

IN THE SUPREME COURT OF FIJI
[CIVIL APPELLATE JURISDICTION]

CIVIL PETITION: CBV0002 OF 2024

[Court of Appeal No: ABU 101 of 2018]

BETWEEN : **PRITISHNA LATA BHAN**

Petitioner

AND : 1. **GABRIEL SINGH**
2. **NITIN RONEESH MISHRA**

Respondents

Coram : The Hon. Mr Justice Brian Keith, Judge of the Supreme Court
The Hon. Mr Justice Terence Arnold, Judge of the Supreme Court
The Hon. Mr Justice Alipate Qetaki, Judge of the Supreme Court

Counsel: Mr H.K. Nagin and Ms M. Deo for the Petitioner
Mr R. Prakash and Mr S. Nandan for the Respondents

Date of Hearing: 9th October, 2025

Date of Judgment: 30th October, 2025

JUDGMENT

Keith, J

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

Arnold, J

Introduction

- [2] Car owners often allow other people to drive their cars. Sometimes, a driver who is driving a car with the owner's permission has an accident. Occasionally, the accident is the result of the driver's negligence. While the negligent driver may well be personally liable for any property damage or personal injuries caused by their negligence, they may not have the financial capacity to make good any claims. So the question will arise whether the owner has any liability for the driver's actions, as that may give rise to a claim under the owner's third-party liability insurance. This requires consideration of the circumstances in which a car owner will be vicariously liable for losses caused by the negligence of a driver who has the owner's permission to drive the car at the time of the accident.
- [3] On 7 September 2008, the First Respondent, Gabriel Singh, was a passenger in a car that went off the road at speed in the course of an overtaking manoeuvre, causing him significant injuries. The car was owned by the Petitioner, Pritishna Bhan, but was driven at the time by the Second Respondent, Nitin Mishra. Ms Bhan was in the car at the time, as was a fourth person, a friend. For ease of understanding, I will refer to the First Respondent as the passenger, the Petitioner as the owner and the Second Respondent as the driver.
- [4] The passenger sued the driver and the owner on the basis that (i) the driver was personally liable for losses resulting from the injuries caused by his negligent driving and (ii) the owner was vicariously liable because the driver was driving the car as her agent. Although disputed at trial, it has been accepted on appeal that the accident was caused by the driver's negligence.
- [5] In the High Court, Kumar J found for the passenger against both the driver and the owner. The Judge held that the driver and the owner were jointly and severally liable

for damages in the amount of \$472,415 (plus interest) and costs of \$5,000.00.¹ The owner appealed. The Court of Appeal upheld both the Judge's decision as to liability and his damages award. In relation to the appeal, the Court made an indemnity costs order against the owner in favour of the passenger.² The driver played no part in the appeal.

[6] The owner now petitions for leave to appeal to this Court against both the finding of vicarious liability and the quantum of damages awarded. Before addressing the Court's jurisdiction, I will briefly describe what happened at trial in relation to the two areas at issue.

Vicarious liability

[7] Having found that the driver's negligent driving caused the accident, Kumar J turned to the issue of vicarious liability. The Judge identified the leading authority in Fiji as being *Ganesh v Ali*.³ The Court of Appeal in that case summarised the relevant principles concerning vicarious liability in situations such as the present from the judgments of the House of Lords in *Morgans v Launchbury*.⁴ In particular, the owner of a car would only be vicariously liable for damage caused by the driver's negligence if the driver was driving the car as the owner's authorised agent and on the owner's behalf - mere permission to drive is not enough to create vicarious responsibility for negligence. Vicarious liability in this situation was based on the delegation of a task or duty rather than on ownership. Ultimately, whether vicarious liability did attach depended upon an assessment of the evidence in the particular case.

[8] Kumar J then went on to deal with the facts relevant to the vicarious liability assessment. To understand how he did so, it is necessary to say something about the evidence at trial.

