

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBA 02 of 2019

BETWEEN : BIMLESH KUMAR

APPELLANT

AND : K. LAL & SONS

RESPONDENT

Counsel : Appellant: In person
: Respondent: Mr. T. Sharma
Date of Hearing : 18.4.2019
Date of Judgment : 29.4.2019

JUDGMENT

INTRODUCTION

1. Claimant – Appellant (Claimant) filed a claim before Small Claims Tribunal (SCT) relating to damages from a motor accident. The claim was filed on 8th July, 2016. There is a dispute as to the date of incident. There are three days mentioned in different documents as date of incident. Defendant objected to the claim on the basis that it was filed outside the time stated in Limitation Act, 1971 and there was an inquiry before SCT to ascertain the date of the accident. The Referee of SCT had also attempted to obtain originals of the statements made in this regard from Police, but was informed that the originals of the said records, where copies of the documents were obtained, were archived. They were older than legally stipulated time to have originals with them. Both parties were granted opportunity to lead evidence through oral as well as documentary evidence to ascertain the date of incident. Both parties had produced evidence in SCT and learned Referee had determined that the claim was filed outside the time period stated in Limitation Act, 1971 as the correct date of incident was 29th June, 2010. Having aggrieved by that decision Claimant appealed to court below. This appeal was dismissed

in the court below on 14.3.2018. Having aggrieved by decision of court below another appeal was made by the Claimant.

2. The grounds of appeal are as follows:

- a. That learned Magistrate erred in law when she failed to consider that the Appellant's claim was within 66 year period and did not pass the Limitation Period.
- b. That learned Magistrate erred in law when she gave her judgment /order without properly hearing and analyzing the evidence of Appellant.
- c. That the manner in which the learned Magistrate conducted the proceedings was conducted (sic) in an unfair manner since the learned Magistrate refused and take into the consideration to hear the Appellant's evidences being presented before her and as a result the manner with the learned Magistrate conducted the proceeding was in all circumstances unfair to the Appellant and prejudicially affected the result of the proceedings. (sic)"

3. The powers of the High Court sitting as an appellate court from a decision of a Magistrates Court are set out in Order XXXVII Rules 18 and 19 of the said rules and state as follow;

'General Powers of Appellate Court

18. The appellate court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the appellate court thinks fit to determine before final judgment in the appeal, and, generally, shall have as full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the appellate court as a court of first instance, and may rehear the whole case, or may remit it to the court below to be reheard, or to be otherwise dealt with as the appellate court directs. (emphasis is mine)

Power of appellate court to give any decision or make any order

19. The appellate court shall have power to give any judgment and make any order that ought to have been made, and to make such further or other orders as the case may require, including any order as to costs. These powers may be exercised by the appellate court, notwithstanding that the appellant may have asked that part of a decision may be reversed or varied, and may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.' (emphasis added)

4. The power of the High Court regarding the Appeals from a Magistrate's Court in terms of Rule 18 and Rule 19 included re hearing on the documents that are contained in the copy record. So any of the powers of court below can be exercised by the High Court in the exercise of Appellate powers.
5. In Fiji High Court case of Aaryan Enterprise v Mehak Unique Fashion [2011] FJHC 727; Civil Appeal 17.2011 (decided on 10 November 2011) (unreported) Calanchini J (as his Lordship then was) held:

'In my judgment the jurisdiction conferred on this Court as an appellate court under Order XXXVII to hear appeals from the Magistrates Court entitles the Court to consider the matter in question as a court of first instance (i.e. afresh) unfettered by the decision of the learned Magistrate and as a result, I am entitled to exercise my own discretion. Under Order XXXVII I am not restricted to reviewing the manner in which the learned Magistrate exercised her discretion. (See CM Van Stillevoeldt BV -v- EC CaviersInc [1983] 1 All ER 699).'

6. The general power of appellate court is discussed in a more recent decision in England , in Beacon Insurance Co Ltd v Maharaj Bookstore Ltd [2014] 4 All ER 418 at 423 (Privy Council) and it was held:

'It has often been said that the appeal court must be satisfied that the judge at first instance has gone 'plainly wrong'. See, for example, Lord Macmillan in Watt (or Thomas) v Thomas [1947] 1 All ER 582 at 590, [1947] AC 484 at 491 and Lord Hope of Craighead in Thomson v Kvaerner Govan Ltd [2003] UKHL 45, 2004 SC (HL) 1 (at [16]-[19]).....'

7. An appeal is against the final decision and not against the reasons given in the decision (See Fiji Court of Appeal decision Kaur v Singh (unreported ABU 11 of 1998; 13 August 1999) and Commonwealth of Australia and Others v Bank of New South Wales and Others [1949] 2 ALLER 755 at 763).
8. In this appeal learned Referee had acted fairly in order to determine the claim of the claimant was filed outside 6 year time period stated in Limitation Act, 1971.
9. Section 15(4) of Small Claims Tribunal Act,1991 states as follows;

"(4) The Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to actual forms or technicalities."

10. So SCT is not bound to follow 'strict legal rights or obligations' or to the 'forms' or to 'technicalities' in its determinations and flexibility is given to consider paramount importance to 'substantial merits and justice'.

11. Section 15(4) does not allow SCT to completely disregard the law, but it is not bound to give effect to strict legal rights or obligations and the paramount consideration will be merits and justice of the case. In NZI Insurance New Zealand Ltd v Auckland District Court [1993] 3 NZLR 453 held, that NZ had similar provision in NZ Disputes Tribunal Act, 1988 where it also needs to have 'regard to law' but not bound to give effect to legal rights as they are not presided with legally qualified person but presided by laymen.
12. This is a balancing act of referee and depending on the circumstances of the case such balancing act needs proper application. In this case learned referee had properly exercised this power.
13. Suva City Council v Ratulevu [2000] FJHC 35; Hba0001J.99s (3 March 2000) (Per Fatiaki J) (as he then was) held that Limitation Act, 1971 applies to SCT, hence a claim that is outside time period needs to be struck off. Learned referee had done this after conducting an inquiry as to ascertain the date of incident. The issue relating to limitation was raised in SCT and referee was aware of the legal implication and had decided to hold an inquiry to determine the date of incident. So learned referee as well as parties to the claim were all appraised with the legal objection and they have participated in the inquiry, too.
14. Leaned Magistrate had rightly held that SCT had analysed the evidence properly to determine the date of incident stated in the claim. This is a correct observation, by court below ant there is no misdirection and or error of law.
15. Court below had also found that SCT had not exceeded jurisdiction in determining claim of the claimant was filed outside the 6 year time period under Limitation Act, 1971.
16. There is no merit in any of the grounds of appeal. Considering the circumstances of the case. Court below had correctly applied law and there is no error of law in the decision of the court below. The power of court below in the exercise of appellate jurisdiction regarding a determination of SCT is limited and that was correctly applied.
17. There is no prejudice in the manner in which court below had dealt with the appeal. There is no evidence on this ground.
18. There are no merits in the appeal. All three grounds of appeal are without any merit. Appeal is dismissed.
19. I do not award any cost, considering the circumstances of the case.


FINAL ORDERS

- a. Appeal is dismissed.

- b. Decision of court below is affirmed.
- c. Each party to bear their costs in this Appeal.

Dated at Suva this 29th day of April, 2019.




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Justice Deepthi Amaratunga
High Court, Suva