IN THE HIGH COURT OF FIJI
AT LABASA

Civil Action No: HBC 25 of 2015

BETWEEN	:	TEVITA ROKOTUNI
		Plaintiff
AND	:	FIJI FOREST INDUSTRIES LIMITED
		Defendant
Coram	:	The Hon. Mr Justice David Alfred
Counsel	:	Mr. S. Sharma for the Plaintiff Mr. A. Ram and Mr. K. Ratule for the Defendant
Dates of Hearing	:	18 and 19 October and 9 November 2016
Date of Judgment	:	10 February 2017

JUDGMENT

1. This is a claim arising out of a workplace accident.

2. According to the Amended Statement of Claim, the Plaintiff was employed by the Defendant as an assistant operator of the hot pressure machine (machine) at the latter's factory.

3. On or about 26 February 2014 the Plaintiff was directed by the Defendant's servants and agents to work on the machine, and while pushing the ply board into it, a work colleague switched it on and as a result the 3rd to 5th fingers of his left hand were crushed.

4. The Plaintiff alleges that his said injuries were caused by the negligence of the Defendant, its servants and / or agents.

5. Among the particulars of negligence are the following:

(i) Failing to provide safe machinery.

(ii) Failing to take adequate precautions for the safety of the Plaintiff.

(iii) Exposing the Plaintiff to a risk of damage or injury known to them.

(iv) Requiring the Plaintiff to engage in a dangerous activity.

6. It is also contended by the Plaintiff that he is entitled to rely on the doctrine of res ipsa loquitur.

7. Thus, the Plaintiff claims general damages for injuries suffered and special damages for expenses incurred.

8. The Defendant in its Statement of Defence contends that the injuries sustained by the Plaintiff resulted solely or substantially from the negligence of the Plaintiff, the particulars of which include the following:

(i) Failed to take heed of the instructions provided to him.

(ii) Holding the end of the board and inserting it inside the open platen when he was not required to do so.

(iii) Not waiting for the platen to open before inserting the board.

9. The Defendant also contends that the doctrine of res ipsa loquitur is inapplicable in this case.

10. The Minutes of the Pre-Trial Conference record, inter alia, the following:

Agreed Facts

1. On 26 February 2014, the Plaintiff was employed as an assistant operator of the hot pressure machine of the Defendant at the material time when he was injured at work.
2. The Plaintiff was paid weekly wages of $172.80 less FNPF deduction of $13.82 (as consented to by both Counsel at the hearing).

Issues

1. Did the Defendant owe a duty of care to the Plaintiff and did it fail in that duty.
2. Were any instructions or guidelines given to the Plaintiff and, if so, did he fail to adhere to them.
3. Was the Plaintiff's injury caused or contributed to by his own negligence.
4. Did the Defendant provide a safe and proper working condition.

11. The hearing commenced with the Plaintiff (PW1) giving evidence. He said he was presently employed by the Water Authority since April 2015 as a project worker. On the day in question, the main operators of the machine were Semisi and Samuela.

12. The operator wanted to open the platen. Semisi accidently pressed the wrong button for it to go up and the Plaintiff's hand went in. The machine lifted up and compressed his left hand, crushing 3 fingers. Samuela's hand was also "strangled". The Plaintiff's fingers were burnt. PW1 said he had been working on the machine for 4 years. He was careful at work. On that day he was not aware why the button was pressed. Semisi was not supposed to press (the button) as he was not the operator.

13. He said he was rushed to hospital where 3 fingers were amputated. He now cannot play rugby; he cannot plant cassava. He concluded by saying none of them told Semisi to press the button. It was impossible to avoid as they were not aware when it was going to happen to them.

14. Under cross – examination by Counsel for the Defendant, PW1 said he became a permanent worker with the Defendant in 2013. Now with the Water Authority

(Authority) he is in the digging team. With the Authority he gets $4.07 per hour while when with the Defendant he got $3.84 per hour. Then he worked 9 hours (per day) while now he works 8 hours with the Authority. He is getting more pay with less hours.

15. He said after the accident, he went back to work with the Defendant but not with the hot press machine. He got the same salary as before but doing lighter work. After 3 months, he left the Defendant and later joined the Authority.

16. On the day in question, PW1 said he was the assistant and Samuela was the operator and in control of the machine. Samuela did not ask Semisi to open the 16th platen. When PW1 and Samuela put the board in the 15th platen Semisi closed it. At that point Samuela and PW1 were hurt instantly as their hands were stuck in.

17. He is right handed while the injury is to his left hand. He said he attended on the review dates; did not go for other treatment and did not discharge himself.

18. In re – examination, PW1 said the 16th platen did not open and their hands were in the 15th platen when it closed.

19. The next witness was Dr. Maloni Bulanauca (PW2), who has been a surgeon for the past 8 years. The Plaintiff had been in the A and E of the Labasa Hospital. He was considering skin grafting for the Plaintiff as an option to obviate amputation but that was not possible to consider further due to the Plaintiff's non – attendance. His whole person impairment is 21.6 % according to the American Medical Association scale. Matters got worse when the Plaintiff was not in their care. Thus the infection spread. Without amputation the disability would still be there. He tendered the Labasa District Hospital reports dated 3 July 2014 and 1 August 2014, respectively as Exhibits P2 and P3. The Plaintiff will not be able to do heavy lifting and it is possible he will suffer pain.

