

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**Action No. HBC 12 of 2015**

**BETWEEN**

**ARVIN CHAND** of Lot 17, Balolo Street, Narere, Nasinu, Self Employed.

**PLAINTIFF**

**AND**

**THE COMMISSIONER OF POLICE** of Vinod Patel Plaza,  
Centrepoint, Nasinu.

**FIRST DEFENDANT**

**AND**

**ATTORNEY GENERAL OF FIJI** of Level 6, Suvavou House, Suva.

**SECOND DEFENDANT**

**Counsel** : Mr A. Nand for the Plaintiff  
Ms S. Chand with Ms O. Solimailagi for the Defendants

**Dates of Hearing** : 06<sup>th</sup> and 07<sup>th</sup> February, 2017  
14<sup>th</sup> and 15<sup>th</sup> August, 2017

**Date of Judgment** : 05<sup>th</sup> October, 2017

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## JUDGMENT

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- [1] The plaintiff instituted these proceedings against the defendants alleging that the police officers who came to arrest him on a complaint made against him by his wife, assaulted him causing injuries.
- [2] In the statement of defence the defendants averred that at the time of the plaintiff's arrest, the plaintiff resisted and one Pravin Chand intervened and attempted to prevent the police officers from discharging their official duty. It is averred further that in the event the plaintiff did suffer injuries, such injuries were not as a result of the allegations of assault made by the plaintiff against the defendants.
- [3] In reply to the statement of defence the plaintiff averred that his elder brother came and attempted to stop the police officer from assaulting him and the police also arrested and wrongfully charged his brother for obstruction of justice.
- [4] The issues to be determined at the trial, as agreed by the parties, are as follows:
1. Whether the plaintiff was arrested with reasonable cause on the 24<sup>th</sup> February 2009 for damaging property pursuant to section 324 of the Penal Code?
  2. Whether or not the Valelevu police officers on the 24<sup>th</sup> day of February, 2009 assaulted the plaintiff by punching both sides of his body and covered his head and face with the plaintiff's T-shirt?
  3. Whether or not the plaintiff resisted the arrest?
  4. Whether or not the plaintiff suffered any loss or injury as a result of the alleged assault by the police officers?

- [5] At the pre-trial conference the parties admitted that the first defendant, the Commissioner of Police is responsible for the Fiji Police Force, the second defendant was joined as a party to these proceedings pursuant to section 12 of the State Proceedings Act 1951 and on 24<sup>th</sup> February, 2009 the plaintiff was arrested for damaging property contrary to section 324 of the Penal Code Act and resisting arrest contrary to section 247 of the Penal Code Act.
- [6] The trial of this matter commenced before Justice Hamza on 06<sup>th</sup> February, 2017 and after recording the evidence of three witnesses on 07<sup>th</sup> February, 2017 further hearing of the matter was postponed for 14<sup>th</sup> and 15<sup>th</sup> of August, 2017 and before 14<sup>th</sup> of August, 2017 Justice Hamza assumed duties as a Judge of the High Court in the Criminal Division and the matter was allocated to Justice Nicholas who fixed the matter for hearing on 14<sup>th</sup> to 17<sup>th</sup> August, 2017. Justice Nicholas left the Judiciary before the matter came up for hearing and it was allocated to me. When it came up for hearing on 14<sup>th</sup> August, 2017 both parties informed court that the matter can be continued without having a trial a fresh.
- [7] The police officers had gone to the plaintiff's house to arrest him on a complaint made by his wife that he snatched her chain. The plaintiff testified that his wife left the house and he went to her place and asked for certain items given by him to her such as the wedding chain and another chain and he snatched away the chain she was wearing. It is his evidence that on the day of the incident while he was preparing meals for the children three police officers came and asked him whether he snatched a chain of his wife and when he admitted it, they started assaulting him. They had pulled the T-shirt he was wearing over his face and kicked him on the stomach with the boots they were wearing. Later the brother of the plaintiff had come to his rescue and the police arrested both of them. He also testified that on the way to the police station the vehicle was stopped at Muanikoso, took the plaintiff out of the vehicle and assaulted him again. When they arrived at the police station, the witness said that he was again assaulted.
- [8] Witness Pravin Chand is the brother of the plaintiff. His evidence is that on the day of the incident he was at home fixing a machine and heard somebody was yelling. When he ran to the place he saw that the police officers were hitting the plaintiff. One police officer was holding him from the T-shirt and other two were hitting him. When he was asked as to which part of the body they were hitting the witness said it was the

stomach. The witness had then run to the police officers and pushed one of them away. He testified further that when he pushed the officer they punched him. When he was questioned as to what transpired at the police station the witness said that they were dragged from the van into the police station and started kicking them. It is also the evidence of the witness that when the plaintiff requested the officers to take him to a doctor they started swearing at them.

