

**IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA
CIVIL JURISDICTION**

CIVIL ACTION NO. HBC 130 OF 2016

BETWEEN : **RANGILA DEVI** of Uciwai, Nadi, Domestic Duties as the Administratrix in the **ESTATE OF AVINESH GOUNDER** late of Uciwai, Nadi, Fiji, Mechanic, Deceased, Intestate.

PLAINTIFF

AND : **PACIFIC TRANSPORT LIMITED** a limited liability company having its registered office at 169, Foster Road, Walu Bay, Suva.

FIRST DEFENDANT

AND : **ROHIT HARI KISSUN** of Sukanivalu Road, Lautoka, Bus Driver.

SECOND DEFENDANT

AND : **LAND TRANSPORT AUTHORITY** a statutory authority established under section 6 of the Land Transport Act 1998.

THIRD DEFENDANT

BEFORE : Hon. Mr. Justice Mohamed Mackie

APPEARANCES : Mr R. Singh, with Ms A. Swami, for the Plaintiff
Mr R. Gordon, for the First and Second Defendants
Mr V. Chand with Mr A. Prasad, for the Third Defendant

DATE OF TRIAL : 20th March, 2023.

WRITTEN SUBMISSIONS: Filed by the Plaintiff on 22nd June 2023.
Filed by the 3rd Defendant on 21st April 2023.

DATE OF SITE INSPECTION: On 19th July 2023

DATE OF JUDGMENT : On 09th October 2023

JUDGMENT

A. INTRODUCTION:

1. The Plaintiff, namely, RANGILA DEVI, as the Administratrix of the Estate of her deceased Son AVINESH GOUNDER, by her writ of Summons and the Statement of Claim filed on 30th June 2016, is seeking damages from the 1st, 2nd and 3rd Defendants on account of the death of her son, Avinesh Gounder ("AVINESH") in a Motor Vehicle accident occurred on 16th November 2016 at Uciwai junction on Queen's Road, Nadi.
2. As per the statement of claim, the cause of action pleaded against the 1st and the 2nd defendants, who were the Registered owner and the Driver, respectively, of the passenger Bus bearing personal Registration number plate "SAKULA" was the alleged

Negligent on the part of its Driver, who failed to stop or manoeuvre the Bus to avoid the collision with the vehicle bearing Registration No. BI-809 in which the deceased, Avinesh, was a passenger, who sustained fatal injuries and died on 26th November 2015.

3. The cause of action pleaded against the 3rd Defendant Land Transport Authority (LTA) is based on the alleged breach of its statutory duty of care, through its employees or servants, which the Plaintiff claims that the LTA owed towards the deceased, when the deceased was traveling in the vehicle No- B I 809 along Uciwai Road on the day of the accident.
4. It is also on record, that the Driver of the ill-fated Vehicle bearing No. BI – 809, namely Mr. Alfred Paul, (“Alfred”) also died of this accident instantly.

B. Reliefs Claimed & Defence

5. The Plaintiff, as per her Statement of claim, moved for reliefs, *inter-alia*, for special damages, Damages under Law Reforms (Miscellaneous provisions) (Death & Interest) and Damages under Compensation to Relative Act.
6. The Defendants by their respective Statements of defence, refuted the claims and moved for the dismissal of the Plaintiff’s action.

C. BACKGROUND:

7. On 16th November 2015, the deceased Avinesh Gounder (“Avinesh”) was travelling as a passenger in the Motor vehicle bearing No-BI – 809 down the Uciwai Road, towards the Queens Road, junction. When the Driver of the said vehicle, Alfred Paul, was turning his vehicle towards his right, the passenger Bus “SAKULA” that came from Suva direction collided with it resulting the instant death of its Driver (Alfred), and causing serious injuries to Avinesh.
8. ‘Avinesh’ was immediately taken to Nadi Hospital from where he was transferred to Lautoka Hospital by an Ambulance, and succumbed to his fatal injuries on 26th November 2015. His Mother Rangila Devi, having obtained the Letters of Administration, is before this Court as the Administratrix of his Estate claiming damages as aforesaid.
9. The Officers of the 3rd Defendant LTA, at the time material, were attending a to a complaint concerning another vehicle bearing Registration No- DN -252 and travelling in a LTA Vehicle on the same Uciwai Road, towards the Queen’s Road, but behind the vehicle No-BI-809, in which “Avinesh” was travelling driven by Alfred.
10. The Passenger Bus “SAKULA” driven by the 2nd Defendant, was plying from the direction of Suva towards Lautoka and when it approached the Uciwai junction collided with the Vehicle No-BI- 809, while it was taking its right turn from Uciwai Road towards Suva direction. Though, the 2nd Defendant driver of the Bus claimed to have attempted to avoid the collision by swerving the Bus to his right, his attempt became futile.
11. The Plaintiff in her Statement of claim alleges that the Third Defendant’s Officers, who were on duty at the time material, were **chasing** the vehicle No- BI-809 in which her Son

