

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

Civil Action No. HBC 70 of 2023

BETWEEN: **Krishan Kumar** of Lot 1 Namara No.2 Khalsa Road, Nasinu, Market Vendor.

Plaintiff

AND: **Suva City Council** a duly incorporated body established under the Local Government Act having its registered office at 196 Victoria Parade, Suva.

Defendant

Representation

Plaintiff: Mr. D Singh (Daniel Singh, Lawyer)

Defendant: Mr. W. Raiubi (Suva City Council)

Date of Trial: 5th November 2025 and 21st January 2026

Judgment

A. Introduction

[1] Mr. Krishan Kumar claimed that he fell at the Suva Market after a rope caught his left foot. The rope was tied to a corner of a tarpaulin and a market stall. Due to the fall, he suffered injuries.

[2] For the injuries, Mr. Kumar claims general damages, past economic loss and special damages, future economic loss, gratuitous care, costs of future care, interest and costs.

[3] The SCC in its defence pleaded that they took good care of the surrounding facilities, staff were allocated with shift work to walk around the market to minimize risk, and that staff had carried out inspections and did not see any rope laid around the walkway.

[4] SCC further pleaded that the Plaintiff failed to keep a proper look out on his path, the access was always clear and that the Plaintiff contributed to his injury.

B. Issues for Determination

[5] The following issues are for determination:

(a) Whether the Plaintiff's fall was caused by the negligence and/or breach of statutory duties by the Defendant, their servants or agents?

(b) Whether there was contributory negligence on the part of the Plaintiff?

(c) If the Defendant is found liable:

- (i) Whether the Plaintiff is entitled to general damages for pain and suffering and loss of amenities of life and, if so then, the quantum?
- (ii) Whether the Plaintiff is entitled to past economic loss and special damages and, if so, the, the quantum?
- (iii) Whether the Plaintiff is entitled to future economic loss and, if so then, the quantum?
- (iv) Whether the Plaintiff is entitled to gratuitous care and, if so then, the quantum?
- (v) Whether the Plaintiff is entitled to costs of future care and, if so then, the quantum?
- (vi) Whether the Plaintiff is entitled to interest on the award and, if so then, the quantum?
- (vi) Whether the Plaintiff is entitled to costs and, if so then, the quantum?

C. The witnesses and evidence

- [6] The Plaintiff gave evidence. His other witnesses were Dr. Pita Sovanivalu and Ms. Mereamo Rarakula.
- [7] For SCC, the witnesses were Ms. Maria Tumumbolau and Mr. Kalivati Bola.

D. Determination

- [8] I have considered all the evidence. I have also considered what was submitted by the parties.

The Fall

- [9] The parties agreed and it is not in dispute that on 11th November 2021 at around 6 pm, Krishan Kumar was walking along the Suva market building walkway when his left foot got caught on a rope on the walkway tied to a corner of a tarpaulin and market stall, unnoticeable on the walkway. He fell as a result of his foot being caught on the rope. He suffered injuries.
- [10] A CCTV footage from the market showing Mr. Kumar's fall was tendered as an exhibit. This was played in Court. The footage is 19 second long. The footage commences with the Plaintiff walking in wearing a blue shirt, with a bag strapped over his shoulder. He is carrying a plastic bag in one hand. As the Plaintiff moves a man (red t/shirt) is adjacent to him and another man (light maroon shirt) right in front of him.
- [11] As the man in the light maroon shirt steps aside, and comes in between the Plaintiff and the man in the red tee shirt. The plaintiff maintains his path. The Plaintiff takes 3 steps forward and he then trips and falls. The Plaintiff trips on a rope on the walkway tied to a corner of a tarpaulin. The tarpaulin is spread on the market stall with produce on top of it. It hangs on the side of the stall. Following the fall, the Plaintiff holds his leg and the man in red t/shirt and others attend to him.
- [12] The date and time stamp on the video is "*11-11.2021 Thu 17:57:00*"

The Injuries

- [13] The medical evidence in Court was of Dr. Pita Sovanivalu. He is the Senior Registrar of the Pediatric Department. He had also examined the Plaintiff on 31st October 2025. The medical records were tendered through Dr. Sovanivalu. There was no dispute about the tendering of any of the records.
- [14] The medical report (PE -1) compiled by Dr Pauliasi Bauleka shows that the Plaintiff suffered injuries to his right leg. He had displaced fracture of tibia/fibula. He was admitted for 7 days and taken to the operation theatre for manipulation of the fracture under anesthesia with long leg casting for at least 6 weeks.