¹ *Singh v Mishra* [2018] FJHC 839.

² *Bahn v Singh* [2024] FJCA 27.

³ *Ganesh v Ali* (1978) 24 FLR 147.

⁴ *Morgans v Launchbury* [1972], UKHL 5 [1973] AC 127.

[9] Immediately after the accident on 7 September 2018, the driver and the owner were interviewed by the police. During the course of her interview on 8 September, conducted while she was in hospital, the owner described how she had driven her car from her place to pick up a friend and the passenger. She said they drove to Navua, where they stopped at the passenger's house. The group was then going on to the driver's place. The owner said:

From [the passenger's] house I gave the key to drive the car to [the driver] because he knew the area very well. We went to [the driver's] place. He was driving at normal speed.

She then went on to describe the accident.

[10] However, in her evidence at trial in December 2020, the owner gave a different account. She said that she left the keys in the ignition while they were at the passenger's house. When they left, the driver went to the car before her and sat in the driver's seat. She said she told him to move and not to drive, but he refused. She said that she had no alternative but to get into the passenger seat and let him drive the car.

[11] When she was cross-examined, her inconsistent statement to the police was put to her and she was questioned about it. She said she gave the statement while she was in hospital the day after the accident and was under medication. There was, however, no evidence as to the nature of the medication, her precise condition, or her ability to recall the events of the previous day, except that having described in her statement the events of the previous day up to the moment the driver lost control of the car, the owner said she could not remember what happened from then on until she was in the hospital.

[12] Similarly, when the driver gave evidence, he said that when they left the passenger's place to go to the driver's place, he went and sat in driver's seat of the car; the keys were in the ignition, so he started the engine. The owner told him that she would drive but he refused to move. He said the owner had no choice but to go along with that. Again, it was put to him in cross-examination that he had given a different account

when interviewed under caution by police on 9 September 2018. In that interview, he told police that the owner had authorised him to drive her car. The driver agreed he had said that, but said when he was interviewed he was in shock, had been involved in a road accident, had sustained head injuries, had been in a cell for more than 24 hours and “got some mental tortures by police officers”.⁵ He said his evidence in court was correct and denied that it was fabricated.

[13] The trial Judge found that the accounts given by the owner and the driver in their evidence had been fabricated and that the accounts they gave to police shortly after the accident were true. He also found that the trip that day had been planned by the passenger, the owner and the driver, ie it was coordinated arrangement. He therefore concluded that the driver was driving the owner’s car at the time of the accident with her permission and that she had delegated her duty and responsibility to him (ie, the driver was driving the car on the owner’s behalf). This formed the basis for his finding of vicarious liability.

[14] A witness’ out of court statement which is inconsistent with their evidence in court will not usually be treated as evidence of the facts in it. Rather its relevance is to undermine what the witness has said in court, However, in this case, the evidence of the owner and the driver was so similar to each other, and yet so different from what they had both told the police within a day or so of the accident, that the Judge was entitled to conclude that they had deliberately put their heads together to concoct a scenario which might absolve the owner from liability. That meant that exceptionally the Judge was entitled to find that what they had told the police had been the truth.

[15] The petition for leave to appeal identified two grounds of appeal in relation to the vicarious liability issue. Both challenged the basis on which the Judge made his factual findings, by, for example, alleging that he had not taken into account what the owner and the driver had said in their evidence. Accordingly, Mr Nagin, who appeared for the owner on the petition, was asked whether his client was challenging the validity of the legal principles which the Judge had relied upon in considering whether vicarious liability existed, or whether he was arguing that the Judge had misapplied

⁵ It is relevant to note that the caution interview records that when the driver was asked whether he was “physically and mentally fit for the interview”, he said he was.

the accepted principles in the circumstances of this case. In his response, Mr Nagin suggested that his arguments went to both aspects.

