

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 168 of 2010

BETWEEN : **JAGDISH PRASAD** of Lot 21 Kalabu Stage 2, Valelevu, Nasinu.

PLAINTIFF

AND : **MINISTRY OF AGRICULTURE**, Suva.

1ST DEFENDANT

AND : **ATTORNEY GENERAL OF FIJI**, Suvavou House, Suva.

2ND DEFENDANT

Counsel : **Mr. Singh R. for the Plaintiff**
Ms. Sharma T. for the 1st and 2nd Defendants

Date of Judgment : **31st October, 2018**

JUDGMENT

INTRODUCTION

1. The Plaintiff had instituted action against the Defendants due to injury he suffered from an accident, while driving a tractor, in a farm. The Plaintiff was a fieldsman cum driver attached to a farm. On 7th June, 2007 he was driving a tractor GL 900. On the morning of the accident, Plaintiff had used the gravel path inside the farm to transport some men and materials using a trailer. The passage to vehicles on the said farm was in between two large drains and first the tractor had veered to right side drain and then came up to the road and had gone to the other side and Plaintiff had jumped from the tractor and both he and tractor, had landed on left side of the road, to drain. Plaintiff had suffered injuries from that fall as the tractor had landed on him. In the amended statement of claim the Plaintiff had pleaded certain statutory obligations of an employer and failure to fulfil them. The burden of proof is with the Plaintiff to prove negligence on the part of the 1st Defendant, and causation of that to the accident on balance of probability. The Plaintiff was the only eye witness and at the hearing he said he had applied brakes to avoid

collision with some group of dogs and tractor had gone to right side of the drain and again to the left side. The Plaintiff jumped from the driving seat and the tractor had landed on him injuring him. In his amended statement of claim there was no pleading as to how accident was caused. The accident had occurred after travelling about 67 meters, from the refuelling. The Defendants' evidence was the accident was due to Plaintiff's own fault of driving at an excessive speed on a high gear within a short distance. This is an explanation that can be accepted on the balance of probability and Plaintiff's version cannot be accepted on the balance of probability on consideration of all the evidence presented. The burden of proof of cause of the accident is with the Plaintiff. The cause of accident should result from alleged one or more negligent acts of the 1st Defendant. The Plaintiff had travelled only about 68 meters after refuelling when accident happened, and failure of brakes cannot on the balance of probability cause such an incident in the manner explained by the Plaintiff.

FACTS

2. The following facts are admitted in the pre-trial conference
 1. The Plaintiff is a Feldman and at all times was employed by the First Defendant, the Ministry of Agriculture and forestry known as Ministry of Primary Industries.
 2. The Second Defendant is sued in his capacity as the legal representative of the Government of Fiji under the Crown Proceedings Act.
 3. The First Defendant is the owner of a tractor registration No. GL 900.
3. At the hearing it was not disputed that the Plaintiff had driven the tractor GL 900 in the cause of his employment, at the time of the accident.
4. The Plaintiff had driven the tractor with a trailer loaded with certain material for the farm, before the accident. Earlier he had also transported some people. He had left the trailer, and people for unloading and had returned on the same road for refuelling.
5. After refuelling he was returning to the same location where he left the trailer, using the same road, when this accident happened.

