

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

CIVIL APPEAL NO. : HBA 18 of 2014

BETWEEN : MAHENDRA PRASAD
Appellant

AND : SARLA DEVI
Respondent

COUNSEL : Appellant in Person.
No appearance for the Respondent.

Date of Hearing : 15th June 2015

Date of Judgment : 03rd July 2015

JUDGMENT

[1] This is an appeal from the ruling of the learned Magistrate on the appeal of the appellant against the order of the Small Claims Tribunal dated 10th January 2014.

[2] The respondent's case before the Small Claims Tribunal was that on 09th October 2013 the appellant, who was the driver of the vehicle bearing registration number DN 723, came behind and collided with the her car bearing registration number CQ 454.

[3] The manner in which this accident occurred is not in dispute. The appellant has not denied this position before the Tribunal. His explanation was that at the time of the accident it was raining and he could not see the lights of the respondent's car.

[4] After hearing the parties the Tribunal awarded \$3000 as damages and ordered the appellant to pay the said amount in monthly installments of \$100.

[5] The appellant preferred an appeal against this order to the Magistrate in terms of Section 33 of the Small Claims Tribunal Decree and the learned Magistrate dismissed the appeal on the ground that he had no power under Section 33 of the Small Claims Tribunal Decree to consider the merits of the appeal.

[6] Being aggrieved by the said dismissal the appellant preferred this appeal. At the hearing of the appeal the appellant appeared in person and the respondent was absent and unrepresented.

[7] Section 33(1) of the Small Claims Tribunal Decree provides as follows:

Any party to proceedings before a Tribunal may appeal against an order made by the Tribunal under section 15(6) or section 31(2) on the grounds that:

(a).The proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or

(b).The tribunal exceeded its jurisdiction.

[8] In the instant appeal there is no allegation that the Tribunal exceeded its jurisdiction. The appellant submits that the evidence before the Tribunal was one sided and he was not allowed to adduce any evidence and that since he has been

discharged by the Magistrate's Court from the charges framed by the Police he is not liable to pay damages.

[9] The argument that the appellant is not liable to pay damages since he has been discharged by the Magistrate's Court from the charges framed against him has no basis. Discharge or acquittal by the Magistrate's Court from the charges framed against the appellant does not deprive the respondent from suing the appellant for the damage caused to her car. A conviction may have a bearing on the civil action but certainly not an acquittal or discharge. The degree of proof required in a criminal case is very much higher than in a civil action. In other words criminal cases must be proved beyond reasonable doubt whereas in civil matter the required degree of proof is balance of probability. The evidence which may not be sufficient to convict a person on a criminal charge may be sufficient to hold him liable in damages. Therefore, the argument of the appellant that he is not liable to pay any damages for the reason that he has been discharged by the Magistrate's Court from the charge of negligent or reckless driving is without merit. It is also pertinent to note that the admission of the appellant made at the inquiry before the Tribunal that he came behind and collided with the respondent's car alone shows that he was responsible for the accident.

[10] Although the appellant alleges that the evidence was one sided and he was not allowed to adduce any evidence, he has not been able to substantiate this allegation before the learned Magistrate. On a careful perusal of the proceedings had before the Tribunal it appears that it had been very accommodative. The proceedings show that when the appellant informed the Tribunal that he was discharged from the Magistrate Court Proceedings, the Tribunal postponed the hearing to obtain a clarification on that matter. The appellant had had sufficient

time and opportunity to bring evidence before the tribunal and the Tribunal had not imposed any restrictions on him or restraint him from adducing evidence.

[11] The respondent, to establish the quantum of damages claimed, produced before the Tribunal three quotations from three different garages. The vehicle involved in the accident bears the registration number CQ 454 whereas the registration number of the vehicle referred to in the quotations is CQ 545. This may have been a mistake made by the people who issued these quotations. However, the appellant should have raised this matter before the Tribunal. The proceedings do not show that this matter was brought to the notice of the Tribunal at the hearing. These matters cannot be raised for the first time in appeal. Further, when the Tribunal awarded \$3000 as damages and directed the appellant to pay this amount in instalments at the rate of \$100 per month he has suggested that he would pay \$50 per month which shows that he has agreed to pay the amount awarded by the Tribunal. The appellant submitted that he agreed to pay the properly assessed damages at the rate of \$ 50 per month and not the damages claimed by the respondent but the record does not show that he made such a statement to the Tribunal. When the amount payable was decided by the Tribunal the appellant has merely offered to pay \$ 50 per month. In view of the reasons set out above the appellant cannot now be heard to complain that the amount awarded by the Tribunal was excessive and/or arbitrary.

[12] The appellant also contends that the respondent has taken a long time to obtain these quotations and they have been obtained from people known to the respondent. It is to be noted that the referee has awarded as damages the amount stated in the lowest quotation. The delay in obtaining quotations does not invalidate them unless there is evidence that the respondent's car was damaged again after it was collided with the appellant's vehicle and before the quotations were obtained. Although the appellant complains that it has taken a long time for

the respondent to obtain quotations, on a careful perusal of them it appears that there is no such delay. The accident occurred on 09th October 2013 and the three quotations are dated on 22nd, 26th and 28th of the same month. I, therefore, do not see any undue delay in obtaining the quotations.

[13] In the circumstances it cannot be said that the learned Magistrate has erred in dismissing the appeal on the ground that he had no power to go into the merits of the appeal and also that the Tribunal has conducted the proceedings in a manner which was unfair and prejudicially affected the results of the proceedings.

[14] For these reasons I hold that the appeal of the appellant is without merit and liable to be dismissed.

[15] Decision of the Court.

- i. *The appeal of the appellant is dismissed.*
- ii. *No order for costs.*


Lyone Seneviratne

JUDGE.

