

**THE HIGH COURT OF FIJI**  
**AT LABASA**  
**APPELLATE JURISDICTION**

HBA No. 04 of 2020

**BETWEEN** : RAM PIYARE and SONS LIMITED

**APPELLANT**

**AND** : GYANENDRA PRAKASH

**RESPONDENT**

**BEFORE** : M. Javed Mansoor, J

**COUNSEL** : Mr. A. Prasad and Mr. H. Robinson for the Appellant

: Ms. P. Mataika and Mr. P. Gade for the Respondent

**Dates of Hearing** : 9 March 2021

**Date of Decision** : 30 August 2023

# DECISION

PRACTICE AND PROCEDURE      *Res judicata – Parties defendants in a previous action – Whether issues before the resident magistrate should have been raised before the High Court*

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1. This is an appeal against the judgment of the Magistrates' Court of Labasa dismissing the appellant's writ of summons on the basis that the action is *res judicata*.
2. The present controversy goes back to another action that was instituted in the High Court<sup>1</sup> by a claimant seeking to recover damages for injuries sustained in an accident, involving a vehicle owned by the appellant and driven by the respondent on 14 December 2020.
3. The vehicle was driven by the respondent, who was employed by the appellant. The High Court found the respondent to be liable as the driver, and the appellant vicariously liable.
4. By judgment dated 24 November 2016, the High Court ordered the appellant and the respondent to pay damages to the claimant in the sum of \$30,000.00 with interest and costs.
5. Subsequently, the appellant filed action against the respondent in the Magistrates Court of Labasa to recover damages on the basis that the respondent misrepresented facts concerning mechanical defects of the vehicle involved in the accident. The defendant denied the plaintiff's claim, and filed a counter claim.
6. The resident magistrate struck out the writ of summons and the counter claim after a preliminary issue was raised before trial commenced. The court ruled that

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<sup>1</sup> [2016] FJHC 1083; HBC11.2012 (24 November 2016)

the issues raised by the appellant should have been placed in its counterclaim in the High Court, in which the parties were defendants. This appeal is against the ruling of the magistrate on the preliminary issue.

7. The appeal is based on the following grounds:

- (1) “The Learned Magistrate erred in holding that the cause of action as appearing in the writ of summons was unenforceable and wrong on the grounds of *res judicata*, in particular, holding that the issues for determination before the Magistrates Court was already determined by the High Court when the same was false and there was no such material before the Court to make such determination.
- (2) The learned Magistrate erred in entertaining an oral application to dismiss plaintiff’s cause of action on the grounds of *res judicata* when there was no such material evidence before her on affidavit.
- (3) The Learned Magistrate erred in analyzing the material put before her and applying the principle of *res judicata* before dismissing the action.
- (4) That the entire judgment of the Learned Magistrate is perverse, and contrary to Section 15 of the Constitution of the Republic of Fiji”.

8. The appellant submitted that the action in the Magistrates Court is based on the respondent’s fraud and misrepresentation, and that these issues did not figure in the High Court action. It was submitted that the High Court did not consider the issues raised by the appellant’s statement of claim in the Magistrates Court.

9. The differences that arose between the parties during the High Court trial is highlighted in the judgment of Seneviratne J. This is found at paragraph 8 of the judgment.

“It appears that the evidence of the 1<sup>st</sup> Defendant is different from what has been pleaded in the statement of defence. The 1<sup>st</sup> Defendant however said that he never instructed Mr. Kohli to file a statement of defence and it was his employer who took him to Mr. Kohli. He stated further that he did not tell Mr. Kohli that the accident was due to the sudden mechanical failure nor did he ask Mr. Kohli

to file a statement of defence on his behalf and it was his boss (the 2<sup>nd</sup> Defendant) who instructed Mr. Kohli. What appears from the evidence of the 1<sup>st</sup> defendant is that he did not have money to retain Mr. Kohli to represent him in court. I do not see any reason to disbelieve the 1<sup>st</sup> defendant. Although it was suggested to the 1<sup>st</sup> defendant in cross-examination that he instructed Mr. Kohli to aver in the statement of claim that it was a sudden mechanical defect which caused the accident there is no evidence that the 1<sup>st</sup> defendant in fact gave such instructions to Mr. Kohli except the suggestions made to the 1<sup>st</sup> defendant in the course of cross-examination which is not sufficient for the court to act upon and arrive at the conclusion that the 1<sup>st</sup> defendant instructed Mr. Kohli to file a statement of defence on his behalf. In cross-examination, the General Manager of the 2<sup>nd</sup> defendant company admitted that he took the 1<sup>st</sup> defendant to Mr. Kohli”.

10. The above paragraph of the judgment shows that differences between the appellant and the respondent emerged during the trial, and not at the stage of pleadings.
11. The respondent submitted that although the appellant and the respondent did not raise any issues in contest, the judgment of Seneviratne J had examined the evidence and concluded that both parties were negligent and ordered them to pay damages to the plaintiff in that case. Therefore, the respondent submitted, the matters raised by the action in the Magistrates Court were dealt with adequately by the High Court.
12. The High Court judgment examined the position of the appellant and the respondent on the basis of their pleadings and the evidence before court. The court found a clear variance in the respondent’s position, with his evidence in conflict with that of the statement of defence filed on his behalf. The respondent made it clear that he had nothing to do with the statement of defence that was filed on his behalf. In the course of testimony, the matters said to have been misrepresented were raised before the High Court.
13. The court finds that Seneviratne J carefully considered the evidence in regard to the defect in the brakes of the motor vehicle that caused the accident. The judgment stated (at paragraphs 13 and 14):

“From this evidence the only reasonable conclusion the court could arrive at is that the 1<sup>st</sup> defendant has driven this vehicle knowing very well that its brakes were defective which amounts to negligence on the part of the 1<sup>st</sup> defendant. The second defendant had been negligent in permitting the first defendant to drive such a vehicle on the road.

The 1<sup>st</sup> defendant in his evidence attempted to place the entire responsibility of the accident on the 2<sup>nd</sup> defendant which is not possible under the law. If the court finds the 1<sup>st</sup> defendant responsible for the accident, the 2<sup>nd</sup> defendant becomes vicariously liable as the employer for the negligent acts of the 1<sup>st</sup> defendant.”

14. The resident magistrate said that the High Court had concluded that the motor vehicle driven by the respondent had endangered the lives of road users and passengers of other vehicles. The magistrate seems to have proceeded on the basis that the issues between the parties in the Magistrates Court were gone into by the High Court, although they were not raised before the judge.
15. Although the High Court considered the evidence given by the appellant and the respondent, the judgment does not make it clear that the present controversy was resolved. The matters pleaded in the appellant’s statement of claim were not pleaded before the High Court, and the disputes between the parties were not taken up as issues for the court’s determination.
16. While the policy behind the upholding of a plea for *res judicata* is understandable, a litigant must not be shut out from bringing a genuine claim. The court must, therefore, consider the overall circumstances to see whether the interests of justice would be met by upholding a *res judicata* plea by one of the parties.
17. Considering all the circumstances mentioned above, the court is of the view that it would be just to set aside the decision of the resident magistrate and remit the matter for trial to adjudicate the issues before the Magistrates Court.
18. The appeal is allowed with costs to be paid by the respondent.

**ORDER**

- A. The appeal is allowed.
- B. The record is to be sent back to the Magistrates' Court of Labasa.
- C. The respondent is to pay the appellant \$1,000.00 as costs summarily assessed within 21 days of this judgment.

Delivered at **Suva** *via Skype* on this 30<sup>th</sup> day of **August, 2023**.



M. Javed Mansoor  
Judge