“Avinesh” was a passenger. The Plaintiff alleges further that due to the chase given by the LTA vehicle, the driver of the said vehicle, Alfred Paul, had to speed and while turning towards his right at the junction his vehicle collided with the Bus “Sakula”.

D. The issues:

12. Parties had recorded 07 agreed facts which included an admission as per paragraph 4 of the PTC minutes to the effect

“4. That all material times, the employees and agents under the control and directions of the Third Defendant were stationed on and along Uciwai Road Nadi”

13. The parties raised 23 issues, which included the following issues as well. However, most of the issues have now become redundant due to the discontinuation of the action against the 1st and 2nd Defendants, and as the cause of death was admitted at the trial. Thus, the task before this Court has now been limited to ascertain :-

- i. *WHETHER the 3rd Defendant through its employees, servants and agents had a statutory duty of care towards the deceased, when they were engaged in their duty.*
- ii. *Whether the said statutory duty of care was breached by the Third Defendant through its employees, servants and agents?*
- iii. *WHETHER the employees, servants and agents of the Third Defendant gave chase or were in pursuit of the said vehicle No BI 809 along or on the Uciwai Road up to the Queen’s Road (junction) where the said vehicle collided with the said bus and if so;*
- iv. *WHETHER the employees and agents of the Third Defendant are permitted under law to chase or pursue a vehicle, which is suspected of having committed a Traffic offence?*
- v. *WHETHER the Driver of the vehicle in which the deceased travelled committed a Traffic offence on 16th November 2015?*
- vi. *WHETHER in an attempt to flee from the employees and agents of the Third Defendant, the Driver of the said vehicle drove it in a careless and/ or negligent manner and as a result the said vehicle collided with the Bus and/or driver of the vehicle caused the accident?*
- vii. *WHETHER as a result of the actions of the employees, servants and agents of the Third Defendant, the Driver of the said vehicle No-BI 809 collided with the Bus, along Queen’s Road at the intersection of Uciwai Road, Nadi?*

E. Trial :

14. On the date of the Trial, Counsel for the Plaintiff intimated that they do not intend to proceed against the 1st and the 2nd Defendants. Accordingly, the notice of discontinuance was filed on 24th March 2023. As the Counsel for the 1st and the 2nd Defendants moved for costs, order on cost was reserved for today.

15. The Plaintiff, **Rangila Devi (PW-1)** and one, **Dhan Pal (PW-2)** gave evidence for and on behalf of the Plaintiff, while **Nalesh Pillay (DW1)**, **Rajneel Rohit Chand (DW-2)** and **Paulini Ranadi (DW-3)** all LTA officials, who were on duty at the time material along or on Uciwai Road, gave evidence for and on behalf of the 3rd Defendant LTA..

16. As the issues to be decided were limited, no necessity arose for much of documentary evidence to be led, except for marking the Letter of Administration and a NEWS PAPER cutting, both of which were marked on behalf of the Plaintiff as "Pex-1" & "Pex-2" respectively.

F. Site Inspection:

17. It, was after hearing the witnesses, particularly, PW-2 Dhan Pal, the Court was inclined to have a site inspection, which was proposed by the Defence Counsel and agreed to by the Plaintiff's Counsel as well. Accordingly, the Court visited the venue of accident on 19th July 2023 with the representation of the parties by their respective Counsel, Co-counsel, and with the presence of the witnesses, particularly "PW-2". Two members of my staff, namely, Senior Court Officer Mr. Nicola and Clerk Ms Vandhana assisted me in this task.
18. The sketch prepared by the Court at the site, with the concurrence of the Counsel for both the parties, which speaks for itself, is filed of the record marked as "X" and contents of it will be referred to below, if and when needed.

