

**IN THE SUPREME COURT OF FIJI**  
**APPELLATE JURISDICTION**

**CIVIL PETITION NO. CBV 0016 of 2023**  
**Court of Appeal No. ABU 009 of 2022**

**BETWEEN** : **FUEL SUPPLIES PACIFIC PTE LTD**  
*Petitioner*

**AND** : **RAJNESH PRASAD & RANJEETA MALA**  
*First Respondent*

**AND** : **RAJNESH PRASAD & RANJEETA MALA**  
*Second Respondent*

**AND** : **RAKESH PRASAD**  
*Third Respondent*

**Coram** : **The Hon. Justice William Calanchini**  
**Judge of the Supreme Court**

**The Hon. Justice Terence Arnold**  
**Judge of the Supreme Court**

**The Hon. Justice Lowell Goddard**  
**Judge of the Supreme Court**

**Counsel** : **Mr K Singh for the Petitioner**  
: **Mr S Nandan for the First and Second Respondents**  
: **Mr S Nand for the Third Respondent**

**Date of Hearing** : **8 April, 2024**

**Date of Judgment** : **26 April, 2024**

# **JUDGMENT**

## **Calanchini, J**

- [1] I have had the advantage of reading the draft judgment of Arnold J and agree with his reasoning and his conclusion.

## **Arnold, J**

### **Introduction**

- [2] The Petitioner, Fuel Supplies Pacific Pte Ltd, seeks leave to appeal against a decision of a single Judge of the Court of Appeal under s 7(3) of the Supreme Court Act 1993.<sup>1</sup> To explain the Petition, it is necessary to set out the background briefly.

### **Background**

- [3] Fuel Supplies employed the Third Respondent, Rakesh Prasad, as a truck driver. Around 3.15 pm on 31 October 2013, Rakesh Prasad was driving a Fuel Supplies truck along King's Road to the Fuel Supplies' depot in Suva when he collided with a taxi driven by the First Respondent, Rajnesh Prasad. The accident occurred when the truck driver changed from the lane in which he was travelling to the lane in which the taxi was travelling to allow following traffic to pass.
- [4] As the truck moved over, it hit the side of the taxi, causing it to spin several times before it stopped. The occupants of the taxi – Rajnesh Prasad, his wife Ranjeeta Mala and their young daughter, Tanvi Tanish – were shaken but did not suffer substantial injuries. The exact extent of their injuries was the subject of dispute at trial.<sup>2</sup>
- [5] On 27 January 2016, the taxi-driver issued a writ of summons against the truck driver and Fuel Supplies as his employer seeking damages in relation to their injuries. The annexed statement of claim alleged that the truck driver was employed by Pacific Fuels, had been negligent in driving the truck in the course of his employment, and had caused injuries to the taxi-driver, his wife and their daughter. Special and general damages were sought, as well as interest and costs.

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<sup>1</sup> The question whether the Petitioner has already been granted leave is dealt with at para [28] below.

<sup>2</sup> The taxi suffered considerable damage on one side as a result of the accident. Liability for that damage must have been resolved as it did not figure in the litigation.

[6] The writ of summons was served on the truck driver, who filed an acknowledgement of service and a statement of defence. In the statement of defence, the truck driver put negligence in issue (ie, whether he had been negligent and whether the taxi-driver was contributorily negligent), and also put the occupants of the taxi to proof in relation to their injuries.

[7] There is a dispute, however, about whether the writ was served on Fuel Supplies. I will return to this point in more detail below. For present purposes, it is sufficient to note that the trial Judge acted on the basis that Fuel Supplies had been served with the writ but had decided not to defend the claim.<sup>3</sup>

### **Proceedings**

[8] The matter went to trial in August 2018. Kumar CJ delivered judgment on 7 December 2021. The Chief Justice noted that there was no dispute that the truck was owned by Fuel Services and was being driven by their employee in the course of his employment.

[9] The Chief Justice found that the truck driver had been negligent, that the taxi-driver had not been contributorily negligent and that the plaintiffs had suffered some, but not all, of the injuries alleged. He entered judgment against both the truck driver and Fuel Supplies as his employer, the following being the main awards:

- a. The taxi-driver - \$20,000 (plus interest) for pain and suffering.
- b. The taxi-driver's wife - \$5,000 (plus interest) for pain and suffering.
- c. Their daughter - \$8,000 (plus interest) for pain and suffering.