- [9] Officer Alvin Kishore Kumar has also participated in arresting the plaintiff. It is his evidence that when he and constable Sashi walked towards the plaintiff's house he was talking to Constable Allan and when they informed the plaintiff that they were from Valeleuv and the purpose of their visit he turned back and tried to go into the house. When Allan held him by hand he had pushed him the witness had held him from behind and pushed the plaintiff towards the vehicle. At that moment the plaintiff and the witness both had fallen on the ground. He also testified that he lifted the plaintiff up and the T-shirt the plaintiff was wearing was over his head. In cross-examination the witness said that he and the plaintiff fell before putting handcuffs on him.
- [10] In cross-examination the witness said that when he asked him to accompany them to the police station he started going inside the house and the witness grabbed his hand. The plaintiff had then shouted and the people around the house had gathered. At that point the brother of the plaintiff has also got involved and the plaintiff had allowed the witness to handcuff him. However, they had handcuffed him outside the plaintiff's house and brought him to the vehicle. The brother of the plaintiff had been handcuffed before getting into the vehicle.
- [11] The other two officers called by the defendants as witnesses are not aware of what transpired in the course arrest.
- [12] Dr Lorina Chandra is the doctor, who examined the plaintiff on 3<sup>rd</sup> February, 2009. It is her evidence that the plaintiff was claimed to be beaten up and that he complained of chest pain. The witness had then referred him for a chest X-ray. The medical report issued by Dr Chandra has been tendered in evidence marked as "P1" according to which she had examined the plaintiff on 3<sup>rd</sup> March 2009. The report states that the investigation results revealed fractures to the right 6<sup>th</sup> and 7<sup>th</sup> lateral ribs.
- [13] Two identical (with different dates) medical reports from Suva Private Hospital have been tendered in evidence marked as "P3" and "P4". "P3" and "P4" bears two different

dates. P<sub>3</sub> is dated 27<sup>th</sup> April, 2015, whereas "P<sub>4</sub>" is dated 03<sup>rd</sup> March, 2009. However, both these reports are in respect of the same chest X-ray taken on 03<sup>rd</sup> March, 2009. The X-rays have been tendered in evidence marked as "P<sub>2</sub>" and "P<sub>2A</sub>". The name and the number of the patient and the date on which the X-rays were taken appear clearly on the X-rays.

- [14] The plaintiff called Dr Jonetani Kama, the Radiologist attached to the Suva Private Hospital where these two X-rays were taken, to testify. He is not the radiologist who took these x-rays. Dr Kama's evidence on these two X-rays is that they indicate bony fractures. When the court asked what ribs he was referring to the witness has said number 6 and number 7 ribs. In cross-examination the witness said that these fractures could have been caused less than two weeks prior to the taking of X-ray and that it could be due to trauma from the side of the patient. When he was questioned by the learned counsel for the defendants whether this could have been caused by kicking with safety boots the witness said that he classified it as an impact to the chest wall.
- [15] The plaintiff also called Dr Josese Turagava to testify. He gave evidence on the Discharge Summary (P<sub>5</sub>) and the Medical Report dated 05<sup>th</sup> May 2015 (P<sub>6</sub>). The plaintiff had been admitted to the CWM Hospital where he was diagnosed as having Incarcerated Umbilical Hernia and was treated. He had been discharged from the hospital on 22<sup>nd</sup> March, 2012 and was readmitted on 29<sup>th</sup> March, 2012 with wound infection. The witness also testified that if the plaintiff was kicked with safety boots there should be other marks on the body. This doctor has not seen the patient when he was admitted with injuries in 2009. There is more than sufficient evidence for the court to conclude that the plaintiff had two broken ribs when he was produced before the doctor in 2009.
- [16] The defendants tendered another medical certificate of the plaintiff dated 19<sup>th</sup> April, 2017 issued by the CWM Hospital and signed by Dr Turagava. In that report certain incidents of assault on the plaintiff are mentioned and 17<sup>th</sup> January, 2009 the plaintiff had been admitted to the CWM Hospital with acute chest pain but the doctors had not diagnosed a heart attack. He had been treated for costochondritis. I do not see how this report has any relevance to the matter in issue in this action. Costochondritis is an inflammation of the junctions where the upper ribs join with the cartilage that holds them to the breastbone. This condition causes localised chest pain.

