IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
LABASA CIVIL APPEAL NO.3 OF 1978

Between:

CHANGAIYA s/o Adi Narayan — Appellant

and

JAI KARAN s/o Bhawani Bhik — Respondent

JUDGMENT

The appellant was the defendant in an action brought against him by the respondent who claimed $3,000 damages for loss and injuries sustained by him due to the negligent driving of a motor vehicle by the appellant. The Magistrates Court Labasa found both parties equally negligent and awarded the respondent $1,450 damages and costs.

There are four grounds of appeal:

"1. THAT the Learned Magistrate erred in law and in fact in holding the Appellant guilty of negligence in view of the evidence adduced.

2. THAT the Learned Magistrate erred in law and in fact in holding the general damages proved when no evidence to that effect was adduced.

3. THAT the Learned Magistrates' apportioning of contributory negligence is unreasonable in view of the evidence adduced.

4. THAT the verdict of the Learned Magistrate is unreasonable and cannot be supported having regard to the evidence adduced."

On the 17th August, 1976 the appellant pleaded guilty in the Magistrates Court, Labasa to a charge of Dangerous Driving which driving led to the serious injuries sustained by the respondent. The appellant admitted the charge and his plea of guilty and conviction in the Defence filed by him.

Despite this admission the Defence denied negligence and alleged that it was the respondent who had been negligent or alternatively was guilty of contributing negligence.

It would be difficult to find a clearer case of negligence by a driver of a motor vehicle. There is not only the appellant's own admission and conviction, but the facts found by the learned trial Magistrate established his negligence beyond any doubt.

The appellant approached a pedestrian crossing at about 25 m.p.h. He knew where the pedestrian crossing was although the markings were not as clear as they could have been. He saw the respondent by the crossing about to cross and from 2 chains away from the crossing he sounded his horn. He did not slow or stop his vehicle and proceeded on his way and ran into the respondent on the crossing causing him serious injuries.

There is no merit at all in the first ground of appeal and it accordingly fails.

The second ground of appeal discloses that the appellant's solicitor does not appreciate the nature of general damages and how the basis is laid to establish a claim to general damages. To bring the action within the jurisdiction of the Magistrates Court the plaintiff in the Court below limited his claim to general damages to $2,850.

Counsel who appeared on instructions from the appellant's solicitor suggested that the second ground was intended to be on appeal against the quantum of damages awarded. I am not prepared to so interpret the clear wording of the second ground of appeal.

All the plaintiff had to do was establish negligence by the defendant and prove his loss and injuries and this he did. Damages were then assessed and awarded by the Court.

There is no merit in the second ground of appeal which also fails.

I would be inclined to agree with the third ground of appeal but the alleged unreasonableness of the apportionment in my view was the finding that the respondent was equally to blame for the accident. There has not, however, been an appeal by the respondent and I am not called on to determine what was a reasonable apportionment.

On the facts the respondent was either not negligent at all or if was, the degree of his negligence was slight and certainly not 50%.

The apportionment was in my view unduly favourable to the appellant. There is no merit in the third ground of appeal which also fails.

As to the fourth ground of appeal there was an abundance of evidence to support the Magistrate's finding and this ground also fails.

The appeal is dismissed with costs to the respondent.

(SGD) R.G. Kermode
JUDGE

Suva,
6th June, 1978.