

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

**[CIVIL JURISDICTION]**

**Civil Action No. HBC 129 of 2021**

**BETWEEN** : **VINAL VINIT CHAND** of Tuvu, Lautoka, Casual Worker.

**PLAINTIFF**

**AND** : **SANEL PRASAD** trading as **SANEL'S ELECTRICAL SERVICES** of Golf Links Crescent, Wao Lane, Lautoka.

**1<sup>st</sup> DEFENDANT**

**AND** : **AVIMUNI RAJ NAIDU** of Tavarau, Ba, Joiner.

**2<sup>nd</sup> DEFENDANT**

Before : Master U.L. Mohamed Azhar

Counsels : Mr. R. Chaudhary for the Plaintiff  
Mr. R. Gordon for the Defendants

Date of Ruling : 18 July 2024

**RULING**

01. The plaintiff sustained injuries in a motor vehicle accident. The accident was allegedly caused by negligence of the second defendant who drove the vehicle belonged to the first defendant at the material time. The plaintiff was offered an amount as the compensation under "no fault scheme" by the Accident and Compensation Commission of Fiji (ACCF). The plaintiff was not satisfied with the said amount and sued the defendants for damages. The plaintiff also served the claim on the ACCF pursuant to section 28 of the Accident Compensation Act 2017 (**The Act**).
02. The pleadings were closed. The plaintiff's solicitors filed the summons for directions for the parties to discover their respective documents and to proceed to trial of the matter. The summons simply sought the order for the matter to be set within 30 days for a one day trial. It was returnable on 02 December 2021. The counsel for the defendants objected to the

summons on the ground that it did not comply with rules of the Court. However, the court noted that this is a personal injury action and gave the direction for the parties to file and serve their respective Affidavit Verifying List of Documents (AVLD). The plaintiff filed and served his AVLD. On the next date (20.01.2022), the counsel for the defendants sought further time for their AVLD. The court gave directions for defendants' AVLD, discoveries and Pre-Trial Conference Minutes.

03. The defendants, without filling the AVLD, filed the summons seeking to set aside the direction given on 02 December 2021. The summons is supported by an affidavit sworn by the Case Manager of ACCF. It is evident from paragraph 2 of the supporting affidavit that, the ACCF elected to defend this matter according to the Act. The sole issue raised by the ACCF is whether the summons for direction should be filed in this case as it is a personal injury claim and whether the defendant is required to discover documents. The counsel for the defendant submitted that, the mandatory provisions in Order 25 rule 8 (1) apply to this case, as it is a personal injury case. The mandatory provisions require automatic discovery that is limited to disclosure by the plaintiff of any document relating to the special damages.
04. The counsel for the ACCF submitted that, the word "shall" used in the above rule make it mandatory that, the automatic discovery as stipulated in the above rule is the only way to discover the documents mentioned therein. Accordingly, the plaintiff should have discovered his document relevant to the special damages and should not have brought the summons for directions in this matter. The counsel further argued that, the court did not have jurisdiction to order the defendants to file and serve the AVLD and therefore the orders made on 02.12.2021 and 20.01.2022 were void.
05. Conversely, the counsel for the plaintiff cited the Order 25 rule 8 (3) and submitted that, nothing prevents the plaintiff from bringing the summons for directions seeking further directions from the court.
06. Generally, the plaintiff must, subject to the limitations, take out the summons for directions within one month after pleadings deemed closed, as per the Order 25 rule 1 (1). This rule applies to all actions begun by writ. One exception to this rule is the actions for personal injuries to which Order 25 rule 8 applies (see: Order 25 rule 1 (2) (f)).

*Automatic directions in personal injury actions (O.25, r.8)*

8.-(1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions **shall** take effect automatically:  
(a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter, save that where liability is admitted, or where the action arises out of a road accident,

discovery **shall** be limited to disclosure by the plaintiff of any documents relating to special damages;

07. The purpose of this rule was to have standard procedure in all personal injury actions by the rules without resorting to the summons for directions and the order of the courts for this type of cases. However, mere use of the word “shall” in this rule should not be interpreted as mandatory or imperative rule which does not give any exception to it, for several reasons.
08. Firstly, as submitted by the counsel for the plaintiff, the Order 25 rule 8 (3) allows any party to apply to the court for such further or different directions or orders, as may be appropriate, and Order 25 rule 8 (1) does not prevent the same. The sub-rule (1) reads:

(3) Nothing in paragraph (1) shall prevent any party to an action to which this rule<sup>1249</sup> applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate.

