

The High Court of Fiji at Suva  
Civil Jurisdiction  
HBC No. 279/2011

Gyaneshwar Prasad

Plaintiff

AND

R C Manubhai & Co. Ltd

Defendant

COUNSEL: Mr D. Singh for the plaintiff  
Mr S.Ram for the defendant

Date of hearing: 23<sup>rd</sup> November, 2018

Date of Judgment: 6<sup>th</sup> February, 2019

### **Judgment**

1. The plaintiff, a driver states that he was injured on 8<sup>th</sup> September, 2008, in the course of his employment, while lifting a 8 by 4 ft x 10.3mm sheet of glass mirror. The mirror slipped and cut his left arm above his wrist and injured him. The plaintiff claims that the injury was caused by the negligence and/or breach of statutory duty of the defendant. The defendant denies the claim.

### ***The hearing***

2. The plaintiff, (PW2) in his evidence said that the supervisor, at the Glass and Mirror factory of the defendant company asked him to put the glass mirror on a table. He was on one side of the mirror and two boys were on the other. The boys on the other side lifted it higher than expected and the glass mirror cut his hand. He had never lifted a heavy sheet of glass prior to the incident. He was a driver. He did not receive any training in lifting glass. He was not provided a mechanical aid. He could not avoid the accident, as it happened suddenly. There was no supervisor present.

3. PW3, (Neil Singh) also a driver in the employment of the defendant said that he was in the workshop where the plaintiff got hurt. He took him to hospital. The plaintiff was asked to lift the glass mirror from a palette and put it on a table. It was an unusual occurrence for a driver to help other divisions. PW3 confirmed the plaintiff's evidence that he was not given any training to lift glass. A mechanical device was not provided. The accident occurred when two boys, (on the other side of the plaintiff) lifted the glass mirror too high. There was no supervisor present.

***The determination***

4. The plaintiff was employed by the defendant as a driver. He was injured, while lifting a glass mirror manually, as requested by the supervisor/ foreman of the defendant.
5. Section 9(1) of the Health and Safety at Work Act, 1996, states that "Every employer shall ensure the health and safety at work of all his or her workers". Section 9(2)(a) provides that an employer who fails "to provide and maintain plant and system of work that are safe without risk to health" contravenes subsection (1).
6. Section 42(1) of the Health and Safety at Work (General Workplace Conditions) Regulations, 2003 states:-
- No employer shall require any worker to lift, carry or move any load so heavy that its lifting, carriage, or movement would be likely to injure the worker.*
7. Pathik J in *Kumar v Fletcher Construction (Fiji) Ltd*, [1999] FJHC 124; Civil Action no. 316 of 1997 stated:

*It is the common law that a employer has a duty to take reasonable care for the safety of his workmen in all the circumstances of the case. This duty exists whether the employment is inherently dangerous or not. The employer's duty of reasonable care is the ruling principle.*

8. Pathik J cited *Charlesworth on Negligence*, (6<sup>th</sup>ed) paragraph 1032, which states that the employer's duty-

*is a single personal duty, which is non-delegable, and the importance of this feature is that the employer must see that care is taken by all those persons engaged by him. .. Lord Oaksey expressed in his opinion that: "The duty of his employer towards his servant is to take reasonable care for the servant's safety in all the circumstances of the case." It has also been described as "the duty of taking reasonable care... so to carry on his operations as not to subject those employed by him to unnecessary risk." Lord Keith opined that "the ruling principle is that an employer is bound to take reasonable care for the safety of his workmen, and all other rules or formulas must be taken subject to this principle." It follows from the above that the master's duty is stricter than the duty to take reasonable care for oneself and it exists whether or not the employment is inherently dangerous.*

9. I am satisfied on the evidence before me that the plaintiff was not given any instructions nor was a mechanical device provided by the defendant to lift the 8 by 4 ft x10.3mm sheet of glass mirror. The plaintiff had not lifted a glass mirror before.
10. In my view, the management of the defendant knew or ought to have known that the task assigned could give rise to injury. I find that the defendant failed to take reasonable care for the plaintiff's safety.
11. In my judgment, the accident occurred in the course of the plaintiff's employment. The defendant was negligent and in breach of its duty to the plaintiff (a) to provide and maintain a safe system of work, (b) to provide instructions and supervision, (c) to take adequate precautions for his safety, (d) in failing to warn him of the dangers which they knew or ought to have known and, (e) exposing him to unnecessary risk of injury. The defendant is in breach of its statutory duty under the provision of the Health and Safety at Work Act, 1996, and Regulations.
12. In the outcome, I find that the defendant is liable for the accident. I will now assess the damages the plaintiff is entitled to for the injuries suffered, as a result of the accident.



13. The plaintiff's medical report of 26<sup>th</sup> April, 2011, provides:

*...Apparently, he is having difficulty to efficiently using his left hand due to the injury. He was not hospitalised for this injury as according to the folder, presumably it was a superficial injury, without any major vessel, tendon or nerve injury.*

***Final Assessment:***

*This was done twice because of the difficulty to co-relate his complaint with his clinical findings. There was obvious malingering noted.*

***On Examination*** – 5cm distal 1/3 anterior forearm with fingers stance held in flexion. There is also 5cm scar on the ulnar posterior side. He claimed to have tenderness to passive extension of his fingers.

