

In the High Court of Fiji at Suva  
Civil Jurisdiction  
HBC No. 222 of 2013  
Between  
Teoakatau Maio  
Plaintiff  
and  
Win Full Fishing Company Limited  
Defendant

COUNSEL: Mr Daniel Singh for the plaintiff  
Mr R.P.Singh for the defendant  
Date of hearing : 20<sup>th</sup> April, 2017  
Date of Judgment: 2<sup>nd</sup> November, 2017

### **Judgment**

1. The plaintiff, a fisherman/deckhand in his amended statement of claim states that during the course of his employment with the defendant in its business of catching fish at sea, his right eye got injured on board the vessel “Winful 2” while hauling in the main line, due to the alleged negligence and/or breach of statutory duties of the defendant. He claims damages for pain and suffering, loss of amenities of life and special damages. The following particulars of negligence are pleaded:
  - (a) *Exposing the Plaintiff to a risk of damage or injury of which they knew or ought to have known.*
  - (b) *Failing to take any of any adequate precautions for the safety of the Plaintiff while he was engaged upon the said work.*
  - (c) *Failing to provide the Plaintiff with any or any suitable protective face gear or goggles or effective eye screen to enable him to carry out the said work in safety, and to protect the eyes and the face of the Plaintiff, while he was carrying out the said work, contrary to Regulation 53(3)(a)(iii) of the Health and Safety at Work (General Work Place Conditions) Regulations 2003.*
  - (d) *Failing to move the fishing vessel forward to slacken the main fishing line in order to avoid it from becoming taut and falling off the pulley with the snap.*
  - (e) *Failing to move the fishing vessel uniformly in order to avoid high tension on the main fishing line and to prevent it from slipping off the pulley with the snap.*
  - (f) *Failing to take any measures to prevent the Plaintiff from getting injured by the falling main fishing line from the pulley.*
  - (g) *Failing to take any or any adequate or sufficient measures whether by way of examination, inspection, testing or otherwise to ensure that the Plaintiff was not injured while engaged in his duties.*
  - (h) *Failing to provide professional medical attention promptly.*

2. The defendant in its statement of defence states that its crews were provided safety gear and training on occupational health. The plaintiff's injury was caused due to the main line being broken. After the injury, his wound was dressed with the first aid kit. When he was brought ashore, the defendant took him to hospital and paid his medical costs. By way of further defence, the defendant states that the plaintiff's cause of action is statute barred under section 4 of the Limitation Act.

3. ***The hearing***

a) PW1

PW1, (*Dr S.P.Saha*) said that he examined the plaintiff on 13<sup>th</sup> April, 2017. He produced the plaintiff's medical certificate, which provides that his right eye is "*pseudophakic*", an eye with an artificial plastic lens and his permanent visual impairment was 19 %. His sight in his right eye was not normal. He was not fit for all kinds of jobs, due to his poor vision. PW1 said that the injury was consistent with that caused by a fishing line.

In cross-examination, PW1 said that he examined the plaintiff on 13<sup>th</sup> April, 2017. An artificial lens was inserted in his right eye at the Suva Private hospital one week after the injury. The plaintiff was not fit for all kinds of jobs due to his poor vision.

b) PW2

PW2, (the plaintiff) in his evidence said he was born on 4<sup>th</sup> August, 1980. He had worked for the defendant for a period of one year before the injury occurred.

On 15<sup>th</sup> October, 2010, he was in the front of the vessel "*Winful 2*", controlling a lever, which pulled in the main line of 10 to 15 km long. The branch line which catches the fish was attached to the main line. On that day, the sea was very rough and the main line slipped from the pulley and fell into his right eye. He felt pain and could not see anything. He fell on the floor. Neither safety goggles nor helmets were provided to him. Four days after the injury he was transferred to another boat and was taken to the Suva Private hospital. His eye was operated. He was admitted for a day and had 10 reviews thereafter. His right eye was blurred. He cannot see clearly. After 5 years, he got a job as a labourer. If he continued to work for the defendant, he could have become a Bosson. He was paid \$ 20 a day by the defendant. He claims loss of earnings for 5 years in a sum of \$ 6000, loss of FNPF in a sum of \$ 1000 and special damages.

In cross-examination, PW2 admitted that he was continued to be paid until December,2010. He denied that he knew the line could slip and maintained that safety goggles and helmets were not provided. His wage slip confirming that he was paid \$ 20 a day was produced. He maintained that he still had pain in his right eye.

In re-examination, he said that if he was provided a pair of goggles and a helmet he would not have suffered the injury

c) PW3,(*Auguste Nareta*)

PW3 testified that he had worked with PW2 on 15<sup>th</sup> October,2010. PW2 was controlling the lever pulling the main fishing line when it slipped and hit his right eye. He had a serious injury to his right eye. Goggles and helmets were not provided. The boat reached Suva 4 days later. In cross examination, he denied that safety goggles and helmets were provided.

d) DW1,(*Josateki Leweda, Crew Manager*) said that he looked after the supply of OHS and safety equipment to the crew that go fishing. He inspected “*Winful 2*”, when it arrived and departed from Suva wharf. It had a supply of safety goggles and helmets, four sets of each. The Chief Officer on board provides the safety equipment. It was accessible to the crew. He said that he was unaware if helmet and goggle was necessary for fishing.

In cross examination, DW1 said that ordinarily, the Chief Officer on the vessel should ensure that the crew wear safety gear. The breaking of the main line was not foreseeable in any ship. It could happen at any time.

***The determination***

4. I will first determine the issue whether the plaintiff’s cause of action is time barred as recorded at the PTC.
  
5. The plaintiff, in the first instance filed action against Golden Ocean Fish Ltd on 26 July,2013. Golden Ocean Fish Ltd filed statement of defence on 30<sup>th</sup> August,2013, denying the claim and stated further that the plaintiff had never worked for Golden Ocean Fish Ltd, contrary to the averment in the statement of claim.

6. The plaintiff then filed summons for leave to amend the writ to substitute this defendant. The Master allowed the application. The plaintiff filed amended writ and statement of claim on 30<sup>th</sup> July,2015, claiming damages against this defendant for injuries sustained to his right eye on 15<sup>th</sup> October,2010.
7. Section 4 of the Limitation Act reads:
  - 1) *The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say –*
    - a) *Actions founded on simple contract or on tort: ...*

***Provided that –***  
In the case of actions for damages for ***negligence, nuisance or breach of duty*** (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this sub section shall have effect ***as if for the reference to six years there were substituted a reference to three years.***(emphasis added).
8. The plaintiff claims damages for negligence and breach of duty. Clearly, the plaintiff's action falls within the proviso to section 4 a). It follows that the action is time barred.
9. Mr R. Singh, counsel for the defendant in his closing submissions quite correctly points out that the plaintiff did not file an application for extension of time limit under section 16 of the Limitation Act .
10. Mr Daniel Singh, counsel for the plaintiff in his closing submissions contends that this is a case of a genuine and honest mistake under Or 20, r 5(3).
11. I disagree. Or 20, r 5 enables "*the correction of the name of the party*". In the present case, a different entity has been made a party in the amended writ.
12. In the light of my finding that the plaintiff's action is time barred, I do not find it necessary to make a finding on the evidence led.
13. The plaintiff's case fails.

14. *Orders*

- (a) The plaintiff's action is declined.
- (b) I make no order as to costs.



**A.L.B.Brito-Mutunayagam**  
**Judge**  
**2<sup>nd</sup> November, 2017**