

In the High Court of Fiji at Suva

Civil Jurisdiction

Civil Action No. 260 of 2010

Between:	Jope Gonevulavula	First plaintiff
	Lavinia Gonevulavula	Second plaintiff
And:	Akuila Ratuloa	Third plaintiff
And:	Shivneil Chand	First defendant
And:	Total Fiji Limited	Second defendant

Appearances: Mr Peter Knight for the plaintiffs

Ms Leena Goundar for the defendants

Date of hearing: 15th June, 2015

Judgment

1. Introduction

- (a) On 27th October, 2008, Akuila Ratuloa, the third plaintiff was driving a Nissan van bearing reg. no. LM 250 along Milverton Road towards Rewa Street, when that vehicle was involved in a collision with Toyota dual cab reg. no. FF 466 driven by Shivneil Chand, the first defendant towards Grantham Road. Jope Gonevulavula and Lavinia Gonevulavula, the first and second plaintiffs allege that the Nissan van “owned” by them was damaged, as a result of the collision. The dual cab was owned by Total Fiji Limited, the second defendant and driven by the first defendant, as its agent.
- (b) The plaintiffs allege that the accident occurred due to the negligence of the first defendant. The defendants state that the accident was caused by the negligence of the third plaintiff. Alternatively, the defendants state that the collision occurred due to an

inevitable accident, in that the third plaintiff suddenly turned into the first defendant's lane and "*the First Defendant instinctively drove the Second Defendant's vehicle onto the (third) Plaintiff's lane to avoid a collision*".

- (c) The first and second plaintiffs claim a sum of \$ 38596.00, as damages caused to their vehicle. The statement of claim states that the vehicle of the first and second plaintiffs suffered serious damage and was a write off. The third plaintiff's claim for injuries suffered was settled out of Court.

2. *The determination*

- a. The agreed facts provide that the collision occurred. The second defendant was the owner of the Toyota dual cab.
- b. The preliminary trilogy of issues for determination read as follows:

Whether the first and second plaintiffs were the owners of Nissan Van Reg No:LM 250 at the time of the alleged incident.

Whether the plaintiffs have locus standi to institute the proceedings hereto?

Whether the said collision caused damage to motor vehicle registration number LM 250?

- c. The defence contends that the first and second plaintiffs have not established that they were the owners of the Nissan van bearing reg no:LM 250, at the time of the accident.
- d. PW1 produced the vehicle registration certificate for the period 15th April,2006, to 14th April,2007, stating that the joint owners of the Nissan van were the first and second plaintiffs. The vehicle was assigned registration no.ES 148 as a private vehicle.
- e. PW1 said that the registration was changed to LM 250, when it became a public service vehicle. He produced a LTA mini bus permit for LM 250. This authorized PW1, as "*permit holder to use..LM 250 minibus for the carriage of passengers for hire or reward..., from 20th August, 2007..(to) 19th August,2010*"
- f. In cross-examination, PW1 said that he purchased the vehicle in April,2005. He did not have the LTA registration of ownership, as at the date of the accident. He

- said that he had a mini bus permit as at that date. He denied that he was not the owner of the vehicle at the time of the accident.
- g. The defence produced in the cross-examination of PW1, a vehicle registration certificate for the period 5th August,2010, to 3rd August,2011, stating that the first plaintiff was the owner. This was for a period subsequent to the accident.
 - h. The first and second plaintiffs rely on a mini bus permit obtained by the first plaintiff in support of their claim that they owned the vehicle jointly as at the relevant date.
 - i. In my view, the mini bus permit does not establish ownership. Ownership must be proved with the relevant vehicle registration certificate, as was produced by parties for a period before and after the date of the accident.
 - j. At the conclusion of the case for the plaintiffs, Ms Goundar, counsel for the defendants stated that the defendants have no case to meet.
 - k. In my judgment, the first and second plaintiffs have not established that they were the owners of the Nissan van as at 27th October,2008, the date of the accident. The claim for damages fails.
 - l. Should I be wrong in my finding, I proceed to determine the issues of negligence and damages .
 - m. PW2,(Etika Marawai) testified that he was a front seat passenger in motor vehicle reg.no. LM 250 driven by the third plaintiff when it was involved in the accident. The first defendant was travelling at an excessive speed and could not control his vehicle. As a result, it hit the vehicle of the first and second plaintiffs on the driver's side and their vehicle was pushed to the side of the road. PW2 said that the side and the front of the vehicle was damaged.
 - n. In cross-examination,PW2 denied that the vehicle he was travelling in went on to the lane on which the first defendant was driving.
 - o. It transpired that the first defendant was convicted of the offence of dangerous driving in the Magistrate's Court.
 - p. In terms of section 17(1) read with 17(3)(a) of the Civil Evidence Act,2002, a person convicted of an offence by a court in Fiji, is taken to have committed the offence, unless the contrary is proved.

- q. The FCA in *Prasad v Lata* (2005) FJCA 39, cited Lord Denning in *Stupple v Royal Insurance Co* (1971) 1 QB 50, at page 72, who explained the effect of the equivalent section in England, as follows:

It shifts the legal burden of proof...the defendant must show that he was not negligent....otherwise he loses by the very fact of his conviction.

- r. In my judgment, the first defendant has failed to discharge the burden of proof that he was not negligent. He did not testify at the hearing. No evidence was adduced to prove the contrary.
- s. I find the first defendant negligent of dangerous driving. The second defendant is vicariously liable for the negligence of the first defendant
- t. Finally, I turn to the issue of whether the collision caused damage to the Nissan vehicle.
- u. PW1, (the first plaintiff) in his evidence in chief said that he purchased the vehicle for \$ 55000 from Carpenters Motors and spent \$ 15000 to convert it to a mini bus. The purchase was partly financed by a loan from Merchant Finance and Investment Company Ltd. In support, he sought to produce a statement of account from Merchant Finance and Investment Co. Ltd.
- v. Ms Goundar quite correctly objected to the production of that document as well as an estimate and quotation for repairs for the vehicle from Carpenters Motors, since the author of these documents were not called. I upheld her objection.
- w. PW1 said that the vehicle was not repaired. It was a write off. The vehicle was taken to the Raiwaqa Police Station and A.K. Motors. He said the vehicle was burnt in a fire in the premises of A.K. Motors. Here again, no evidence of the fire was adduced.
- x. PW2, in his evidence said that he was present at Carpenters Motors to obtain an estimate of the cost of repairs to the vehicle. Carpenter Motors said that the vehicle was a write off.
- y. Mr Knight, counsel for the plaintiffs, in his closing submissions states that no notice was given to the defendants that the documents from Carpenters Motors would be produced in evidence. He relies on section 4(4) of the Civil Evidence Act that

failure to comply with section 4(1) of that act does not affect the admissibility of the evidence.

- z. In my view, it would have been “*reasonable and practicable*” for the plaintiffs to have called Carpenters Motors. The claim that the vehicle was a write off and the other circumstances in which this evidence is adduced as hearsay suggest to my mind “*an attempt to prevent proper evaluation of its weight*” as contemplated by section 6 (f) of the Civil Evidence Act.
- aa. In my judgment, the first and second plaintiffs have failed to establish with cogent evidence ,the damage caused to the Nissan van.
- bb. The first and second plaintiffs claim is unfounded. The action fails.

3. **Orders**

- (a) The claim of the first and second plaintiffs for damages is declined
- (b) The plaintiffs shall pay the first and second defendants costs summarily assessed in a sum of \$ 2000.

23rd October, 2015



A.L.B. Brito-Mutunayagam

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Judge