[10] Fuel Supplies say that they only found out about the proceedings when they received a letter dated 17 January 2022 from the taxi-driver's solicitors enquiring how they would be paying the judgment sum, following which steps were taken to enforce the judgment against them. By this stage, the time for appealing the High Court's judgment had expired. Fuel Supplies immediately sought a stay of proceedings and

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<sup>3</sup> *Prasad v Fuel Supplies Pacific Limited* [2021] FJHC 363, at para [49]: "This Court notes that [Fuel Supplies] chose not to file Statement of Defence and take part in this proceeding".

applied for leave to appeal out of time. They were unsuccessful before a single Judge of the Court of Appeal<sup>4</sup> and now petition this Court.

### **Basis for Petition**

[11] The single Court of Appeal Judge had concluded that, irrespective of service, Fuel Supplies had been represented at, and participated in, the trial. Before this Court, the parties accepted that this was incorrect.

[12] According to Fuel Supplies, the true position is that it did not receive any information about the case at any stage, was not represented at the trial and did not participate in it in any way. As a consequence, there has been a fundamental breach of the rules of natural justice – liability has been imposed upon Fuel Supplies without it being given any opportunity to defend itself.

### **Discussion**

[13] Before I go on to discuss the merits of the petition, I should note several salient factual matters.

*(i) Relevant factual matters*

[14] First, Fuel Supplies knew of the accident immediately after it occurred, and that the taxi-driver was pursuing a personal injury claim against the company. In particular:

- a. The truck driver gave evidence (both at trial and in subsequent affidavits) that he contacted his employer immediately after the accident, and two company representatives attended the scene, one of whom drove the taxi-driver and his family home. The taxi-driver had apparently called the police, and by this stage the truck driver had been taken to the police station. A Fuel Supplies' representative handed the police the Third-Party Insurance Policy for the truck before the truck driver was released. The police indicated that the truck driver was likely to be charged with careless driving. They followed this up with a short report on 5 November 2013, which Fuel Supplies received.

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<sup>4</sup> *Fuel Supplies Pacific Limited v Prasad* [2023] FJCA 101.

- b. In relation to the personal injury claims, the taxi-driver wrote to Fuel Supplies' insurer on 7 February 2014 and to Fuel Supplies on 27 March 2014, advising them of the claims, attaching relevant documentation, and inviting each to contact him about resolving the claims.

[15] Second, in early 2022, Fuel Supplies' lawyers wrote to the High Court Registry requesting that they be permitted to search the Court file. They were particularly concerned to find out whether there was an affidavit of service on the file. The Registry informed them that there was not. Unfortunately, this information was misleading. An affidavit of service had been filed in the High Court on 7 June 2016 (the backing sheet was date-stamped and initialed by a Registry officer), but it appears to have been removed from the file for some reason during a directions or similar hearing and not replaced. The taxi-driver's lawyers had a copy of the affidavit of service as filed, however, and annexed it to an affidavit dated 22 April 2022.

[16] In the affidavit of service, a process server swears that he served a sealed copy of the writ of summons dated 27 January 2016 at Fuel Supplies' registered office on 30 January 2016. A true copy of the writ (including the statement of claim) was attached.

[17] Further evidence of timely service of the writ of summons is found in the file before this Court. In particular:

- a. The process server kept a note of details of service on the backing sheet of a copy of the writ. Relevantly the note reads:

“Name: FUEL SUPPLIES PACIFIC LTD  
Sign: Refuse to Receive  
Date: 30/1/16  
Time: 12.40 pm  
Served at Registered office”

- b. The taxi-driver filed an affidavit dated 22 April 2022 annexing a copy of the affidavit of service and deposing that he was present when the writ was served.

- c. The truck driver filed an affidavit dated 18 March 2022 in which he said:

“... I can recall that the Appellants Accountants, Ami Chand, had called me in 2016 that they have received a paper in regards

to a claim made by the [taxi-driver] but I cannot confirm whether it was the Writ of Summons or some other paper”.

It is noteworthy that Ami Chand acknowledged receipt of the letter dated 17 January 2022 to Fuel Supplies from the taxi-driver’s lawyers enquiring about how the company would be paying the judgment sum.