20. During cross – examination by Counsel for the Defendant, PW2 said their plan was to admit the Plaintiff and do debridement. It was of the utmost importance for the Plaintiff

to come and save his fingers. Unfortunately he signed for and did not take that chance. A skin graft could have been done because the blood supply was there and amputation would be unnecessary. It is correct to say that the Plaintiff's non – attendance ended with his having dry bone and complication. He is right handed. Recovery means healing. There was no issue after amputation. It is possible for the Plaintiff to go back to work.

21. In re – examination PW2 said that if skin grafting had been done in time, there was a more than 85% chance of full recovery; if it had been done in March (2014) there would have been a 100% recovery, but the Plaintiff delayed in having the skin grafting. The medical department had not communicated with the surgical department.

22. At this juncture Counsel for the Defendant sought to amend their defence, under Order 20 rule 5 of the RHC, on the ground that new evidence had emerged. This was objected to by Counsel for the Plaintiff on the ground that the amendment was being sought at that late stage.

23. The Court allowed the amendment to be made and the Defendant had to file and serve the amended pleading.

24. The next witness was Samuela Waidrodro, PW3. He said that at the material time he was working for the Defendant as the operator for the hot press machine. He and the Plaintiff were at work. There was no one else there at the time. While they were loading the 15th platen the press came down and their hands were crushed. He then saw Semisi behind him and he had pressed the button. PW3 was in charge and he was the operator and his job was to open the platen. PW3 did not tell Semisi to press the button. If Semisi had not been there, PW3 would not have been injured. The Plaintiff and him were the third persons to be hurt by the machine. Only the operator could operate the machine. Nobody else is allowed to touch the machine during the work.

25. During cross – examination by the Counsel for the Defendant PW3 said that while they were cautious there was no guard for the new Chinese machine. The other machine was

older and of German make and had a proper guard. The workers want the new machine (the one involved) to have guards. The teeth of the platen are sharp and they were pushing the plywood because there was no guard. That is the way the work is done, for the past 50 years, PW3 was taught to push the plywood inside so that his fingers would cross the platen.

26. With this the Plaintiff closed his case.

27. The Defendant now opened its case. Its first witness was Ms. Reena Lata, DW1, the Human Resource assistant in the Authority. According to her records the Plaintiff's hourly wage is $4.07 and his annual salary is $8,465.60. He started working with them on 9 April 2015 and is still employed by the Authority.

28. In cross – examination DW1 said the Plaintiff is on a long-term project and his contract will be renewed.

29. The next witness was Semisi Betevua, DW2. He said he has been working for the Defendant for the past 9 years. He is a senior hot press operator. On the day in question, there were 3 of them working viz, Samuela, the Plaintiff and himself. Samuela is supposed to operate the switch. The buttons were facing Samuela and from where he (DW2) was, he could not see the buttons on the controller. Samuela asked him to open the 16th platen, although Samuela was supposed to open it. While pressing the buttons DW2 could not see the buttons. He could not see what they were doing. He admitted he pressed the buttons. Nobody can press the buttons without being instructed. Samuela instructed him to press the button. DW2 pressed the button and they shouted as their hands were crushed. He stopped the press from closing. He had pressed the wrong button.

30. When cross – examined by Counsel for the Plaintiff, DW2 said he was aware that it is a dangerous machine. He denied he touched the button of his own volition. He is senior to Samuela. The Plaintiff and Samuela need to use one hand only to set the plywood in the

machine. One hand is 1-2 inches in. When their hands were inside he, DW3, pressed the wrong button and their hands were crushed.

31. The next witness was Manasa Levaci, DW3. He has been a supervisor with the Defendant for the past 30 years. He said he knew DW2 was a press operator. The Plaintiff, Samuela and DW2, all worked on the hot press machine. DW2 pressed the wrong button. He pressed the close button while the Plaintiff and Samuela were still pushing in the plywood.

32. During cross – examination DW3 said he was appointed the investigating officer after the accident. The operator should be careful when operating the press. The operator will know the risk of pressing the wrong button. There were 3 buttons on the switch and DW2 knows the function of the buttons. DW2 could not see the buttons. He said DW2 should not have pressed the buttons without seeing them.

33. The next witness was Sakiusa Tabuanitoga Kaukimoce, DW4. He said he retired from the Defendant's service on 5 August 2016. He was a human resource officer. He said the Plaintiff was assisting Samuela by loading the hot press. He then gave evidence regarding the Plaintiff's earnings etc. He said the Plaintiff resumed work on 5 August 2014 and continued to receive the same rate.

34. The Defendant's final witness was Mr. Emosi Taloga, DW5. He is a specialist in orthopedics, for the past 15 years. He saw the Plaintiff. His findings are that the Plaintiff has suffered 17% whole person impairment. He can be rehabilitated.

