IN THE FIRST CLASS MAGISTRATE'S COURT AT LAUTOKA
CIVIL DIVISION

Civil Cause No. 36 of 2018

BETWEEN: **DEL-CEE GRAMENT (FIJI) LIMITED**

PLAINTIFF

AND: **ASHOK KUMAR TRADING AS PARADISE RENTALS**
KIRT PRABHA SINGH

DEFENDANTS

J U D G M E N T

INTRODUCTION

01. This action was initiated by plaintiff seeking to recover the damages caused to their vehicle belongs to 1st defendant, driven by the 2nd defendant.

02. Only the second Defendant appeared in court and in the absence of the first defendant matter fixed for formal proof against him.

03. Since second defendant admitted the statement of claim counsel for the plaintiff move that judgment be entered in their favour as per Magistrate court rule VI:08 claiming this to be a liquidated sum.

04. Court however did not agree with the counsel's application as the plaintiff need to prove their claim really exists and thus ordered for formal proof in accordance with magistrate court rule VI:09.

05. Accordingly the insurance officer was called for evidence marking a bundle of documents as PEx1.

CLAIM OF PLAINTIFF

06. Plaintiff in his SOC claims that they are the owners of the vehicle number FJ110 and second defendant being the driver of the LR 1479 collided causing extensive damages to the plaintiff's vehicle.

07. It has further claimed that first defendant being the renting authority for the LR 1479 is liable jointly and/or severally.

08. Plaintiff submitted that second defendant is so negligent whereby he was charged and convicted for dangerous driving and that proceedings are conclusive regarding his negligence.

09. It is submitted that FJ 110 vehicle was beyond the repairable condition and accordingly declared a write-off.

STATEMENT OF DFENCE

10. Only the second defendant filed a statement of defence but basically, he has admitted his negligence but prayed that he cannot afford to pay the amount claimed by the plaintiff.

ANALYSIS

11. This court is mindful that the onus is on the plaintiff to prove his claim on a balance of probability. If the evidence falls short on this degree of proof the claim cannot be said to be established irrespective of how weak the defence is.

12. Plaintiff's witness is the insurance officer in the company which the plaintiff has insured its vehicles. He said that FJ 110 had been insured with them and the vehicle had involved in a mother vehicle collision. Evidence is led regarding the investigation and assessment of the damages and motor claim from with all the documents marked as PEx1.

13. Witness gave evidence referring to the pre accident valuation (PAV) and the assessment after the accident. He also referred to the assessment report form "Carpenters Limited" and the report of the police. Counsel did not step further and very much limited to the facts in Plaintiff's favour.

14. Court however noted that Plaintiff been reinstated by the insurance company; in this case "New India Insurance". Upon questioning witness said that they have taken the salvage worth $15,000 which is a profit for them. It is also revealed that insured value was $30,000 and Plaintiff has agreed to receive $29,000 and the sum has actually paid to the Plaintiff.

15. During the cross-examination counsel put to the witness that plaintiff is actually claiming the "Pre-Accident Value" they paid for the insurance company which witness confirmed.

16. From the above findings it is evidence that plaintiff had an insurance policy with “New India Assurance”. As such plaintiff has paid a premium for indemnify the losses he may suffer in future.

17. Such insurance is a contract between the plaintiff and the insurance company to indemnify the predefined category of risks for a premium. It is obvious and common sense that insured need not to pay the full value of the item that he is insuring as the counsel suggested and lead to the witness in re-examination. It is just a small portion of the exact value which insurer allocates the risks of a loss from the individual to a great number of people.

18. This is a well know principle in insurance as Principle of Indemnity. On the other hand, this being the base of the auto insurance is no-brainer in this era to get confused of. Thus, there is no chance that Plaintiff and the legal advisor would not know of.

19. The insurance company has paid the total damage of $29,000 to the plaintiff. As per the evidence the insured amount is $30,000 even though its Pre-accident value was $33,000. After considering the cost of repairs, insurance company has proposed the plaintiff the sum of $29,000 as a full and final discharge of their liability which Plaintiff has agreed to (Page 12, 13 & 14 of PEx1). Therefore, full restitution has been done to the Plaintiff in this incident. Accordingly, plaintiff cannot have any claim whatsoever on this incident against any party. Any such attempt as in this case amounts to an unjust enrichment.

20. While the Plaintiff has no cause of action against the defendants the insurer can proceed to sue against them as per the Principle of subrogation. It is evident from the page 15 of PEx1 that insurer has already initiated their proceedings.

21. It is evident now that plaintiff has not disclosed the vital incident of their receiving the claim for the damages in their statement of claim and also sought a judgement in their favour under magistrate court rule VI:08 claiming it to be a liquidated claim.

FINDINGS OF THE COURT

22. For the above reasons I find that plaintiff has no cause of action against the defendants and statement of claim amounts to unjust enrichment.

23. The second defendant had to go through unnecessary hardships in filing statement of defence and cost & time to attend the court.

ORDERS OF THE COURT

24. Claim of the plaintiff dismissed

25. Cost of $800 to be paid to 2nd defendant by plaintiff summarily assessed by court for the reasons in paragraph 23 of this judgement

26. 30 days for appeal.

BANDULA GUNARATNE

Resident Magistrate

At Lautoka

10th July 2019