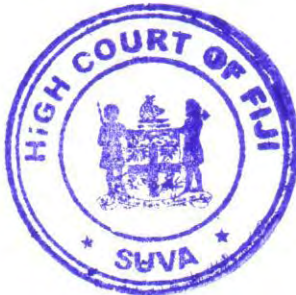
6. Further, what is sought to be tendered into evidence as an exhibit by the Plaintiff is the medical report of the Plaintiff whose author is Dr. Vuetta Scott Vuadrorno.
7. The Plaintiff's substantive claim in the matter is for injuries sustained by him as a result of a motor vehicle accident and further claims for Damages under various heads for pain and sufferings and future economic loss.
8. The Doctor says in his Medical Report that the Plaintiff 'falls when walking on an uneven surfaces and he is unable to stand for long due to pain in his leg and ankle. The Doctor further stated in his Medical Report that 'the surgery on him has left him with a scar deformity. The Doctor further stated the impairments percentages in his Medical Report.
9. If this court accepts this Medical Report intending to be tendered into evidence as an exhibit through PW3 without calling Dr. Vuetta Scott Vuadrorno, then it will deprive the Defendants of their right to examine the Doctor on the questions to ascertain as to how and on what basis the Doctor had arrived at his findings. Since there is no other evidence in awarding damages, the court will have to rely totally on this report.
10. Further, the injury report or the medical report given by a doctor is not substantive evidence and is inadmissible in evidence unless he is examined in a court of law accordingly.
11. The Medical Records officer PW3 through whom the Plaintiff is seeking to tender Dr. Vuetta Scott Vuadrorno's Medical Report is not a medically qualified doctor rather is a medical records officer.
12. This witness PW3 will not be in a position to explain to the court the basis on which the author of this medical report arrived at the medical findings that is contained within this medical report intended to be exhibited into evidence.
13. It will cause injustice to the Defendants if this court accepts this Medical Report into evidence as an exhibit of the Plaintiff without any further proof.
14. However, the Plaintiff will be at liberty to tender the Medical Report in question through the author of the report or through any other Doctor who is medically qualified to do so in the circumstances.
15. The court clearly enquired from the Plaintiff's counsel whether he wanted to call Doctor Vuetta Scott Vuadrorno who was the author of the Medical Report prepared on the Plaintiff's medical condition. Instead he chose to await this court's ruling on the objection raised and the submissions made therein.
16. However, the Plaintiff's Counsel has the conduct of the Plaintiff's case and he is at liberty to make a decision in terms of any other alternatives that may be available to him in order to subpoena and call the author of the medical report which he is intending to tender into evidence on the medical condition of the Plaintiff as an exhibit.

17. For the aforesaid rational I uphold the objection raised by the Defence counsel and disallow the intended Medical Report written by Dr. Vueta Scott Buadromo within the Plaintiff's Bundle of documents as annexure 6 to be tendered into evidence and marked as the Plaintiff's exhibit at this stage of the proceedings.
18. I make the following orders on the objections raised hereinabove accordingly.

ORDERS

- A. The Defence Counsel's objection is upheld.
- B. The Medical Report written by Dr. Vueta Scott Busdromo cannot be tendered into evidence as the Plaintiff's Exhibit.
- C. The Plaintiff is at liberty to exercise any alternatives available to him to call the author of the Medical Report instead to tender the Medical Report into evidence.
- D. There will be no order as to costs at the discretion of this court.
- E. Orders accordingly

Dated at Suva this 18th Day of September, 2019



A handwritten signature in black ink, appearing to be "Vishwa Datt Sharma", written over a horizontal dotted line.

Vishwa Datt Sharma
Judge