

IN THE SUPREME COURT OF FIJI
AT SUVA

CIVIL PETITION NO: CBV0018 OF 2022

Court of Appeal No. ABU 132 of 2018

BETWEEN : **MUKESH CHAND**
Petitioner

AND : **AIYUB KHAN**
Respondent

Coram : **The Honourable Mr. Justice Brian Keith**
Judge of the Supreme Court

: **The Honourable Mr. Justice Terence Arnold**
Judge of the Supreme Court

: **The Honourable Mr. Justice Alipate Qetaki**
Judge of the Supreme Court

Counsel : **Mr. S. Sharma and Mr. J. Dinati for the Petitioner**
: **Mr. A. Ram for the Respondent**

Date of Hearing : **11 October 2023**

Date of Judgment : **27 October 2023**

JUDGMENT

Keith J:

[1] I agree with the judgment of Arnold J. There is nothing which I can usefully add.

Arnold J:

Background

[2] The Petitioner, Mukesh Chand, was employed as a grader driver by the Respondent, Aiyub Khan. In June 2016 in the course of his employment, he was injured when the engine of the grader he was operating to form a road stopped and the grader became uncontrollable and began to slide down a slope. Mr Chand jumped from the grader and suffered serious head and other injuries.

[3] Mr Chand sued Mr Khan for breach of an implied term in their contract of employment, to the effect that Mr Khan would:

“by its servants and/or agents take all reasonable care to provide and maintain a safe system of work and effective supervision of the same and would not expose the plaintiff to a risk of damage or injury of which they knew or ought to have known, and would take all reasonable measures to ensure that the place where the plaintiff carried out his work and the machines he was required to operate and use were safe and that the defendant would maintain a safe and proper system of working.”

Mr Chand alleged that Mr Khan had breached this term in a variety of ways including by failing to provide a fit and proper grader with a properly maintained engine; by failing to provide or maintain a safe system of work; by failing to provide adequate instructions and supervision to Mr Chand; and by requiring Mr Chand to work in a dangerous environment without due regard to his safety. He invoked the principle of *res ipsa loquitur*.

[4] Mr Chand was unsuccessful at trial.¹ The trial Judge found that Mr Chand had failed to establish any of the acts of negligence alleged against Mr Khan. While recognising the difficulty resulting from the fact that Mr Chand’s injuries were such that he was unable to give evidence about how the accident had occurred, the trial Judge concluded that there was no evidence as to why the engine of the grader stopped, nor was there any evidence that the grader suffered from any mechanical defect. In particular, Mr Khan had engaged an independent mechanic to inspect the grader the day after the accident. His evidence was that the grader was in proper working order. Moreover, a Land Transport Authority officer gave evidence that although the grader’s registration had expired, its certificate of

¹ *Chand v Khan* [2018] FJHC 910.

road worthiness was current. The Judge held that the *res ipsa loquitur* principle did not apply and concluded that the likelihood was that the accident resulted from Mr Chand's own negligence.

[5] Mr Chand appealed. Although Mr Chand had raised numerous grounds of appeal, the Court of Appeal said that their main thrust was that Mr Khan had failed to provide proper supervision for Mr Chand while he was at work. The Court of Appeal rejected that contention and dismissed the appeal.² The Court of Appeal accepted Mr Khan's submission that Mr Chand was an experienced grader operator and was in full charge of the grader at the time of the accident. No amount of supervision would have assisted in the emergency situation that Mr Chand confronted.

[6] Mr Chand now petitions this Court for leave to appeal. In his Petition, Mr Chand raises the same matters that were raised in the Courts below, including issues relating to the safety of the system of work, the extent of training and supervision that Mr Chand received, and the roadworthiness of the grader.

Discussion

[7] Under s 7(3) of the Supreme Court Act 1998, this Court may only grant leave to appeal in a civil case where the case raises:

- a far-reaching question of law,
- a matter of great general or public importance, or
- a matter that is otherwise of substantial general interest to the administration of civil justice.

[8] There is no such matter in the present case. Rather, this is a case where the Courts below have applied well-established principles to a particular set of facts. There is nothing in the Record before the Court that justifies a challenge either to the factual findings made in the Courts below or to their application of the law to the facts as found.

² *Chand v Khan* [2022] FJCA 123.

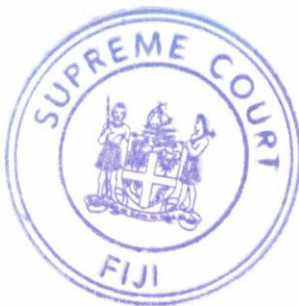
[9] I am sympathetic to the predicament that Mr Chand found himself in, especially given that he was unable to give evidence and given also the absence of written documentation (such as maintenance records, training and work safety guidelines and notes of daily briefings) and, most surprisingly perhaps given the ubiquity of mobile phones, the absence of photographs of the accident scene immediately after the accident.


[10] Irrespective of those challenges, however, Mr Chand was always going to face difficulties establishing his case. The fact that an independent mechanic had inspected the grader the day after the accident and found it to be in good working order, so that the engine stoppage could not be attributed to some failure on the part of Mr Khan, became an almost insurmountable hurdle.


[11] In the result, I would refuse Mr Chand's petition for leave to appeal. In the circumstances, I would make no order for costs.

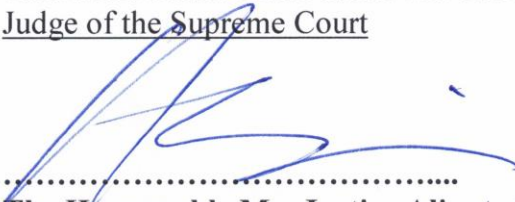
Qetaki J:

[12] I agree with the Judgment of Arnold J.




.....
The Honourable Mr. Justice Brian Keith
Judge of the Supreme Court


.....
The Honourable Mr. Justice Terence Arnold
Judge of the Supreme Court


.....
The Honourable Mr. Justice Alipate Qetaki
Judge of the Supreme Court