6. From the point of refuelling, he had only travelled less than 70 meters when the accident happened. He had not proceeded far when accident happened.
7. The Plaintiff in the statement of claim pleaded particulars of negligence in the following manner
 - a. Failing to take any adequate precautions for the safety of the plaintiff.
 - b. Failing to warn the Plaintiff of the danger to which he was exposed.
 - c. Failing to provide the Plaintiff with a safe place of work.
 - d. Failing to devise, institute and maintain a safe system of work.
 - e. Failing to repair and or maintain the Tractor.
 - f. Failing to repair, maintain and upgrade the gravel road to Naduruloulou Research Station.
 - g. Failing to take any or any adequate precaution for the safety of the Plaintiff while he was engaged upon his work.
8. Further, the Plaintiff had pleaded following statutory breaches
 - a. Failing to provide and maintain systems of work that are safe and without risks to health in breach of section 9(2)(d)(i) of the Health and Safety at Work Act 1996.
 - b. Failing to provide and maintain means of access to and egress from the plaintiff's work place that are safe and without any risks in breach of section 9(2)(d)(ii) of Health and Safety at Work Act 1996.
 - c. Failing to ensure that the Plaintiff can move safely about the workplace in breach of Regulation 5(1)(a) of Health and safety at Work(General Workplace Conditions) Regulation 2003.
 - d. Failing to ensure that the Plaintiff can move safely about the workplace in breach of Regulation 55(1) of Health and Safety at Work (General Workplace Conditions) Regulation 2003.
 - e. Failing to prevent the Plaintiff from falling off the Tractor at the workplace in breach of Regulation 55(1)(c), 55(1)(d)(i) and 55(1)(d)(ii) of the Health and Safety at work (General Workplace Conditions) Regulation 2003.
9. The Plaintiff who is seeking damages from his employer in his evidence stated that on the date of accident he had taken some people and material on a tractor. He had driven the tractor to desired location in the farm, and had come back to refuel leaving the trailer. He had used the same gravel road, to return for refuelling as well as return to the location where he left trailer.

10. After refuelling he had again driven the tractor, on the same road (for 67.5 meter) and according to him he had seen some dogs on the path, and applied the brakes. After that the tractor had suddenly gone to the right side of the road and also to the drain and then come back to the road. The drain is large and a tractor could easily travel in and also come out. It had again travelled on the gravel road and had gone to the left side of the drain and the Plaintiff had jumped from the driver's seat and landed on the ground and the tractor had landed on him.
11. The Plaintiff in his evidence stated that tractor needed to be roll started, and did not state that the accident was due failure to the issue with starting of the engine.
12. Plaintiff did not state that he had reported any defect in the tractor that caused this accident. In fact, after returning to work, again he was given the same tractor. The Plaintiff used the same tractor, without any objection to that.
13. The Plaintiff had not stated at any point before hearing of this action, that he had applied brakes to avoid collision with dogs and then the tractor had travelled in the manner that he described.
14. Both parties filed written submission and also case law. Apart from plaintiff the person who refilled the tractor (S. Prasad) gave evidence for the Plaintiff. The Plaintiff's wife gave evidence regarding the injuries and treatment he received. Defendant called the Senior Research Officer of the farm and also one Agricultural Technician, who had seen the incident after the event. He had also prepared a report on the accident.

ANALYSIS

15. In an action for damages on negligence the burden of proof is with the Plaintiff to prove his cause of action. The civil standard of proof is balance of probability

*"The civil standard"*¹

¹ See generally, Redmayne "Standards of proof in civil litigation" (1999) 62 MLR 167. While this section focuses on the costs of wrong decisions, there are in fact four utilities to be considered including the utilities of correct decisions and Redmayne demonstrates how they should be considered.(Cross on Evidence (NZ)/Evidence law outside the Evidence Act 2006/Chapter Three Degrees of Proof/Chapter Three Degrees of Proof).

The standard of proof in civil proceedings is usually described as the "balance of probabilities". In the United States, the term "preponderance of evidence" is used but this is misleading as it appears to refer to the process of proof rather than the outcome.

In the standard civil case a loss has been suffered and the question is who is to bear it. There is no public interest reason to prefer plaintiffs over defendants. If breach of contract is alleged, for example, who will be the plaintiff and who will be the defendant will depend on whether payment was in advance or is being withheld. Nor is there any utility analysis justifying bias. On the face of it, each party stands to lose the same amount if a wrong decision is made, ie the utility values of wrong decisions are symmetrical. The standard of balance of probabilities is the level at which a correct decision is most likely and there is no reason to depart from it in the ordinary civil case.

The balance of probabilities standard does put a slight cost on plaintiffs which may help to ensure that only reasonably strong cases are brought to court."

16. In the statement of claim the Plaintiff had not pleaded, with particulars as to the cause of accident or specific negligence that resulted the accident. Plaintiff had not pleaded failure or defect in breaking system in tractor.