The Duty of Care

- [15] Any person who visits any market or shop is owed a duty of care by the owner or person in control of that site. What this basically means is that the persons in control of the market and the shops must take reasonable steps to ensure the users of the facilities their safety while they are on those premises. They are to remove or control any significant hazard that could lead to injury. This duty is extended to customers, workers, vendors and visitors alike.
- [16] The scope of the duty of care is not unlimited. It is not about eliminating every possible risk, rather its addressing risks that are foreseeable and significant enough that a reasonable person would take precautions to avoid them. Not all accidents result in breach of duty. We consider whether the property owner took adequate steps to prevent the risk. These can be in number of ways. Amongst which includes inspecting the walkways and monitoring the passages to keep it clear of all hazards which may cause harm to users of the facilities. If items in the market are not properly disposed or handled, they can be hazards. For instance, peelings and produce can lead to a person falling or tripping in the passages and walkways, if they come in one's path. In this matter the rope that was hanging became a hazard and it led to the Plaintiff falling. Reasonable care requires the Defendant to carry out inspections at regular intervals. It could be half hourly or three quarter hourly.
- [17] The Defendant is in care and control of the Suva Market. They owed a duty to the Plaintiff, a vendor and user of the facilities.

Was the duty of care breached?

- [18] The tarpaulins and ropes that were used by the vendor was used to wrap up the produce at the close of the market. These are authorized by the Defendant. These tarpaulins are spread over the table and produce is placed on it. When it is uncovered the tarpaulins and the ropes as in this case hung with the tarpaulin towards the walkway.
- [19] The Defendant employees are engaged to see that the walkway and the obstructions are clear. The Defendant pleaded that *“at around 6.00pm, our staff had carried out inspections around that particular area with shift works and did not see any rope lying around the walkway.”*
- [20] The CCTV footage shows that Mr Kumar fell around **17:57** that is **5.57** pm. It is 3 minutes before the alleged inspection by the Defendant's workers. The Defendants

had the CCTV footage in their possession. They have failed to show any evidence of the Defendant's workers carrying out any inspections. They had specifically pleaded that they inspected at **6pm**. No evidence of that was even given in Court. The Defendants failed to show this Court of any regular or any inspections that was carried out by them.

- [21] It is expected that regular inspections are carried out in the market and any hazards or risks are eliminated. In this case the Defendant has not shown that they acted to eliminate the hazard which was the rope tied to the Tarpaulin on the walkway. It was and is the Defendant's duty to see regular checks are made. It is not enough to say it is done. They were to produce evidence in court that it was done. They had CCTV footages available. They could have shown that regular inspections were made. They have not shown any inspections being carried out.
- [22] Having personnel available for work and having them carrying out those duties is the responsibility of the Defendant. It is expected that regular inspections are to be carried out in the market. The passages and walkways are narrow. Items left on those portions can lead to someone tripping over or falling. Inspections should be carried out at regular intervals. People are employed and paid to carry out those inspections. They must do their job. If they had inspected and done their job they would have identified and removed the rope from the walkway.
- [23] The Plaintiff would not have fallen if the walkway was kept clear of the rope tied to the tarpaulin. This would have only been possible by regular inspection of the walkway and the premises. As accident happened due to the rope on the walkway, then in my judgment some explanation should have been forthcoming from the Defendant to show that the accident did not arise from any want of care on their part. I do not have probative evidence before me of the Defendant showing regular inspection of the walkway.
- [24] On the evidence before me I find that the Defendant breached its duty. The workers employed by the Defendant failed to inspect the walkway and keep it clear of the hazard in this case being the rope tied to the tarpaulin. The rope caused the Plaintiff's fall. As a result of the fall the Plaintiff sustained injuries.