[16] In fact, however, both the written and oral submissions on behalf of the owner went only to the factual issue. By way of example, following the citation of an extract from *Morgans v Launchbury*, the owner's written submission says:

15. The application of the aforementioned case to the testimonies of both the Petitioner and the Second Respondent clearly establishes that the Petitioner did not grant permission for the Second Respondent to drive the motor vehicle, therefore should not bear vicarious liability for the Second Respondent's conduct.

The submission then cited another case and submitted that the trial Judge had wrongly applied it:

in order to establish that the Petitioner is vicariously liable in the current matter; the Petitioner at no point in time instructed or provided authority to the Second Respondent to drive the said motor vehicle. The Second Respondent in his evidence also testified the same that the Petitioner had instructed him not to drive and despite the same he drove without permission and authority causing an accident.

[17] The effect of these submissions is to challenge the factual findings made by the Judge on the basis of his assessment of the witnesses, having heard them give their evidence-in-chief and then undergo cross-examination by reference to their previous inconsistent statements.

[18] In addition, in the course of his oral submissions, Mr Nagin handed up copies of four Fijian authorities. All were examples of Fijian courts applying the generally accepted principles for determining vicarious liability in driving situations, both within and without employment relationships. The judgments in three of the cases referred to the judgments in *Morgans v Launchbury*, the same authority as Kumar J referred to and applied in the present case. None of the cases suggested that the generally accepted principles were unsuited to Fijian conditions. In my opinion, it was open to the Judge to make the factual findings he did.

Damages

[19] Having made his liability findings, Kumar J assessed damages. The Judge analysed the damages claim in some detail. Some aspects of the claim he disallowed; some he reduced; others he awarded as claimed. Again, the owner's challenge to the Judge's analysis focusses not on the correctness of the relevant principles as to damages, but on the details of particular claims, particularly as to expenses in relation to an unsuccessful trip to New Zealand for medical treatment. These matters had been raised before the Judge, and he had addressed them. Similarly, they were raised and addressed in the Court of Appeal.

Should leave be given?

[20] As is well known, section 7(3) of the Supreme Court Act 1998 provides that the Court may only give leave to appeal in a civil case which raises (i) a far-reaching question of law; (ii) a matter of great general or public importance; or (iii) a matter that is otherwise of substantial general interest to the administration of civil justice. This case does not fall within any of these criteria. Rather, it seeks to challenge factual findings made by the Judge, including findings as to credibility, and damages assessments made within the framework of accepted principles. It is not part of our role as a final court to deal with such matters. As section 7(3) makes clear, this Court has jurisdiction only in respect of civil appeals with broad significance.

Disposition

[21] Accordingly, I would deny the Petitioner (the owner) leave to appeal. Given that, because of its factual focus, this petition never had any prospect of succeeding in this Court, I would order the Petitioner to pay costs of \$10,000 to the First Respondent (the passenger).

Oetaki, J

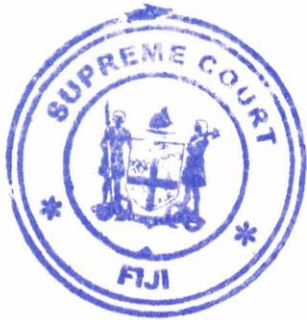
[22] I wholly agree with the judgment and reasoning.

Orders of the Court:

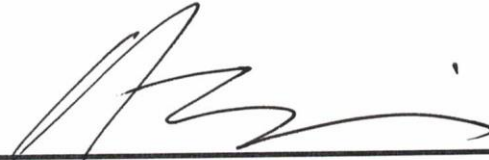
1. *The Petitioner's application for leave to appeal is dismissed.*
2. *The Petitioner must pay the First Respondent costs in the amount of \$10,000.00.*



The Hon Mr Justice Brian Keith
JUDGE OF THE SUPREME COURT



The Hon Mr Justice Terence Arnold
JUDGE OF THE SUPREME COURT



The Hon Mr Justice Alipate Qetaki
JUDGE OF THE SUPREME COURT