(ii) *Effect of service*

[18] Where a writ of summons is served on a defendant, the effect is that the defendant is obliged to file an Acknowledgement of Service and indicate whether or not it intends to defend the claim. If it fails to do that, the plaintiff may, according to the advice on the writ, “proceed with the action and judgment may be entered against you forthwith *without further notice*” (emphasis added). Accordingly, acknowledging service and notifying a decision about how it will respond to the claim is critical to a defendant’s position in the litigation. In general, without taking those steps, a defendant has no right to receive subsequent documentation.

[19] I note that O.13, r 2 of the High Court Rules 1988 provides:

Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

The advice on the writ is consistent with this.

(iii) *Objections to affidavit of service and statement of claim*

[20] Counsel for Fuel Services raised a number of objections to the affidavit of service. In my view, none of them has substance, but I will briefly address two.

[21] First, Fuel Services argued that the affidavit does not identify specifically the registered office at which the writ was served. However, the intitlement to the affidavit of service refers to Pacific Fuels Pte Ltd “a ... company having its registered office at Manoca Industrial Area, Nausori”. The process server deposed:

“At the time of service the 2<sup>nd</sup> Defendant refuse to sign the said Writ of Summons and a copy was left at their registered office.” [sic]

There is no reason to believe that the writ was left at some other address.

[22] Second, it was argued that the affidavit should have identified the person who refused service. How the process server was supposed to establish the identity of the person who refused service was not explained.

[23] Turning to the statement of claim, Fuel Services submitted that it did not raise a vicarious liability claim. However, although it did not raise vicarious liability as a separate cause of action, the statement of claim specifically pleaded the requirements for such a claim. In particular:

- a. paragraph 2 of the statement of claim alleged that the first defendant (the truck driver) was at all material times the driver of the truck;
- b. paragraph 3 alleged that the second defendant (Fuel Supplies) was at all material times the owner of the truck;
- c. paragraph 5 alleged that the truck driver “as an employee, agent, or servant of [Fuel Supplies]” drove the truck so negligently and carelessly that the truck collided with the taxi;
- d. paragraphs 6 and 8 gave particulars of the truck driver’s negligence and the injuries suffered by the taxi-driver and his family; and
- e. paragraph 11 claimed general damages “from the Defendants under pain and suffering”.

[24] In my view, this pleading is sufficient to raise a vicarious liability claim against Fuel Supplies.

### **Outcome**

[25] It will be recalled that under s 7(3) of the Supreme Court Act, the Supreme Court may not grant leave in a civil case unless it raises:

- a. a far-reaching question of law;
- b. a matter of great general or public importance;

- c. a matter that is otherwise of substantial general interest to the administration of civil justice.

[26] Fuel Supplies is correct that the decision of the single Judge of the Court of Appeal proceeded on an erroneous factual basis, and that this was to its disadvantage. To that extent, there is a basis for its Petition.

[27] However, if the Court of Appeal Judge had proceeded on the basis of the correct facts (ie, that Fuel Supplies was served with the writ of summons but did not acknowledge service or notify its position in relation to the taxi-driver's claim), he must inevitably have reached the same conclusion as he did, namely that Fuel Supplies' application for an extension of time to appeal should be dismissed. This result was inevitable for the reasons explained above.

[28] There is one final matter. At the hearing, the counsel for the Petitioner handed up a copy of orders made by the Acting President of the Court on 1 December 2023. One of the orders was: "Petitioner is given leave to appeal to the Supreme Court". Presumably, that order was made under s 11 of the Supreme Court Act 1998. The circumstances in which the order was made are not clear, and the order may not mean what it appears to mean. In any event, the Court has power under s 11(b) of the Act to vary it.

### **Disposition**

[29] Accordingly, I would:

- a. Refuse the Petitioner leave to appeal;
- b. Order the Petitioner to pay costs in the amount of \$5,000 to the First and Second Respondents and \$5,000 to the Third Respondent.

### **Goddard, J**

[30] I have read the judgment of Arnold J and agree with it in its entirety.



[31] **Orders of the Court**

1. *The Petitioner's application for leave to appeal is dismissed.*
2. *The Petitioner must pay costs in the amount of \$5,000 to the First and Second Respondents and \$5,000 to the Third Respondent.*



**The Hon. Justice William Calanchini**  
Judge of the Supreme Court



**The Hon. Justice Terence Arnold**  
Judge of the Supreme Court



**The Hon. Justice Lowell Goddard**  
Judge of the Supreme Court