

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

CIVIL ACTION NO.: HBC-324 OF 2015

BETWEEN : KANCHAN LAL
PLAINTIFF

AND : AKHTAR ALI
FIRST DEFENDANT

AND : RAIWAQA BUS COMPANY LIMITED
SECOND DEFENDANT

AND : SUN INSURANCE COMPANY LIMITED
FIRST NAMED THIRD PARTY

AND : NEW INDIA ASSURANCE COMPANY LIMITED
THIRD NAMED THIRD PARTY

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr D Prasad [Diven Prasad Lawyers]

FIRST DEFENDANT : Not Served

SECOND DEFENDANT : Ms S Prasad [MA Khun Esq]

FIRST THIRD PARTY : Mr R Vamanalagi on instructions [AK Lawyers]

SECOND THIRD PARTY : [LIABILITY & QUANTUM DETERMINED]

RULING OF : Acting Master Ms Vandhana Lal

DELIVERED ON : 29 May 2019

RULING
[Issue of Cost]

1. This ruling relates to following files:

- HBC 07 of 2015 – Seru Tabua Sauliga and Semi Taukeiniwaqalevu Sauliga v. Akhtar Ali [First Defendant] Raiwaqa Bus Company Limited [Second Defendant] Sun Insurance Company Limited

- HBC 324 of 2015 – Kanchan Lal v. **[First Named Third Party]**
New India Assurance Company Limited
[Second Named Third Party]
- HBC 54 of 2016 - Samuela Sautamata Ritova v. Akhtar Ali
[First Defendant]
Raiwaqa Bus Company Limited
[Second Defendant]
Sun Insurance Company Limited
[First Named Third Party]
New India Assurance Company Limited
[Third Named Third Party]
- HBC 127 of 2017 – Shaheem Ali v. Akhtar Ali
[First Defendant]
Raiwaqa Bus Company Limited
[Second Defendant]
Sun Insurance Company Limited
[First Named Third Party]
New India Assurance Company Limited
[Third Named Third Party]
- HBC 144 of 2017 – Mosese Daulakeba v. Akhtar Ali
[First Defendant]

Raiwaqa Bus Company
Limited
[Second Defendant]
Sun Insurance Company
Limited
[First Named Third
Party]
New India Assurance
Company Limited
[Third Named Third
Party]

2. On 3 November 2016 the Counsel for Second Defendant filed an inter parte notice of motion dated 1 November 2016 seeking orders (amongst others) for leave to issue Third Party Notice to the AON (Fiji) Limited and New India Assurance Company Limited.

The grounds for said application was that the "Motor Comprehensive Policy for vehicle registration number DU 927 was issued by AON (Fiji) Limited.

The Second Defendant further stated that the Compulsory Third Party Policy for vehicle DU 927 was issued by New India Assurance Company Limited.

3. Consent orders were granted on 7 December 2016.
4. On 6 March 2017 counsel for AON (Fiji) Limited raised objection to Third Party Summon. Hence the Second Defendant was ordered to pay cost and directed to file amended summon for Third Party Notice Directions.
5. After several adjournments, the Third Party proceeding against the Second Named Third Party (AON) was discontinued.
6. Thereafter there were other applications heard [interim payments and consolidation of cases with stay of proceedings pending outcome of a test case].
7. On or about 27 July 2018, the Second Defendant filed a motion dated 24 July 2018 seeking orders to amend its Statement of Defence and to issue Third Party Notice against Land Transport Authority.
8. On 19 September 2018, Counsel for Second Defendant made application to withdraw their Summon filed on 16 November 2017 and motion of 27 July 2018.

Plaintiff's Counsel sought cost.

9. The court granted orders for the Second Defendant to withdraw its application and asked all parties affected to file and serve their Written Submission on issue of cost.
10. Submission were filed as follows:
 - a. Plaintiffs' submission on 28 September 2018;
 - b. Second Defendant's submission on 3 October 2018;
 - c. First Named Third Party's submission on 25 October 2018.

11. Upon perusing the submissions, I agree with the Plaintiff's and First Named Third Party's counsel that the Second Defendant had complicated the proceedings and deferred the matter from proceeding to trial by filing its application for leave to issue third party notice against AON and Land Transport Authority.

These applications were withdrawn without being heard by the Court.

There was a copy pleading and Order 34 filed May 2017 for cause of action between the Plaintiff and Second Defendant and had to be left in abeyance until September 2018.

Further the proceedings between the first named third party and the Second Defendant was delayed and left in abeyance.

12. Hence I order cost against the Second Defendant in favour of each Plaintiffs named in Civil Files HBC 07 of 2015; HBC 324 of 2015; HBC 54 of 2016; HBC 127 of 2017 and HBC 144 of 2017 summarily assessed in sum of \$500 each and a total sum of \$500 on all the named cases in favour of the First Named Third Party, Sun Insurance Limited.

Said cost is to be paid in 14 days.

13. Whilst deciding on issue of cost I note that there were orders made for consolidation.

14. Order 4 rule 2 lays out provision for consolidation of proceedings and it reads:

"Where two or more causes or matters are pending, then, if it appears to the court-

- a) That some common question of law or fact arises in both or all of them; or*
- b) That the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transaction; or*
- c) That for some other reason it is desirable to make an order under this rule,*

the court may order those causes or matter to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them..."

15. The Supreme Court Practice (1993) Volume 1 on paragraph 4/9/1 commentary to Order 4 rule 9 outlines principles the Courts have applied in considering whether or not to consolidate actions:

"The main purpose of consolidation is to save costs and time, and therefore it will not usually be ordered unless there is "some common question of law or fact bearing sufficient importance in proportion to the rest" of the subject matter of the actions "to render it desirable that the whole should be disposed of at the same time."

But no order for consolidation will be made without hearing all parties affected and therefore it will only be made on the hearing of applications in all actions (Daws v. Dally Sketch)...."

Paragraph 4/9/5 further states:

"A separate summons should be issued in each action proposed to be consolidated, or one summons may be issued provide it fully sets out the

title of each such actions. The principle is that the actions to be consolidated or tried together should be before the court at the same time."

16. I find that the consolidation order was not proper considering the fact different counsels appear for the Plaintiffs in the respective files. After the order for consolidation no procedure was laid down on consolidations. The remaining files were stayed pending outcome of File HBC 54 of 2016.

Upon careful perusal of the file I note the proceedings are at different stages for each files. In some instances the First Named Defendant has not been served but parties have proceeded to pre-trial conference with other parties.

This are claims relating to accident alleged to be caused by the negligence of the First Defendant who was an employee [driver] of the Second Defendant. Hence it is prudent that the First Defendant ought to be served personally since the employer is not representing him.

17. Hence on courts own motion I vacate the order for consolidation and substitute with following orders:

The proceedings are not to be consolidated but to proceed under respective file numbers until matter is ready for trial.

I find it is only proper to all files are prepared for trial and referred to a Judge who shall decide which matter is to be tried first or all are to be tried at the same time.

18. Appropriate directives will be given in respective files for next course of action as required.


FINAL ORDERS

19. In Civil files HBC 07 of 2015; HBC 324 of 2015; HBC 54 of 2016; HBC 127 of 2017 and HBC 144 of 2017 the second named defendant Raiwaqa Buses Limited shall pay each plaintiffs in the respective files \$500 as costs and shall pay the First Named Third Party, Sun Insurance a total sum of \$500 as costs.

Said costs to be paid in 14 days.

20. The order for consolidation and stay of proceedings made on 23 July 2018 is set aside. Further directives to be issued in respective files as required.




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Vandhana Lal [Ms]
Acting Master
At Suva.