17. In the statement of claim following particulars were stated as negligence and they are discussed below
 - a. Failing to take any adequate precautions for the safety of the plaintiff. – In the evidence Plaintiff was unable to prove this, and witnesses called for the Defendant gave evidence that they had followed safety procedures
 - b. Failing to warn the Plaintiff of the danger to which he was exposed. - The Plaintiff was adequately informed about the safety within the farm according to the first two witnesses of the Defendant and also stated relevant instructions are followed.
 - c. Failing to provide the Plaintiff with a safe place of work. - There is no proof of this on the evidence. The evidence of the 1st Defendant was that they had followed safety procedures applicable to government employees.
 - d. Failing to devise, institute and maintain a safe system of work - This was not proved. The Plaintiff used the tractor without observing any issue with the tractor. He had even failed to check the fuel level on the date of incident before starting the work.
 - e. Failing to repair and or maintain the Tractor.- This was not proved by the Plaintiff. The only issue that the Plaintiff raised about the tractor was related to the start. This was denied by the 1st Defendant. Even if the defect in the start is accepted that is not the cause of the accident. The Plaintiff's counsel argues that if there is defect in the start then there was other defects in the tractor. This cannot be accepted on the balance of probability. The fact that the tractor was able to be used by the Plaintiff

without any complaints as to its functions except the start, is also an indication that it was maintained properly.

- f. Failing to repair, maintain and upgrade the gravel road to Naduruloulou Research Station- this was not proved by the Plaintiff. The defendant had repaired it about a week before the accident and the fact that there were other vehicles using the same road and the Plaintiff had also used it before the accident proves that it was maintained to the standard of a farm road.
 - g. Failing to take any or any adequate precaution for the safety of the Plaintiff while he was engaged upon his work- The Plaintiff stated that no seat belts were provided for the tractor. First the Plaintiff should prove that seat belts were a requirement for a driver of a tractor. This was not proved. Requirement for vehicle used in farm is not the same as vehicle used in public thoroughfare.
18. The Plaintiff had stated certain statutory obligations and that the 1st Defendant had breached those. If the failure to satisfy statutory obligations had not contributed to the cause of the accident the Plaintiff had fall short of proving his case. In the evidence Plaintiff failed to state which of the statutory obligation that resulted the accident. The written submission of the Plaintiff had not described the breach and the nexus between the breach and alleged negligence.
19. The Plaintiff needs to establish alleged negligence on the part of the 1st Defendant to the cause of the accident on balance of probability. The Plaintiff failed to prove any of the particulars of negligence pleaded from a – g in statement of claim and also statutory obligations. They were
- a. Failing to provide and maintain systems of work that are safe and without risks to health in breach of section 9(2)(d)(i) of the Health and Safety at Work Act 1996.- This was not proved by the Plaintiff, in contrary the Defendant's witnesses stated that they had followed the safety procedures.
 - b. Failing to provide and maintain means of access to and egress from the plaintiff's work place that are safe and without any risks in breach of section 9(2)(d)(ii) of Health and Safety at Work Act 1996.- There is no proof of that by the Plaintiff, and also how it had resulted in the accident that injured the Plaintiff.
 - c. Failing to ensure that the Plaintiff can move safely about the workplace in breach of Regulation 5(1)(a) of Health and safety at Work(General Workplace Conditions) Regulation 2003.- There is no proof of this by the Plaintiff