- [17] From the above evidence it appears clearly that the plaintiff sustained injuries while he was in the police custody. There is no evidence that the plaintiff was released before he was produced in court. There is also no evidence that the plaintiff had two rib-fractures at the time of his arrest. The officers who were involved in the arrest of the plaintiff deny the allegation of assault. It is within their knowledge as the officers who arrested the plaintiff and under whose custody and observation he was kept at the police station how he sustained injuries. A bare denial of the officers who went to arrest him is not sufficient for the court to exclude the possibility that it was the officers who caused the injury to the plaintiff.
- [18] The evidence of the police officers involved in the arrest to the plaintiff is not consistent. Witness Gounder says that he arrested the plaintiff between 17.30 and 17.40 hours. According to witness Alvin Kumar it was he who arrested the plaintiff and brought him to the vehicle. The evidence of Officer Allan Nair is that he arrested the plaintiff and witness Gounder arrested the plaintiff's brother. Witness Sashi Kumar testified that he was in the car with the complainant and the other three officers went towards the house and in few minutes they brought the plaintiff and his brother.
- [19] The evidence of the witnesses for the defendants does not explain at all how the plaintiff sustained injuries while he was in their custody. Witness Gounder said that he and the plaintiff fell on the ground on their way to the vehicle from the plaintiff's house because the road was slippery. There is no evidence that the plaintiff sustained rib fractures because of the fall.
- [20] Therefore, from the evidence adduced by both parties the only reasonable conclusion the court can arrive at is that the plaintiff has been assaulted by the officers who arrested him and he sustained injuries as a result of the assault.
- [20] The learned counsel for the defendants submitted that the determination of assault against the defendants should be limited to the assault that allegedly took place at the plaintiff's place of residence because the plaintiff has not pleaded in his statement of claim that he was assaulted in three different places namely, at his residence, at Muanikoso and at Valelevu Police station.
- [21] In support of this contention the learned counsel cited the following paragraph from the judgment in *Ah Koy v Native Land Trust Board* [2005] FJHC 49, HBC0546.2004:

A further object of pleadings is to inform the court about the precise matters in issue between the parties which the court may determine. Pleadings set the limits of the action. Cases must be decided on the issues on the record and if it is desired to raise other issues they must be placed on the record by amendment (*Blay v Pollard and Morris* [1931] KB 628 at 364). It is not for the judge to speculate about the nature for each party's case. The judge and the parties are circumscribed by the pleadings on the record.

[22] In this decision it has been held that the case must be decided on the issues on record. In the present action the issues have been settled on the basis that the plaintiff was assaulted on the 24<sup>th</sup> February, 2009, without any reference to a particular place. Therefore, the argument that the case must be limited to the alleged assault at the plaintiff residence is without merit.

[23] The particulars of loss according to the amended statement of claim are as follows;

- (i) Pain.
- (ii) The plaintiff cannot enjoy proper conjugal relations with his spouse.
- (iii) The Plaintiff has been seriously restricted in his daily activities particularly in his work in his business.

[24] The law does not provide for damages for the loss of conjugal relation with the wife. He is certainly entitled to damages for pain and suffering.

[25] The injuries suffered by the plaintiff according to the medical reports are as follows;

- (i) Tenderness on the right shoulder arm and left hand restricted range of movement of right shoulder;
- (ii) Tenderness on interior chest (right side);
- (iii) Tenderness on the back ( upper and lower);
- (iv) Abrasion on the back;
- (v) Rib fractures (6<sup>th</sup> & 7<sup>th</sup> ribs).

[26] At the trial three doctors testified. They spoke about the injuries caused to the plaintiff but there is no evidence as to what extent these injuries could affect his day to day life or in other words whether these injuries are permanent in nature. The burden is on the plaintiff to prove that the injuries caused by the police officers have deprived him of his earning capacity as a technician.

[27] The plaintiff claimed \$700.00 as special damages but he has failed to prove that he in fact incurred that amount.

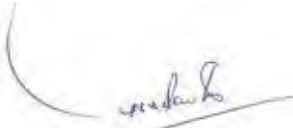
[28] There is no evidence as to how long it took the injuries to heal. However, from the evidence it is not difficult to conclude that he had been in pain until the broken ribs were healed. Taking into the nature of the injuries the court decides to award \$45,000.00 as damages.

[29] Orders of the court:

1. The defendants are ordered to pay the plaintiff \$45,000.00 with interest at the rate of 4% from the date of the judgment until the entire sum is paid in full.
2. The defendants are also ordered to pay \$3000.00 as costs (summarily assessed) of this action to the plaintiff.



05<sup>th</sup> October, 2017

  
Lyone Seneviratne

JUDGE