

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

Civil Action No. **54 of 2016**

**BETWEEN: SAMUELA SAUTAMATA RITOVA of Lot 9, Makoi Road, Nasinu.**

**PLAINTIFF**

**AND: RAIWAQA BUSES LIMITED a limited liability company having its registered office at 211 Ratu Sukuna Road, Suva.**

**DEFENDANT**

**AND: SUN INSURANCE COMPNAY LIMITED a limited liability company having its registered office at Level G & 1 Kaunikuila House, Laucala Bay Road, Suva.**

**THIRD PARTY**

**Appearances:**

Ms. S Kumar (Diven Prasad Lawyers) – **Plaintiff.**

Ms. S.D. Prasad (M.A. Khan Esq) – **Defendant.**

Mr. V. Rokodreu – On Instructions- (AK Lawyers) – **3<sup>rd</sup> Party.**

**Date of Hearing: 23<sup>rd</sup> September 2024**

**Ruling**

[1] The Plaintiff’s lawyers filed summons seeking the following orders:

- “1. **THAT** pursuant to Order 2, Rule 1 and Order 37, Rule 6 of High Court Rules 1988 and the inherent jurisdiction of the High Court, the Plaintiff be granted leave to adduce additional evidence post-trial regarding his current medical and physical condition, specifically concerning the recent amputation of his right leg, as this has an important influence on the result of this vcase.
2. **THAT** the Defendant pays the costs of this application on a full indemnity basis; and;
3. **ANY SUCH FURTHER** and other orders as this Honourable Court may deem just.”

An affidavit in support of the Plaintiff was filed with the summons. An affidavit of Krishan Kumar was filed on behalf of the Defendant in opposition to the summons. The Plaintiff also filed a supplementary affidavit.

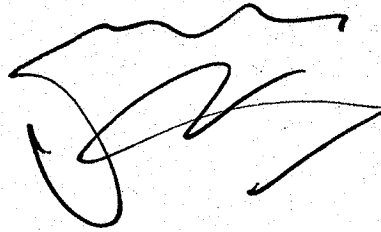
- [2] The trial for this matter commenced on 10<sup>th</sup> June 2024 and concluded on 19<sup>th</sup> June 2024. The judgment is pending. On 27<sup>th</sup> June 2024, the Plaintiff's right leg was amputated from above the knee. The Plaintiff was a passenger in the bus, belonging to the Defendant Company, which was involved in an accident. The Plaintiff has claimed against the Defendant Company.
- [3] The assertion for the Plaintiff is that the amputation is directly linked to the injuries sustained in the bus accident, which subsequently led to bone infection and the loss of his limb. He further states that with his right leg being amputated, he is not unable to pursue employment and may not be able to do so in future. The amputation has significantly changed his life. It has resulted in loss of mobility and independence, severely impacting his ability to work and participate in daily activities. He will require ongoing medical care, rehabilitation and may require prosthetic devices in the future. He is requesting the Court to consider these significant changes in circumstances before rendering a judgment and exercise its discretion in admitting new evidence in pursuit of justice and fairness. The 3<sup>rd</sup> Party does not object to the application.
- [4] The Defendant objects to the Plaintiff's application. They challenge the Plaintiff's claim that the amputation was directly linked to the accident. They further argue that the Plaintiff had ample opportunity to present evidence during the trial and that it should not be considered post-trial. They seek that the judgment be solely based on the evidence presented at the trial. The Defendant relied on **Ladd v. Marshall [1954] 1 WLR 1489**.
- [5] **Ladd** (supra) was an action by the plaintiff for money alleged to have been paid by him to the defendant on a consideration which wholly failed, the plaintiff called, among other witnesses, the defendant's wife as a witness to the payment, which was alleged to have been made on 2<sup>nd</sup> April 1952. She was a reluctant witness and, on being questioned at the hearing on 12<sup>th</sup> March 1954, stated on oath that she did not remember. Judgment was given for the defendant whose evidence the judge accepted in preference to that of the plaintiff and the plaintiff's witnesses. On 6<sup>th</sup> May 1954, the defendant's wife obtained a decree nisi of divorce. Subsequently she informed the plaintiff's solicitors that she did remember the occasion on 2<sup>nd</sup> April 1952, and that the money was paid by the plaintiff to the defendant in her presence. The plaintiff appealed, applying alternatively for a new trial, and sought to adduce on the appeal further evidence from the defendant's former wife. The Court of Appeal held that for the court to allow further evidence to be adduced in support of an appeal against a decision of fact the evidence must be such as is presumably to be believed, and, as the evidence sought to be adduced was not of that description, it would not be admitted; and in the circumstances the appeal and motion for a new trial was dismissed.
- [6] **Ladd** (supra) is clearly distinguished from this matter. The matter before me has the judgment pending. **Ladd** was a matter where judgment was delivered. When Plaintiff's lawyers in **Ladd** sought to adduce fresh evidence by way of a new trial, a judgment had been delivered. In this matter, a judgment has not been delivered. The Plaintiff's lawyers in this case is not seeking a new trial. What is being sought is to adduce additional evidence regarding the current medical and physical condition of the Plaintiff, more specifically concerning the amputation of his right leg. I find that there will be no prejudice to any party if I allow the application by the Plaintiff. I need all the relevant evidence to a make a reasoned decision. The other parties have the right to

cross-examine the witnesses that will be called on behalf on the Plaintiff. There is no unfairness. Interest of justice dictates that I allow the application by the Plaintiff. Costs reserved.

**Court Orders**

(a) Leave is granted to Plaintiff to adduce additional evidence regarding the current medical and physical condition, specifically concerning the recent amputation of the Plaintiff's right leg.

(b) Costs reserved.



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Chaitanya S C A Lakshman

**Puisne Judge**  
31<sup>st</sup> October 2024