35. During cross – examination by the Plaintiff's Counsel, DW4 said the Plaintiff's impairment is the skin. He tendered his medical report as Exhibit D6.

36. At the conclusion of the hearing I ordered Counsel on both sides to file written submissions, and that thereafter I would deliver my decision. Both have done so and I have perused the submissions. I shall now proceed to deliver my judgment.

LIABILITY

37. As this is a workplace accident, the pivotal issue is how the accident occurred. This can only be gleaned from the evidence led by both sides. I have reproduced the evidence led by both sides in some detail, because it is from that evidence that the Court can arrive at the proper decision. If I may say so, this is an open and shut case. There is no necessity for the Court to dilate upon the issue of liability. According to the evidence of the Plaintiff he and Samuela were pressing the platen when Semisi accidently pressed the wrong button for the machine to go up and his hand went in. When the Plaintiff and Samuela put the board in the 15th platen, Semisi closed it and Samuela and the Plaintiff were hurt instantly; their hands were stuck in.

38. In this the Plaintiff's evidence was strengthened by the testimony of Samuela. He said he did not tell Semisi to press the button. When Semisi pressed the button, the press came down and his hands which were inside were crushed. Thus it is as plan as a pikestaff that there was not an iota of evidence of any negligence, contributory or otherwise on the part of the Plaintiff, that was provided to the Court. The fact that the new Chinese machine had no guard while the older German one had is a charge to be leveled against the Defendant. The further fact that the Defendant's employee, Semisi (who the Court notes is still employed by the Defendant) admitted he pressed the wrong button establishes the case against the Defendant. And to drive home the fact of the Defendant's exclusive responsibility, Semisi stated the hands of Samuela and the Plaintiff were crushed instantly when he pressed the button. It is inconceivable that Samuela could have asked Semisi to press the button when he, Samuela knew full well that his own fingers would be crushed as a consequence thereof.

39. I find and I so hold that the Plaintiff has succeeded on a balance of probabilities to prove that the accident occurred solely due to the negligence of Defendant's servant and agent in pressing the wrong button. Indeed, the Defendant never made any serious attempt to push any part of the responsibility for the accident onto the shoulders of the Plaintiff. It

would surely be invidious to say that the Plaintiff had caused or contributed to the occurrence of the accident. It was clear that the defence was run on the lines that the accident allegedly happened because of Samuela's wrong timing in telling Semisi to press the button (in the words of DW3, the Defendant's supervisor). If that is true it only inculpates Samuela not the Plaintiff. Indeed the Defendant in shifting the blame between Samuela and Semisi only succeeded in exculpating the Plaintiff of all and any responsibility for the accident. If in a last desperate attempt the Defendant had alleged the accident was caused by the Plaintiff putting his hand in the platen, this would have been rebutted immediately as an admission by the Defendant that it had no guard in place to prevent this happening. In any event the evidence of PW3 showed that this was the accepted longstanding standard operating procedure of the Defendant. At the end of the day the Defendant cannot evade being held wholly liable.

40. I therefore enter judgment for the Plaintiff against the Defendant on a 100% basis.

QUANTUM

41. The Plaintiff suffered injuries as stated in the medical reports of Dr Bulanauca and Mr Taloga. Awards for similar injuries in other decided cases serve only as a guide to indicate the judicial trend of awards. In my opinion the general damages for pain and suffering and loss of amenities here which would prove to be apposite and adequate is the sum of $32,000.00. This is inclusive of the Plaintiff's 17% whole person impairment - future partial loss of earning capacity.

42. With regard to the Plaintiff's loss of earnings, the evidence shows he lost 1/3 of his income for the period between the accident and his resumption of work with his employer, the Defendant. This would work out to $1, 267.20. He also lost his FNPF contribution for the same period which comes up to $101.38.

43. With regard to any alleged future loss of earnings, the Plaintiff in my opinion has failed to provide any cogent evidence of the same. On the contrary, the Plaintiff confirmed during

cross – examination that "In the Water Authority I am getting more pay with less hours". He also testified that when he went back to the Defendant to work, he got the same salary as before but was doing lighter work. And he left the Defendant after 3 months not that the Defendant asked him to leave. Accordingly I make no award for future loss of earnings.

44. I also make no award of special damages. These may have been pleaded but have not been proved nor even alluded to in the Plaintiff's written submission.

45. In the result, I order the Defendant to pay the Plaintiff:

(1) $32,000.00 as general damages.

(2) $1,368.58 as special damages.

(3) Interest at 6% per annum on the general damages from the date of service of the writ to the date of judgment.

(4) Interest at 3% per annum on the special damages from the date of the accident to the date of judgment.

(5) Interest on the judgment sum ($33,368.58) from the date of judgment to the date of realisation.

(6) Costs, which I summarily assess at $3,500.00.

Delivered at Suva this 10th day of February, 2017.

HIGH COURT OF FIJI SUVA

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David Alfred

JUDGE of the High Court of Fiji.