

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

Civil Action No. HBC 211 of 2024

BETWEEN: SEREMANA BATIRAU of Nakorovou Village, Serua, Galoa, Self-employed and DENZEL ALFRED HILL of Rampur Road, Nakaulevu, suing by his mother and best friend MARY CINA HILL, Massage Therapist, of Rampur Road, Nakaulevu, Navua.

Plaintiffs

AND: CAPITAL INSURANCE LIMITED a limited liability company having its registered office at 231 Waimanu Road, Suva, Fiji.

Defendant

Representation:

Plaintiffs: Mr. D. Singh (Daniel Singh Lawyer)

Defendant: Mr. R J. Singh (Munro Leys)

Date of Hearing: 24th June 2025 and 25th July 2025

Ruling

A. Introduction

- [1] The lawyer for the plaintiffs filed originating summons seeking declaratory orders against the defendants for payments of general damages, special damages, loss of future earnings and interest. It is filed with the affidavit of Seremana Batirau and Denzel Alfred. The application is made pursuant to Order 7 and Order 15 Rule 18 of the High Court Rules and Sections 10 and 11 of the Motor Vehicles (Third Party Insurance) Act.
- [2] For the defendant an affidavit in opposition of Carolyn Tai Lanyon, Claims Manager for the defendant company was filed. An affidavit in response of Poasa Ratubuli, litigation clerk of plaintiff's lawyers firm was filed. Later a supplementary affidavit of Poasa Ratubuli was also filed.
- [3] A preliminary issue of service of the writ on the insurance company was raised. This is what this ruling relates to. Following a hearing on 24th June 2025, I gave 25th July 2025 for my Ruling. On 8th July the Plaintiffs filed a notice of motion to adduce further evidence, with an affidavit of Poasa Ratubuli. It was heard on 25th July 2025.

B. Background

- [3] This matter is related to Civil Action No. HBC 389 of 2017, where a writ of summons and statement of claim were filed. The plaintiffs had received injuries as a result of a bus accident. The defendant in HBC 389 of 2017 were unrepresented and did not file any statement of defence. On 16th May 2018, an interlocutory judgment was entered against the defendants. On 25th January 2025 following an assessment, the Court awarded damages and costs to the Plaintiffs. Following those orders in HBC 389 of 2017, the Plaintiffs are seeking declaratory orders against the defendant on the basis that the defendants (previously Dominion Insurance) insured the bus involved in the accident under the Motor Vehicles (Third Party Insurance) Act.

C. Submissions

- [4] Mr. D. Singh made oral submissions. Mr. R. Singh gave oral submissions and handed a copy of his written submissions. I have considered them all.

D. Determination

- [5] The plaintiffs in this matter are relying on the orders in HBC 389 of 2017 and seeking declaratory orders against the defendant on the basis that the defendants (previously Dominion Insurance) insured the bus involved in the accident under the Motor Vehicles (Third Party Insurance) Act.
- [6] The plaintiffs have relied upon sections 10 and 11 of the Motor Vehicles (Third Party Insurance) Act. Section 11 specifically dealt with duty of insurance company to satisfy judgments against persons insured in respect of third party risks. The relevant section 11 (2) (a) which is that:

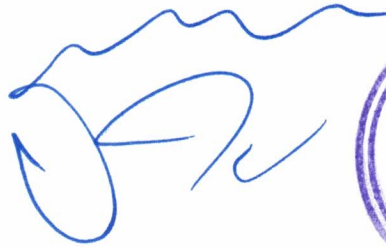
“11.-...

(2) No sum shall be payable by an approved insurance company under the provisions of subsection (1)-

(a) in respect of any judgment unless before, or within 7 days after the commencement of the proceedings in which the judgment was given, the insurance company has notice of the bringing of the proceedings; or

- [7] The submission for the defendant is that they had no notice prior to or that they were served with the claim within 7 days after the commencement of HBC 389 of 2017. This is the key issue for determination.
- [8] The defendants are relying on Section 11 (2) (a) of the Motor Vehicles (Third Party Insurance) Act. The defendants position is that they were not served the writ. Carolyn Tai Lanyon in her affidavit averred that they do not “*have any record of receiving the Writ.*”

- [9] On evaluating all the material I find that Dominion Insurance Company which is now Capital Insurance Limited was served the writ. The writ was filed in Court on 22nd December 2017. It was served n Dominion Insurance on 27th December 2017. The Court documents reveal that the writ was served within 7 days of filing of the writ. The Defendant was served or had prior notice of the claim within 7 days after commencement of HBC 389 of 2017. Section 11 (2) (a) of the Motor Vehicles (Third Party Insurance) Act was complied with.
- [10] For reasons given the defendants application to have the originating summons dismissed in its entirety is refused. The parties will bear their own costs.



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Chaitanya S.C.A Lakshman
Puisne Judge

22nd August 2025