*There is evidence of muscle wasting on thenar and hypothenar muscles. Sensation reduced to the median and radial nerve distributions.*

*I recommend that a second opinion is obtained from Consultant Orthopaedic, CWMH.*

14. The medical report of 13<sup>th</sup> September, 2011, states:

*Apparently, he claimed that he is having difficulty to efficiently use his left hand as the result of the above mentioned injury. He was not hospitalised for this injury as according to the folder, presumably it was a superficial injury, without any major vessel, tendon or nerve injury as according to the A & E medical officer's notes that he had good range of motion in the initial assessment.*

***Final Assessment: (now conducted for the 3<sup>rd</sup> time)***

*This was done twice because of the difficulty to co-relate his complaint with his clinical findings. There was obvious maligering (sic, malingering) noted... (underlining mine)*

***On Examination-***

*Stance:*

*Right upper limb- normal*

*Left upper limb – all fingers in flexion position, a scar of 5 cm distal 1/3 anterior forearm and a 3 cm scar on the ulnar posterior side. He claimed to have tenderness to passive extension of his fingers.*

*Muscle Wasting: There is evidence of muscle wasting on the anterior left forearm. There seems to be no other muscle wasting as expected to be seen on examination to co-relate with his clinical findings. Therefore there is evidence that he has been using his relate with his left hand/fingers.*

*Sensation: reduced to all peripheral nerve distributions.*

*Metacarpophalangeal joints Lt Hand: all IP and joints supple with good range of motion on passive movement.*

*n.b I would expect all his fingers in this flexion stance to be very stiff on passive extension in this number of years (since 2008).*

*However, there are two possibilities:*

1. Malingering

2. Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy.

*Total Awarded .....4% (underlining mine)*

15. PW3, (Dr Pauliasi Bauleka, Orthopaedic Surgen, CWM hospital) in evidence in chief said that he conducted a medical assessment of the plaintiff. The plaintiff had an injury to his left forearm. He had a superficial laceration, a cut and scar. He was treated at the Emergency dept with initial wound wash and infection prevention treatment. There was passive extension in all his fingers. His joints were not stiff. PW3 said that the plaintiff has suffered three nerve injuries. The wasting of muscle will affect his left arm "in terms of power loss and weakness". He was allocated permanent impairment on the possibility of having "Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy".
16. In cross examination, PW3 said that a final assessment was done thrice, "because of the difficulty to co-relate his complaint with the clinical findings. There was obvious malingering noted". However, there was also the possibility of "Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy", as stated in the second medical report. He said that his report was 90 % more to "Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy". The second Consultant's opinion is incorporated in his second medical report.
17. I note that the plaintiff was taken to the CWM hospital after the injury. He was not admitted. I accept that the plaintiff would have gone through pain. There is no evidence before me that he had stitches, as he contended.
18. The plaintiff's disability has been assessed at 4 % permanent impairment on the possibility of him having "Complex Regional Pain Syndrome/Reflex Sympathetic Dystrophy", as testified by PW3. There was evidence of muscle wasting on his forearm.
19. In the light of the principles applicable to assessing damages, I consider a sum of \$ 9,000 (nine thousand dollars) as appropriate for pain and suffering.



20. The plaintiff claims special damages in his statement of claim as follows: \$50 as medical expenses and \$63 as transport expenses. It transpired in cross examination that the plaintiff did not have receipts in support.
21. I grant the plaintiff \$30 as medical expenses incurred and \$30 as expenses for travel to CWM hospital and Samabula Health Centre, totalling \$60.
22. The plaintiff claims loss of wages for a period of 6 months.
23. In the light of the injuries suffered, I do not find credible, the plaintiff's evidence that he could not work for one year. He said that he started cutting grass after a year and got employed two years later as a driver.
24. I grant the plaintiff loss of earnings for a period of three months, (8<sup>th</sup> September, 2008, to 8<sup>th</sup> December, 2008) at the rate of \$126 per week totaling \$ 1638; loss of FNPF contribution at a rate of 10.08 per week for the same period in a sum of \$ 164.
25. The plaintiff is awarded special damages in a total sum of \$1862.
26. There was no cogent evidence before Court in support of the claims for future economic loss and future care. The claims are declined.
27. The plaintiff has pleaded interest. In my view an interest rate of 6% per annum on general damages from the date of writ, (9<sup>th</sup> September, 2011) until the date of hearing and 3% on special damages from the date of the accident until the date of hearing are reasonable.
28. The plaintiff is awarded a total sum of \$15425.00 comprised as follows:
- |   |                  |
|---|------------------|
| (a) General damages for pain and suffering: | \$ 9000.00       |
| (b) Special damages                         | \$ 1862 00       |
| (c) Interest on general damages             | \$ 3893.00       |
| (d) Interest on special damages.            | \$ <u>670.00</u> |
|   | <u>15425.00</u>  |
29. There will therefore be judgment for the plaintiff against the defendant in the sum of \$15425.00 together with costs

30. **Orders**

The defendant shall pay the plaintiff a sum of \$15425.00 and a sum of \$ 3000.00, as costs summarily assessed.



*A.L.B. Brito-Mutunayagam*

**A.L.B. Brito-Mutunayagam**

**JUDGE**

6<sup>th</sup> February, 2019