G. Law:

19. It is trite law that a claim of this nature will succeed only if the plaintiff is able to establish;

- (a) That the defendant owed a duty of care.
- (b) That the defendant breached the duty of care; and
- (c) Such breach resulted in causing damages/ injuries to the plaintiff.

20. In **Bourhill v Young [1942] UKHL 5; (1943) A.C. 92** it was also held;

"A man is not liable in the air. The liability only arises where there is a duty to take care and "where failure in that duty has caused damage": see per Lord Macmillan in Donoghue v Stevenson {[1932] A.C. 562, 618}. In my opinion, such a duty only arises towards those individuals of whom it may be reasonably anticipated that they will be affected by the act which constitutes the alleged breach.

21. The principles that govern Statutory Duty of Care are well settled. In order to succeed, a plaintiff must establish firstly that the defendant had a duty of care and secondly, it did an act or omitted to do an act which was reasonably foreseeable and it caused damages to the Plaintiff.

H. Discussion:

22. Let me go into the paramount question whether the 3rd Defendant LTA, through its employees, who were engaged in their duty on and/or along Uciwai Road on the day in question, had a duty of care towards the deceased "Avinesh" or "Alfred" who was the Driver of the Vehicle in which Avinesh was a passenger?

23. In order to substantiate the existence of duty of care on the part of the 3rd Defendant towards her Son Avinesh, the Plaintiff has to satisfy that, at the time material to the

- accident, there was a nexus between the 3rd Defendant LTA **and** her Son Avinesh and/or the Driver, Alfred, who drove the vehicle in which Avinesh was a passenger.
24. Obviously, the Plaintiff hereof appears to be in an attempt to establish that the 3rd Defendant, being the authority TO REGULATE THE REGISTRATION AND USE OF VEHICLES, THE LICENSING OF DRIVERS OF VEHICLES AND THE ENFORCEMENT OF TRAFFIC LAWS AND FOR RELATED MATTERS, was in the process of enforcing the law in relation to the ill-fated Motor Vehicle bearing Registration No.BI – 809, in which her deceased son was a passenger driven by Alfred.
 25. The Plaintiff's allegation is that by the act of giving a chase to the said Vehicle No-BI-809 by the LTA officers along Uciwai Road on the day of the accident, it was subjected to the duty of the LTA officers, and due to the fear generated by the chase, the Driver of the said Vehicle sped, and as a result the said vehicle met with this tragedy.
 26. It is here the evidence of an Eye-Witness becomes crucial in determining whether there was in fact an act of chasing of the vehicle no. BI – 809, by the officers of the LTA in their vehicle at the time material to the accident as alleged by the Plaintiff.

Evidence

PW-1

27. The Plaintiff, Rangila Devi, was not an Eye witness to the accident. All what she knows is about her Son leaving the home in a Carrier (Vehicle) , what she heard shortly after from her neighbour that her Son was involved in an accident , and what she saw during the short stint of time she spent at the scene of accident until she rushed to the Nadi Hospital. She also says that she saw her Son when he was brought on a stretcher unto the Ambulance. (Vide pages 8&9 of the transcript).
28. It is not in her evidence that she heard from someone at the scene of the accident about the reason for the accident, or met her witness, Dhan Pal, (PW-2), who claimed to have seen the alleged act of chasing of the said vehicle by the LTA vehicle.
29. But, a notable fact that elucidated from her during the cross examination was the present condition of the Uciwai Road , which she described as "Very bad " , and this was observed by the Court as well during the site inspection. Anyone, who sees the present condition of this Road, can safely arrive at a conclusion as to what would have been the condition of this Road exactly 8 years ago in 2015.
30. Plaintiff's evidence does not help in substantiating her claim that a statutory duty of care was owed by the LTA towards her son and/or the Driver Alfred at the time material. The question of breach will come in only once it is established that the ill-fated vehicle, in which her Son travelled as a passenger, was in fact subjected to the duty of the LTA officers by ordering it to be stopped and/ or by chasing it on its failure to stop. The allegation of chasing is vehemently refuted by the defence as it is not their job.
31. The NEWS item published on 17th November, 2015 in a Local daily depicting an image of the collided vehicles, which was marked as Pex-2 through PW-1, does not substantiate the allegation of chasing. PW-1 had nothing to do with the said News item, and she pleaded ignorance of it. The contents of the news in it was not put to the PW-2 during his examination in chief. No a bystander, at least, who could, probably, have seen the

alleged chasing, was called as a witness for the Plaintiff. The Court is not inclined admit "Pex-2" as evidence.