- d. Failing to ensure that the Plaintiff can move safely about the workplace in breach of Regulation 55(1) of Health and Safety at Work (General Workplace Conditions) Regulation 2003. - There is no proof of this obligation as well. The Defendant stated that they had even repaired the farm road about a week before the accident.
 - e. Failing to prevent the Plaintiff from falling off the Tractor at the workplace in breach of Regulation 55(1)(c), 55(1)(d)(i) and 55(1)(d)(ii) of the Health and Safety at work (General Workplace Conditions) Regulation 2003.- the evidence was that the Plaintiff jumped from the tractor deliberately . The Plaintiff failed to prove the requirement for a tractor that were not provided by the Defendant and that should also be cause of the accident.
20. The Plaintiff should first prove that cause of accident. Then the cause of accident should be related to the alleged negligent acts of the 1st Defendant. He had had failed to prove even what caused this accident, on the balance of probability. The story of dogs and failure of brakes were facts which revealed only at hearing.
 21. The facts relate by the Plaintiff before the accident cannot be accepted in the analysis of evidence, in the manner described by Plaintiff. First the tractor had travelled a short distance and if it was driven with reasonable care it cannot gather momentum to move in the manner that was described by the Plaintiff.
 22. The Plaintiff was using this tractor and it was assigned to him. So if there were any defects he should have reported to the 1st Defendant. The Plaintiff in his evidence stated that there was an issue as to the starting of the vehicle. There is no evidence that the accident happened was due to the defect in the starting of the tractor.
 23. The evidence called for the 1st Defendant denied any defects in the tractor being reported. The Plaintiff in his evidence did not state that he refused driving this tractor or requested for another tractor due to any defect. On 7th June 2007 as usual he had driven the same tractor he used to drive without observing defect to make it dangerous.
 24. He had driven the tractor without any defect or an issue to its functions, except for alleged issue of starting. Even this was denied by the 1st Defendant but no other defect was reported or even observed in the said tractor though Plaintiff was the person who was assigned with the said tractor for a long time. This itself proves on the balance of

probability that the tractor was not having defects that would make it dangerous for the Plaintiff to drive. There was no negligence on the part of the 1st Defendant, though the tractor was more than 10 years old. There is evidence that even 30 year old tractors are used in the farm indicating that from the age alone the condition of a machine cannot be determined, and no negligence is presumed.

25. The Plaintiff had driven the tractor on the same road with a trailer, filled with men and material on the same day before this incident. He had left the men and material in another location and had come back to refuel. When he returned for refuelling, he had left the trailer at the location. According to the evidence of Plaintiff, even on the date of the accident the tractor had no issue to make it dangerous to drive.
26. The Plaintiff had called the person who refuelled the tractor (S. Prasad) on that day to give evidence and he even avoided answering the procedure for the drivers as to filling of fuel. He said the road that the tractor was driven was not good and he was related to the Plaintiff and cannot be considered as disinterested party, in the analysis of evidence. He declined to state that a driver needs to check fuel level at the start of a day.
27. The condition of the road inside a farm is not comparable to public thoroughfares. The Plaintiff had driven on the same road earlier with a loaded trailer and also with some people. He was able to drive the tractor and the trailer without any difficulty. He in his evidence did not state that there was any difficulty in driving on that road, due to the condition of the road at that time. So S. Prasad's evidence cannot be accepted as regard to the condition of the road was bad as to make it dangerous to drive a tractor.
28. There was no evidence of accidents and or any reports of road being dangerous. Even general public used to access the farm using utility vehicles on this road before and after the accident without an incident. The road was used by all the other tractors and other vehicles in the farm as well as visitors to the farm, without any incident, proves on balance of probability that condition of the road was not the cause of accident.
29. The Plaintiff was aware of the condition inside the farm as he had worked there for a long period of time and he should take precautions.

30. On the day of the incident Plaintiff had used the same road and same tractor twice. First he used the road with attached trailer and next without the trailer. If the road condition or defective tractor was the cause of accident the probability of an accident was more when attached with trailer. This indicates that road and the implements were safe even shortly before the accident.
31. The Plaintiff in his evidence did not state that accident was due to the condition of the road. The evidence for the Defendants was that this road was repaired about a week before the accident.
32. The Plaintiff's evidence is that he applied brakes and then suddenly tractor gone to right side of the drain and then to the main road and again to the left side before he jumped from the driving seat. On the balance of probability Plaintiff's evidence of accident cannot be accepted. Though the tractor was old Plaintiff did not state that it was unsuitable for a farm. He had used it without a complaint as to it functioned normally even on the day of the incident and, had safely transported men and material on the same road.
33. The Plaintiff had started journey after refuelling and travelled only 67.5 meters when the accident happened. If he drove carefully this was a very short distance and there cannot be substantial inertia for the vehicle's brakes to fail and behave in the manner he had described in his evidence.
34. Once the cause of accident is proved on the balance of probability the Plaintiff needs to prove that cause of the accident was due to the negligence of the 1st Defendant. The Plaintiff only state facts with in the analysis cannot be accepted on balance of probability. The 1st Defendant had through evidence stated that the cause of the accident was excessive speed within a short distance of about 68 meters. This is an adequate explanation of the event, can be accepted on the balance of probability.
35. The Defendant need not prove the cause of accident. The burden is with the Plaintiff to prove cause of accident and its nexus to the alleged negligent acts of the 1st Defendant. The Plaintiff cannot state its burden is discharged by stating that when he travelled less

than 70 meters and applied brakes the tractor had suddenly travelled in the manner described by him.

