

IN THE HIGH COURT OF FIJI AT LABASA

CIVIL JURISDICTION

Civil Action No. HBC 48 of 2019

BETWEEN

LORAINI VUSONICEVA of Korovou, Siberia, Labasa,

Staff Nurse in the Republic of Fiji.

PLAINTIFF

AND

JAMES KISHORE of Siberia, Labasa,

Mechanic in the Republic of Fiji.

DEFENDANT

Counsel : Mr. Sharma S. for the Plaintiff
Mr. Kohli A. for the Defendant

Date of Hearing : 19th May 2020

Date of Judgment : 03rd July 2020

JUDGMENT

- [1] The plaintiff instituted these proceedings to recover damages for the injuries caused to her due to the alleged negligent driving of the defendant.
- [2] In the statement of claim the plaintiff sought the following reliefs:
- i. General Damages.
 - ii. Punitive Damages.
 - iii. Special Damages in the sum of 804.50.
 - iv. Interest.
 - v. Costs of the action.
 - vi. Any other and / or further relief that seem just to this Honourable Court.
- [3] The plaintiff's case is that on 14th September 2017 while she was walking along the Siberia Road towards Labasa Town the vehicle bearing registration number CV 192 came from behind and bumped the plaintiff. The plaintiff has averred in the statement of claim the injuries caused to her die the accident.
- [4] The defendant's position is that the accident was caused due the sole or contributory negligence of the plaintiff.
- [5] At the pre-trial conference the parties admitted the following facts:
1. That on 14th Day of September 2017 being the material time the plaintiff was a pedestrian walking along Siberia Road.
 2. That at all material times the defendant was the driver and owner of the motor vehicle registration number CV 192.
 3. That the plaintiff sustained injuries.

- [6] The plaintiff who was 29 years at the time of the accident testified that on 14th September 2017 while she was walking on the right hand side of the road she heard the noise of a vehicle and when she looked behind it was too late for her to avoid the accident and the vehicle hit her. From the sketch prepared by the police it is clear that the point of impact is on the edge of the road and the plaintiff, at the time of the accident had been on the right side of the road.
- [7] The plaintiff tendered in evidence marked as "P3" the caution interview of the defendant where he has stated that the vehicle went off the road and bumped the pedestrian named Loraini Vusonicewa.
- [8] In an action of this nature the burden is on the plaintiff to establish that the accident was due to the negligence of the defendant. From the facts it is clear that the plaintiff would not have known the cause of the accident and it was within the exclusive knowledge of the defendant who sought not to testify at the trial.
- [9] The plaintiff sought to rely on the maxim "*res ipsa loquitur*" to establish that the accident was due to the negligence of the defendant. *Res ipsa loquitur* is a Latin phrase which means "the thing speaks for itself." In personal injury law, the concept of *res ipsa loquitur* operates as an evidentiary rule that allows plaintiffs to establish a rebuttable presumption of negligence on the part of the defendant through the use of circumstantial evidence.
- [10] The plaintiff in this matter has adduced sufficient evidence to create a rebuttable presumption that the accident was due to the negligence of the defendant. In the absence of any explanation offered by the defendant as to the cause of the accident the court has no alternative but to conclude that the accident was due the negligent driving of the defendant.
- [11] Although the defendant pleaded contributory negligence on the part of the defendant as a defence he failed to adduce evidence in that regard.
- [12] On the day of the accident that is on 14th September 2017, the plaintiff was admitted to the Labasa Hospital and she was discharged on 06th October 2017. According to

the medical report and the evidence of the doctor the plaintiff suffered rib fracture and pelvic fracture. The evidence of the plaintiff is that even after discharging from the hospital she needed assistance from someone to walk about and she used a wheelchair and there after a walker for about a month. It is also her evidence that her mother looked after her and her daughter during that period and also she had to employ a house girl to assist her but the plaintiff's mother said there was no house girl.