P.W-2.

32. As I stated above, it was after the evidence of this witness, a 65 years old man, this Court was prompted to visit the scene of the accident, which in turn gave a clear insight of the venue in order to decide what could most, probably, have occurred, particularly whether could there have been an act of chasing of the said vehicle as alleged, and would it have been possible for the PW-2 to witness the entirety of the alleged chase.
33. PW-2 in his examination in chief, among other things, stated that the Uciwai Road is a Gravel Road, it had Tarseal only up to around 20 meters from the Highway, at the time of the accident he was seated under his porch, the LTA vehicle was chasing the vehicle that involved in the accident, the distance between both the vehicle was around 4 to 5 meters and the place of accident is at around 80 meters away from where he was seated.
34. He added further, that after the accident, the LTA vehicle turned towards it left (Nadi side), though they stopped the vehicle on the side, they remained in the vehicle and never came out of the vehicle. When he was specifically asked as to "*why do you say that you felt that the LTA vehicle was chasing the vehicle in front?*", his prompt answer was "***without anyone chasing from the back my Lord no one would speed like that***", which, in my view, appears to be only an assumption on his part. (Vide pages 15 to 19 of the transcript).
35. In examination in chief (page 19), though he was heard to say that he made a statement to the Police, neither such a statement was marked nor an officer from the relevant Police station was called on behalf of the Plaintiff. Had he seen the vehicle of the victims being chased by the LTA vehicle, it would have been recorded by the investigating Police officer.
36. A fatal accident of this magnitude, killing 2 persons should, undoubtedly, have gone into the Police records, but the Plaintiff failed to adduce any oral or documentary evidence in that regard.
37. Under cross examination while maintaining his stance that he was seated under his porch around 80 meters away from the place of accident, stated further that he saw the LTA vehicle too was running at high speed while chasing the said vehicle, the LTA officers did not assist the victims after the accident. He said that as the LTA vehicle was chasing the other vehicle, it could not stop there and as a result it went straight into the main road. Notably, this witness admitted that the ill-fated vehicle could have stopped, but it did not stop. (Vide page 22 of the transcript).
38. In fairness to the PW-2, I observe that his evidence to the effect that the place of accident was 80 meters away from the porch where he was seated is correct. This is confirmed by my sketch - Vide the distance marked by me therein. But, at the time of inspection, PW-2 added that he saw the LTA vehicle chasing the victims' s vehicle from the point of the bend on the Uciwai Road, which in my estimate, with the agreement of both the counsel, is situated at least around 250 to 300 meters away from his porch.

But, my view of the Uciwai Road from point of bend downward the junction, convinces me that the "PW-2" could not possibly have assessed the speed of the vehicles, by being seated on a chair from such a distance as he claims.

39. The reason being, since his house is situated at an elevation from the main Road, though it may have been possible to clearly see the place of accident 80 meters away, in my view, he could not possibly have viewed a scene of any chasing down the Uciwai Road, unless he had closely watched it by being a passenger in a vehicle that travelled on the same time on the said Road or by being present at either side of the said Road.
40. Further, speeding in this manner would not have been possible, given the condition of the Road, of which the surface is gravel, uneven, rocky, and with potholes all over the places. However, it was observed that the Uciwai Road is around 30 feet width, and it expands up to around 45 feet when approaches the main Road. If the LTA officers were in fact in the act of chasing and wanted to have the victim's vehicle stopped, it could have been easily overtaken and stopped at any point before reaching the junction, by disregarding the condition of the Road.
41. It was observed that, unless the PW-2 had focused his attention on both the vehicles, on account of any specific reason, when those vehicles were at the bend at the Uciwai Road or further down toward the junction, he could not have seen the alleged chase. In my view, all what the PW-2 could possibly have seen is the collision of the Bus and the victim's vehicle, which occurred at around 80 meters away from where P.W. 2 was seated.
42. Moreover, I am not convinced on the evidence of PW-2 that there were only 4 or 5 meters gap between the two vehicles during the alleged act of chasing. If it was the case, the LTA vehicle could not have taken a sudden left turn towards Nadi, soon after the victim's vehicle went into crash. His evidence that the LTA officers, after parking their vehicle in the direction of Nadi, remained seated in their vehicle and did not assist the victims subsequent to the accident, cannot be accepted. As per the evidence, it transpires that it was the LTA officers, among others, had immediately responded to rescue the victims, placed Traffic cones and finally took the victim to the Hospital.
43. No evidence whatsoever was led on behalf of the Plaintiff in relation to any Magistrate's Court proceedings against the Driver of LTA vehicle for commission of any Traffic offence which culminated in the death of 2 persons.
44. Another point I wish to address is the agreed fact recorded in paragraph No-4 of the PTC minutes, alluded to by the plaintiff's Counsel in paragraph 13 of his written submissions, which reads as follows.