Causation

- [25] The injury sustained by the Plaintiff is a direct result of the breach. The Defendant's employees failed to keep the walkway clear of the hazard, which is the rope that was tied to the tarpaulin which caused the injury to the Plaintiff's foot.

Contributory Negligence

- [26] The Defendant pleaded contributory negligence by the Plaintiff. They pleaded that the "*walkway was clear enough for the public to move around. It was the Plaintiff that was not looking properly ahead to see his path.*"
- [27] From the CCTV footage I note that when the Plaintiff moves, he has to avoid the man in the light maroon shirt, who was in front of him. At a point three people, including the Plaintiff and two others are side by side in the walkway. The Plaintiff has to avoid contact. He then walks forward.

[28] I do not find that the Plaintiff walked or did anything that caused his fall. His motion is normal and he takes normal strides, while being aware of his surroundings. He did not contribute towards his fall.

Damages

[29] The Plaintiff was 59 years old at the time of the accident. He is now 64 years old. He is a market vendor. As a direct and proximate result of the negligence of the Defendants, the Plaintiff suffered injuries and loss. He is therefore entitled to damages.

[30] The Defendant is to pay the Plaintiff a sum of **\$60,000.00** for general damages for pain and suffering and loss of amenities of life.

[31] Interest on the **\$60,000.00** at a rate of **6%** from date of writ to date of trial (1050 days) to be paid by Defendant to the Plaintiff is **\$10,356.16**

[32] Interest at 3% from date of accident till date of trial (1533days) to be paid by Defendant to the Plaintiff - **\$314.99**

[33] For loss of future earning, using a multiplier of 2 years and multiplicand of \$500.00 per week. The Defendant is pay the Plaintiff - **\$52,000.00**.

[34] Gratuitous care @ \$80.00 per week for 3 months to be paid by the Defendant to the Plaintiff - **\$920.00**.

[35] Special damages to be paid by the Defendant to the Plaintiff - **\$2000.00**.

[36] Cost of future care for medicine and travel expenses to be paid by the Defendant to the Plaintiff - **\$4500.00**.

[37] The Defendant is to pay the Plaintiff **\$2500.00** as costs. The costs have been summarily assessed.

[38] The total sum to be paid by the Defendant to the Plaintiff is **\$132,591.15**.

E. Court Orders

(a) The Defendant is to pay the Plaintiff a sum of **\$60,000.00** for general damages for pain and suffering and loss of amenities of life.

(b) Interest on the \$60,000.00 at a rate of 6% from date of writ to date of trial (1050 days) to be paid by the Defendant to the Plaintiff is **\$10,356.16**

(c) Interest at 3% from date of accident till date of trial (1533days) to be paid by the Defendant to the Plaintiff is **\$314.99**

(d) For loss of future earning, using a multiplier of 2 years and multiplicand of \$500.00 per week. The Defendant is pay the Plaintiff **\$52,000.00**.

(e) Gratuitous care @ \$80.00 per week for 3 months to be paid by the Defendant to the Plaintiff is **\$920.00**.

(f) Special damages to be paid by the Defendant to the Plaintiff is **\$2000.00**.

- (g) Cost of future care for medicine and travel expenses to be paid by the Defendant to the Plaintiff is **\$4500.00**.
- (h) The Defendant is to pay the Plaintiff **\$2500.00** as costs. The costs have been summarily assessed.
- (i) The total sum to be paid by the Defendant to the Plaintiff is **\$132,591.15**.



A handwritten signature in blue ink, consisting of a large, stylized initial 'C' followed by a series of loops and a final flourish.

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Hon Justice Chaitanya S C A Lakshman
Puisne Judge

20th February 2026