[13] The plaintiff testified that she still feels the pain when she bends down and she cannot play volleyball as before because of the pain. She also said that she cannot enjoy sexual relationship with her husband because of the pain. The plaintiff called Dr. Alipate Natoba to testify. In his evidence Dr. Natoba referred to two medical certificates which were tendered in evidence marked as "P4" and "P5". Dr. Natoba is an Orthopaedic Surgeon attached to Labasa Hospital. The doctor said, the plaintiff had pelvic fracture and posterior rib fracture and she had a long and painful recovery. He also said that even after the pelvic fracture heals some patients can experience pain. The doctor testified further that MRI scan was done and it was normal and the lower back pain complained of by the plaintiff was not caused by the injuries to the pelvic because it has completely healed. Dr. Alipate also testified that if the plaintiff was not in a position to have sexual relationship the impairment rate would have been higher.

[14] It is also important to note that as admitted by the plaintiff she conceived the second baby in January 2018 which is about three months after she was discharged from the hospital. She said that the birth of the second child was not a normal birth but a caesarean section. What the plaintiff was trying to convince the court was that she had to undergo a caesarean section because of the accident but in her evidence she testified that even the birth of the first child was also by a caesarean section. She failed to adduce any evidence that this was because of the injuries she sustained due to the accident.

- [15] As per the medical report date 15th August 2019 the Whole Person Impairment is 4% out of which 2% impairment is due to the pelvic fracture. The report also says that Loraini Vusoniceva has reached Maximum Medical Improvement.
- [16] From the evidence it appears that the plaintiff has suffered pain for about two months after the accident and the evidence does not show that she suffered continued pain thereafter.
- [17] There is no relationship between pain and money. The court has to award some amount as damages for pain and suffering but such amount has to be reasonable. In this matter from the evidence before it the court is of the view that it is reasonable to award \$50,000.00 as damages for pain and suffering and loss of amenities.
- [18] The plaintiff also claims \$804.50 by way of special damages which includes \$400.00 for transportation, \$350.00 for medication and \$54.50 for the medical report. The amount claimed for the medical report was not challenged by the defendant.
- [19] As regards the transportation cost to travel to the hospital from home the defendant's position is that the plaintiff's residence is very close to the hospital and it is a walking distance. The plaintiff admitted that she was staying with her mother in Korovou which is very close to the hospital. However, one cannot expect the plaintiff to walk to the hospital for treatment. The plaintiff's evidence is that she spent \$10.00 to \$15.00 for a single trip to the hospital and back. The question here is whether the plaintiff in fact, spent this amount of money as taxi fares. The plaintiff could not justify the claim of \$400.00 for transportation. The court is mindful of the fact that people generally do not keep receipts for taxi fare but when the amount claimed, as in this case, is disputed by the defendant the plaintiff must have some evidence to justify the claim.
- [20] The plaintiff also claimed \$350.00 as her expenses for medication. When the learned counsel for the defendant questioned the plaintiff on the kind of medicine she bought she said "Deep Heat" and "Bonjela". One does not have to be a doctor to know for what these medications are used. "Deep Heat" of course, is an anti-inflammatory medicine and "Bonjela" is used for mouth ulcers. Other than these two

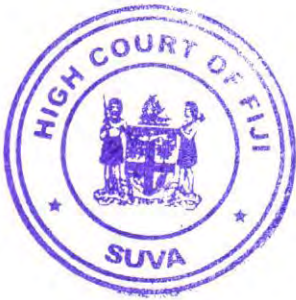
medications the plaintiff did not say she bought any other medications. There is no evidence that the plaintiff in fact spent such an amount to buy medications from the pharmacy.

[21] From the above it appears that the plaintiff has failed to establish her claim for special damages except the amount paid to obtain the medical report.


[22] For the reasons aforesaid the court makes the following orders.

ORDERS

1. The defendant is ordered to pay the plaintiff \$50,000.00 as general damages and \$54.50 as special damages.
2. The defendant is also ordered to pay the plaintiff \$2000.00 as costs of this action.



03rd July 2020


Lyone Seneviratne

JUDGE