09. Secondly, since the above sub-rule allows a party to seek such other directions as may be, the orders or directions given by the court on the summons filed by the plaintiff is neither irregular nor void. Even if it is considered as an irregularity, the said orders/directions should not be set as there was no harm caused to the defendants or the ACCF which now defends this matter.
10. In **Marsh v. Marsh** (1945) A.C. 271 the Judicial Committee of Privy Council considered some of those authorities and concluded with the test applicable in case of irregularity. The Privy Council unanimously held at page 284 that:

A considerable number of cases were cited to their Lordships on the question as to what irregularities will render a judgment or order void or only voidable. *Anlaby v. Proctorious* (20 QB 764) and *Smurthwaite v. Hannay* (1894 AC 494) are leading examples of the former, while *Fry v. Moore* (23 QB 395) may be said to illustrate the latter..... No court has ever attempted to lay down a decisive test for distinguishing between the two classes of irregularities, nor will their Lordships attempt to do so here, beyond saying that one test that may be applied is to inquire whether the irregularity has caused a failure of natural justice. (Emphasis added).

11. The Privy Council again relied on the above decision in Austin v. Hart (1983) 2 ALL E.R. 341 and stated that:

‘The modern approach is to treat an irregularity as a nullifying factor only if it causes substantial injustice: see: Marsh v. Marsh (1945) A.C. 271 at 284.’
12. In fact, the said orders or directions given by the court may help the defendants or ACCF to submit any documents that may assist the court in arriving correct amount of damages that may be ultimately paid by the ACCF according to the Act. In fact and as the court record indicates, the Associate of the solicitors for the defendants/ACCF who appeared on 20.01.2022 moved for further 7 days to file the Affidavit Verifying the List of Documents and the court granted leave to file the same.
13. Thirdly, the purpose of the rules of the courts is to ensure that the courts function in a fair and orderly manner. The rules are based and built on the premise that, both parties must be given equal chance to build and present their cases in a fair manner. The rules ensure that the courts determine the cases in a timely and expeditious manner. Thus the rules are there to assist the courts and not to dictate the courts. Kirby P in Bay Marine Pty Limited v Clayton Proprieties Ltd (1986) 8 NSWLR 104 reiterated at page 108 the dictum in Clune v Watson (1882) Tarl 75, which states that: *‘rules must be the servant and not Masters of the Court’*.
14. The deponent of the supporting affidavit stated in paragraph 21 of her affidavit that, the defendants are being prejudiced and being put to additional expenses by the orders made on 02 December 2021 and 20 January 2022. I do not see any prejudice to the defendants as deponent stated, or to ACCF which now defend the case. The reason is that, the direction of the court to file AVL D is to give a party the equal chance to present the case in a fair manner. If any party does not have any document to support either the claim or defence, it is up to that party to inform the court that, it would not file any AVL D and move on to the other step. The ACCF could have simply informed the court that, there were no documents to file AVL D and moved on to discovery and PTC as appropriate.
15. However, it is the ACCF that took up the move to file the current summons despite clear provisions of Order 25 rule 8 (3). The ACCF, by its move to file this current summons, not only delayed the process, but also spent tax payers money in bringing and supporting the current summons and caused the plaintiff too, who already sustained the injuries due to the accident, to incur further cost in defending this summons. In fact, the real prejudice was caused to the plaintiff who was compelled to oppose the summons whilst the rule [Order 25 rule 8 (3)] allows him to seek further direction as appropriate.

16. For the above reasons, I make the following orders:
- a. The summons filed by the ACCF is dismissed,
  - b. The ACCF is at liberty either to file or not to file an AVLD, and
  - c. The ACCF should pay a summarily assessed costs in sum of \$ 1,500.00 to the plaintiff within 14 days.
  - d. Matter to be mentioned on 7/08/24 for further directions.

**At Lautoka**  
**18.07.2024**



  
**U.L Mohamed Azhar**  
**Master of the High Court**