

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Civil Appeal No. HBA 05 of 2022

BETWEEN: **FIQS RENTALS** of Lot 1 Caubati Road, Nasinu, Fiji

APPELLANT

AND: **MILIKA SARAIVAI KUMA** of Vunivau Settlement, Fulaga Street, Samabula

RESPONDENT

Counsel : **Appellant: Mr. Chand N**
: **Respondent: In Person**

Date of Hearing : **8.2.2023**

Date of Judgment : **24.2.2023**

JUDGMENT

INTRODUCTION

1. This is an appeal against learned Resident Magistrate (RM) handed down on 29.3.2021, dismissing an appeal from an award of Small Claims Tribunal (SCT). Claimant-Respondent (the Claimant) made a claim against Appellant (Rental Company) and the driver of said vehicle that caused damage. According to the claim a vehicle bearing registration LR 4206 belonging to Rental Company had collided with the claimant's vehicle bearing registration no. HZ 176 which was parked by the side of a road. Even legal practitioners file actions against Rental Company for negligence of hirees, on the basis of ownership of vehicle. This is not correct. So it would be difficult for referee to 'give due regard to law' in terms of section 15(4) of Small Claims Tribunal Act 1991. So, it is prudent refer such a matter to Resident Magistrate for determination in terms of

section 22(2) of the same Act. SCT had held that Rental Company was liable for the alleged negligence of the driver of its vehicle. It is not clear on what basis said order was made to hold Rental Company liable for the said negligent act of the driver of LR 4206, but the report of Referee implied that basis was the ownership of LR 4206. SCT had not held any liability of the driver of the said vehicle, and without that no liability arises to the owner, the referee had not given due regard to law. This decision, was appealed to Magistrate's Court, and RM had dismissed the said appeal on the basis of limited power of appeal granted to RM in terms of Section 33(1) of Small Claims Tribunal Act 1991. Having aggrieved, Rental Company has appealed against said decision of RM. Without a proof of liability Referee had proceeded to assessment of damages. When due regard to law is given, the liability needs to be established against Rental Company before proceeding to assessment of damages. This is a fundamental requirement. Section 14(4) of Small Claims Tribunal Act 1991 requires SCT to determine the dispute according to the 'substantial merits and justice of the case, and doing so shall have regard to the law, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities'. So there is an obligation to have regard to the law though some flexibility is granted as to technicalities and forms or obligations. In this instance there cannot be liability of the owner without liability of driver determined and the relationship determined. So the decisions of RM as well as, Referee are set aside and matter is remitted to SCT to conduct fresh hearing. The fact that Rental Company was the registered owner was not sufficient to find liability for negligence of the hired vehicle.

ANALYSIS

2. The Claimant in the Form 1 of SCT had stated the facts relating to the accident where her vehicle HZ 176 which was parked on the road was hit by a 'rental car' bearing registration LR 4206. This car had not stopped after the accident and had proceeded without stopping at the scene of accident.
3. In the Claim as well as in the Report of Referee had included Rental Company as owner of the vehicle that caused accident, and the driver of the vehicle as Respondents.
4. It is not clear on what basis the Claimant is making the claim against Rental Company for the negligence of the driver.
5. But in the record of Referee stated brief background of facts stated that :

'The 1st Respondent as the owner of the vehicle which cause the damages as confirmed by the report from Raiwaqa Police station dated October 21, 2020, was ordered to pay a sum of \$4120....'

6. So the implied basis of the liability of first Respondent (Rental Company), according to the said report of the Referee was the registration of vehicle involved in the accident, as owner. This is not sufficient to conclude liability of Rental Company it due regard given to law.
7. The powers of the High Court sitting as an appellate court from a decision of a Magistrates Court are set out in Order 37 rule 18 and 19 of the Magistrates Court Rules 1945 and state as follow:

“General Powers of Appellate Court

18. The appellate court may, from time to time, make order order necessary for determining the real question in contrary in the appeal, and may amend any defect act or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the appellate **thinks fit to determine before final judgment in the appeal, and, generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance,** and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs.(emphasis is mine)

Power of appellate court to give any decision or make any order.

19. **The appellate court shall have power to give any judgment and make any ought to have been made, and to make such further there as the case may require,** including any order as to costs. These powers may be exercised by the appellate court, notwithstanding that the appellant may have asked that part of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.” (emphasis added)
8. The power of the High Court regarding the Appeals from a Magistrate’s Court in terms of Rule 18 and Rule 19 of Magistrates Court Rules 1945 is extensive and can make any order in order to determine real question in controversy in appeal including rehearing on the documents.

9. In Fiji High Court case of *Aaryan Enterprise v Mehak Unique Fashion* [2011] FJHC 727; Civil Appeal 17.2011 (decided on 10 November 2011) (unreported) Calanchini J(as his Lordship then was) held:

‘In my judgment the jurisdiction conferred on this Court as an appellate court under Order XXXVII to hear appeals from the Magistrates Court entitles the Court to consider the matter in question as a court of first instance (i.e. afresh) unfettered by the decision of the learned Magistrate and as a result, I am entitled **to exercise my own discretion. Under Order XXXVII I am not restricted to reviewing the manner** in which the learned Magistrate exercised her discretion. (See *CM Van Stillevoeldt BV -v- EC Caviers Inc* [1983] 1 All ER 699).’(emphasis added)

10. So, in this instance this court can consider the fact that due regard to the law, not being given by Referee of SCT, when he proceeded to assessment without finding liability of the driver and or Rental Company. This is a complex situation for SCT to determine liability, due to LR 4206 was a hired vehicle.
11. Before assessment of damages liability needs to be considered, in this instance the liability of the driver of the vehicle is a must as the damage to Claimant was caused by driving LR 4206 negligently.
12. So SCT must consider liability in terms of Section 15(4) of Small Claims Tribunal Act 1991 with due regard to law. Though some flexibility is allowed considering ‘merits and justice’, in this instance Referee’s given determination was wrong.
13. Accordingly decision of learned RM is set aside along with Referee’s determination. The matter is remitted to SCT to have a fresh hearing. Considering delay priority to be given to this matter.
14. Rental company can be held liable for their negligence if it is proved so (e.g. if the vehicle was faulty or had hired it negligently to minor etc.), but cannot be held liable only for the negligence of driver of hired vehicle.
15. Appeal grounds 1, 2, 3, 4, 5, 7 and 8 dealt with the above discussed position.
16. Appeal grounds 6, 9 rejected as there are no merits on them.

CONCLUSION

17. Rental Company cannot be held liable for the negligence of drivers who hired vehicles from them. Rental Company can be held liable for their negligence and or negligence of its employees. Claimant had not stated any negligence of Rental Company in the statement of facts. Rental Company ought to provide all the details about the driver of the vehicle at the time of the accident to any claim against a hired vehicle. Decision of RM and Referee are set aside, matter is remitted to SCT for determination of liability before assessment of damages to the claimant with due regard to law. Appeal allowed. No cost ordered considering circumstances. SCT to give priority to this matter as it is a rehearing.

FINAL ORDERS

- a. Appeal is allowed and decision of learned Resident Magistrate, is set aside.
- b. Decision of Referee is set aside.
- c. Matter is remitted for rehearing before another Referee.
- d. Small Claims Tribunal, Referee to give priority to this matter.
- e. No order as to cost.

Dated at Suva this 24th day of February, 2023.