"That at all material times, the employees and agents under the control and directions of the Third Defendant were stationed on and along Uciwai Road"

45. The above admission, as it is, will not place the defence at any disadvantage. Because, being the investigation officers of the LTA, they are at liberty to perform their duties either by moving or by creating a Road-block. But, as far as the Plaintiff is concerned, the said admission is not beneficial to her case. She still has to prove by some evidence that the victim's vehicle was in fact ordered to be stopped by the LTA officers at a Road-

block, but the vehicle fled without stopping due to fear of persecution, compelling the LTA officers to give a chase as the Plaintiff claims. No such an evidence was led.

Defence Evidence:

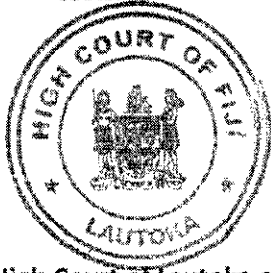
DW-1,2 & 3.


46. All 3 officers of the LTA, who were engaged in duty along the Uciwai Road at the time material and made themselves present at the scene of accident, have given uncontradicted evidence in relation to all what happened. A notable feature that can be observed in their evidence is that the each of them corroborated the other witnesses' evidence. The only mild contradiction that could be observed in their evidence was the manner in which they had received the information about the vehicle bearing No- DN 252, which they had been asked to look for on a certain complaint being made to the Traffic control centre.
47. The manner in which they had received the information about the vehicle No-DN 252 is irrelevant as far as the issue before the Court is concerned. As investigation and enforcement officers they may receive information/ complaints in any manner and they can act on their own volition too as and when needed. Their whole evidence can be admitted and acted up on with no reservation.
48. The Plaintiff has not proved on preponderance of evidence that the relevant vehicle in which the victim Avinesh had been travelling was subjected to any chase by the officers of the LTA in execution of their lawful duties on the day in question. Thus, the question of statutory duty of care will not arise.
49. My considered view is that the 3rd Defendant on the day in question did not owe a duty of care unto the plaintiff's deceased Son Avinesh, and/or unto Alfred Paul , the Driver of the ill-fated vehicle in which the late Avinesh travelled in. As such, the action of the plaintiff has to fail and liable to be dismissed. However, with all due respects to both the deceased, this Court finds that the facts revealed hereof point finger to the Driver of the said vehicle, who seems to have, for the reason best known to him, at the very sight of the LTA vehicle decided to flee and finally met with the accident, probably, owing to the high speed or the malfunctioning of his break system in his vehicle or due to both.
50. This Court finds that the Plaintiff has not proved her case on preponderance of evidence. As such this Court has no alternative, but to dismiss the plaintiff's action against the 3rd Defendant. The counsel for the 1st and 2nd Defendants has moved for costs in a high scale against the Plaintiff, which appears to be reasonable. However, considering the circumstances, I decide to order a sum of \$2,000.00 for 1st and 2nd Defendants and \$1,000.00 for the 3rd Defendant to be paid by the Plaintiff as summarily assessed costs.

I. Final Orders:

- a. The Plaintiff's claim against the 3rd Defendant declined.
- b. The Plaintiff's action against the 3rd Defendant is dismissed.

- c. The Plaintiff shall pay a sum of \$2,000.00 unto the 1st and 2nd Defendants and a further sum of \$1,000,000 unto the 3rd Defendant, being the summarily assessed costs.




A.M. Mohamed Mackie
Judge

At the High Court of Lautoka on this 9th day of October 2023.

