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IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
CIVIL APPEAL NO. 4 OF 1983.

Between:

1. VIJENDRA PRASAD s/o Ant Ram — APPELLANTS
2. R. MOHAMMED ASLAM s/o Rahamatullah

- and -

RAJ KUMAR SINGH s/o Ram Singh — RESPONDENT

Mr. H.M. Patel for appellants.
Mr. J.N. Singh for resondent.

J U D G M E N T

The appellants appeal against the judgment of the Magistrate's Court delivered on the 15th September, 1982, whereunder the appellants were ordered to pay the respondent the sum of $2,320 inclusive of $100 assessed costs.

The claim arose out of an accident involving the respondent's vehicle which was involved in an accident with a vehicle owned by the second appellant and driven by the first appellant in Rodwell Road, Suva, on the 8th May, 1981.

The grounds of appeal are as follows :

1. That the Learned Trial Magistrate erred in law and in fact in holding that the first appellant was negligent when there was insufficient evidence adduced by the plaintiff accordingly.

2. That the Learned Trial Magistrate erred in law and in fact in entering judgment for the respondent/plaintiff in the sum of $2,320 without considering the merits of the affidavit of the second appellant sworn on the 13th of August, 1982 and filed during the said trial.

3. That the Learned Trial Magistrate was manifestly wrong in law in assessing and/or accepting the value of the vehicle in the sum of $2,474.00 as the market value without calling for an independent valuer.

4. The Learned Magistrate erred in law and in fact in not adjourning the case on the 15th of September, 1982, and/or setting aside the judgment on the 10th of November, 1982, particularly in the interest of justice.

5. The finding and Judgment of the Learned Trial Magistrate is unreasonable and cannot be supported having regard to the evidence as a whole.

Mr. Iqbal Khan appeared for the defendants (appellants) in the Magistrate's Court and when case came on for hearing on 2nd June, 1982, Mr. Khan asked for an adjournment because the whereabouts of the first defendant was unknown.

This application was resisted by Mr. Singh and the Court refused an adjournment.

Mr. Khan thereupon asked to be released. The Record does not disclose any reasons for Mr. Khan seeking release. The Record shows:

"I Khan asked to be released.
Court: Yes."

There is no record whether the second defendant was present or not or that he agreed to his counsel being released. Mr. Khan should not have asked to be released and the Magistrate should not have agreed to his release in the circumstances.

Mr. Khan having accepted a brief should not have asked to be released unless he first notified his

clients that he was going to do so so that they could if they wished engaged other counsel.

Mr. Singh called only the plaintiff. There is no record that the Magistrate asked whether the second defendant, if he was present, whether he wished to cross-examine the plaintiff or to give evidence himself.

If the second defendant was present and did not wish to cross-examine or give evidence those facts should have been noted by the Magistrate.

The Magistrate after Mr. Singh addressed the Court, without adjourning, in an extremly short judgment accepted the evidence of the plaintiff and gave judgment for him against both defendants.

The plaintiff's story was brief but he did establish negligence on the part of the first defendant. It was admitted in the Statement of Defence that the second defendant owned the vehicle driven by the first defendant although it was not pleaded or established in evidence or admitted that the first defendant was at the relevant time the servant or agent of the second defendant. However, proof of ownership is prima facie evidence that the vehicle at ne material time was being driven by the second defendant's agent or servant (Barnard v. Sully (1931) 47 T.L.R. 557.

The plaintiff made little effort to establish the damages he claimed was sustained to his vehicle. He alleged the vehicle was a write off but purported to

produce two quotations for repairs indicating vehicle was repairable at a cost of $1,146.95 or $1,381.00 dependent on which quotation was accepted. He alleged the value of the vehicle before the accident was $2,500 and he sold the wreck for $280. His value of $2,500 was not evidence and merely expressed his opinion. He did not call either of the persons who quoted for repairs. Either of them could have established the nature of the repairs and that all repairs were necessary because vehicle had been involved in an accident.

The quotations should not have been accepted as evidence without calling the persons who made the quotations. All that the quotations establish is that two persons made different estimates about a damaged car.

If the second defendant was present, he had no opportunity to cross-examine the maker of the document and as he was unrepresented, the Magistrate should have ensured there was proper proof of the plaintiff's claim.

The Magistrate did not properly consider the evidence before him and as far as the scanty record shows, the conduct of the case was irregular.

I regret that the action will have to be remitted to the Magistrate's Court for rehearing. As the trial Magistrate has left Fiji it will be another Magistrate who will deal with the case.

There is no doubt that the appellants will be held liable but the quantum of the damage is very much in issue.

The appeal is allowed. Judgment of the Magistrate is set aside and the action remitted to the Magistrate's Court for rehearing.

Appellants are to have the costs of this appeal but each party shall bear their own cost of the initial hearing of the action.

(R.G. KERMODE)
ACTING CHIEF JUSTICE

S U V A,

16 SEPTEMBER, 1983.