36. A vehicle travelling at reasonable speed on a farm road cannot behave in this manner described by the Plaintiff. Even if the brakes failed it cannot behave in the manner described by the Plaintiff if it was driven carefully as the distance from start of the journey after refuelling to place of accident was only 67.5 meters. There was no evidence of brakes failed in the said vehicle or any other defect that had nexus to the accident, at any time. The Plaintiff was the person who used that tractor in the said location for a long time, and any defect he would have detected first. He had not detected any.
37. The Senior Research Officer of the farm said Plaintiff was fieldsman cum driver in the farm and he was assigned with tractor SGL 69. He said that since the tractor was used in the farm there was no need to obtain registration to drive on the main roads. He stated that they have even taken care to reduce the speed of vehicles though humps on the road. There is no evidence before me as what types of inspection are done for yearly registration by Land Transport Authority, in order to consider that failure of such inspection could be considered as negligent act that had an impact on the accident. The 1st Defendant had their own technicians and Plaintiff was satisfied with the condition of the tractor.
38. The Plaintiff was employed in the said farm for a long time and he was fully aware of the road conditions inside the farm. This is proved by transporting things on the same way using a trailer on the same road. Plaintiff never said that he had requested another tractor or vehicle due to the condition of the tractor GL 900 at any time.
39. The Plaintiff in his evidence did not attribute the accident to the road condition. His position was that the tractor suddenly developed a defect. The Plaintiff did not state the tractor was not properly maintained by 1st Defendant. Plaintiff had used it even after the accident. He only stated it could not start on that day but apart from that there were no defects that he observed.

40. On the balance of probability the reaction of the tractor travelled on excessive speed in a very short distance. This is supported by the evidence that the tractor was at a high gear when the accident happened. Senior Research officer as well as Agriculture Technical Officer confirmed that tractor was using a high gear at the time of accident. The technical officers had recovered the tractor and at that time it was shown that the gear that was engaged prior to the accident was a high gear.
41. The witness for Defendant also explained that this tractor had two gear options, one high and other low. When the tractor was recovered the last engaged gear was examined and it was on high gear. Apart from high and low category there were numbers from 1 to 4 in each category and it was using number 3 at that moment on high gear. What is significant was that tractor had only moved about 70 meters from refuelling, and it had already engaged gear number 3.
42. The defendant's evidence also stated that there are two brake paddles in a tractor. The Plaintiff who was an experienced tractor driver on the terrain should be able to prove the cause of accident on the balance of probability.
43. The Plaintiff had not complained to any official of the 1st Defendant after the accident that he was given a defective tractor, when he was given the same tractor after resuming work. A reasonable person would not act in this manner if the accident was due to the defect in the vehicle. So the Plaintiff's evidence as to the cause of accident is not proved on balance of probability.

CONCLUSION

44. On the totality of the evidence before me in my judgment the Plaintiff's position cannot be accepted. If the Plaintiff had driven the vehicle with due care it cannot cause such an accident due to application of brakes to prevent collision with some dogs. The evidence on the balance of probability support excessive speed of the tractor within a very short distance. The Plaintiff had not proved negligence on the part of the 1st Defendant. He was provided with the required safety gear and there is no proof of failure on the part of the 1st


Defendant that caused the accident. Action is dismissed and the writ of summons struck off. Considering the circumstances of the case I will not award any cost.

FINAL ORDERS

- a. The action is dismissed the writ of summons and statement of claim struck off.
- b. No costs.

Dated at Suva this 31st day of October, 2018




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Justice Deepthi Amaratunga
High Court, Suva