SOLICITORS:

For the Plaintiff:

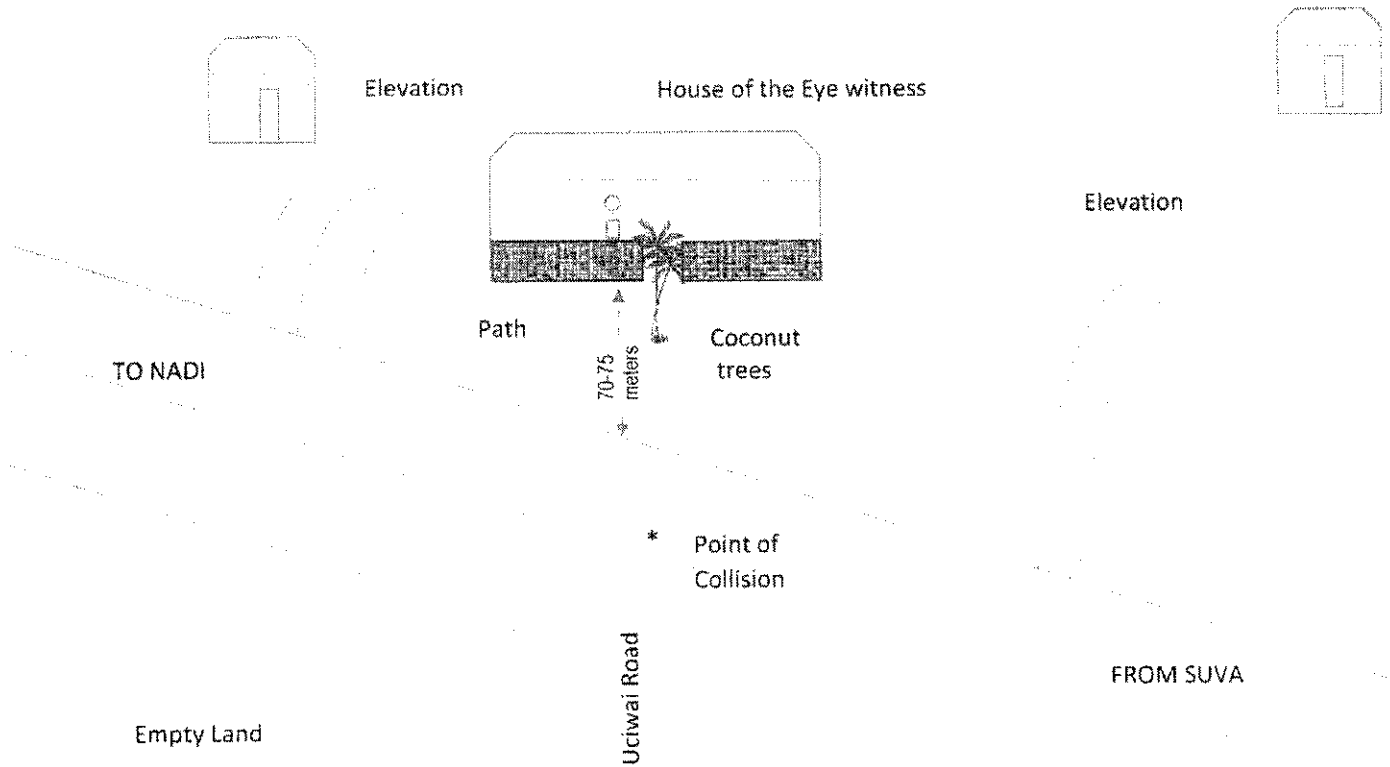
For the 1st & 2nd Defendant:

For the 3rd Defendant:

Messrs: Patel & Sharma- Barristers & Solicitors.

Messrs: Gordon & Company- Barristers & Solicitors.

Land Transport Authority, Legal Department.*



Distance from porch to the bend on the Uciwai Road around 250-300 meters.

To the place of accident around 70-75 meters

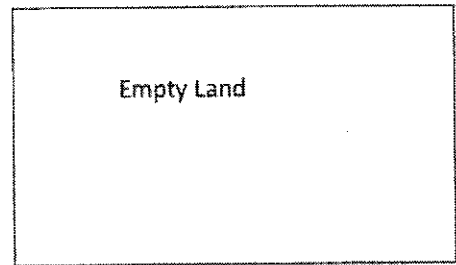
30 feet or 10 meters

150-175 meters

Transformer



Double st. building. A new construction after the accident (agreed)



Empty Land

Mr. R. Singh with Ms. Swamy for the Plaintiff.

Mr. Lomolomo for the defendant.

- Counsel agreed about the condition of road which is rough with not tarseal.
- Width of the road and the shown distance agreed.