

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

SCT Appeal No. 25 of 2019
SCT Claim No. 592 of 2019
HBA No.01 of 2020

**IN THE MATTER OF AN
APPEAL** from the Decision of
Nasinu Magistrates' Court in the
SCT Appeal No. 25 of 2019.

BETWEEN : **ROHIT NIRESH CHAND**

APPELLANT

AND : **VIJAY PRAKASH**

RESPONDENT

Counsel : **Appellant: Ms. Lutu I**
: **Respondent: Mr. Krishneel Chang**
Date of Hearing : **22.04.2020**
Date of Judgment : **22.05.2020**

JUDGMENT

INTRODUCTION

1. This is an appeal against the decision of Resident Magistrate's decision dated 22.10.2019 affirming the award of a referee. Notice of intention to appeal was filed on 24.10.2019. Amended grounds of appeal is filed by the Appellant in person, there is no date in the said document and there is no stamp on the document to state when it was filed. Notice of Appeal was filed 19.11.2019 and accordingly two grounds of appeal are Resident Magistrate had failed to determine that referee had exceeded jurisdiction and proceedings were conducted by referee in unfair and prejudicial manner. The claim before Small Claims Tribunal (SCT) was regarding loss not being able to use the Taxi, due to a damage from road accident. There was no dispute as to the liability, only dispute arose as to the quantum of damage. Referee in his record had outlined the process he adopted to arrive at \$1,700. Being aggrieved by said decision Appellant had appealed to Magistrate's Court without success. This is the appeal against Resident Magistrate's decision where it held that there was no procedural unfairness before Referee. Appellant's main contention is that referee did not consider tax returns of the Respondent in the calculation of loss of income.

Referee stated he had considered all documents. This is entirely left to discretion of referee and this cannot be considered as procedural unfairness. SCT is bound to follow law it can deviate from technicalities in arriving at a decision. A simplified procedure and quick and effective relief is essence of Small Claims Act 1991.

FACTS

2. Respondent, on 18 April 2019 filed a claim at the Small Claims Tribunal against Appellant, seeking damages for the loss of income arising out of a motor vehicle accident.
3. The Appellant and the Respondent 25.3. 2019 were involved in road accident. There was no issue as to liability of the Appellant. The repairs to Respondent's vehicle took more than 18 days.
4. Respondent used the vehicle in issue as a Taxi, hence a source of his income.
5. Respondent made a claim for loss of income for 18 days to SCT.
6. Both parties had appeared before referee of SCT. After hearing of both parties referee had ordered a sum of 1,700 on 7.5.2019.
7. Referee had had submitted a report of the proceedings to the court below it had indicated the manner in which proceedings were conducted.
8. The Appellant aggrieved with the above decision of SCT appealed the same to the court below, but his appeal was dismissed.
9. The Appellant further aggrieved with the above decision of the Nasinu Magistrates' Court further appealed the same to the High Court of Fiji on the following grounds;
 1. *The Learned Magistrate erred in fact and in law in not failing to uphold the Appeal of the Appellant under section 33 of the Small Claims Tribunal Decree;*
 2. *The Learned Magistrate erred in fact and in law in not accepting that the Referee had;*
 - a) *The proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings;*
and
 - b) *The Tribunal exceeded its jurisdiction.*

3. *Such further and/or other grounds as become apparent upon "Copy Record" being made available to him.*

ANALYSIS

10. The powers of the High Court sitting as an appellate court from a decision of a Magistrates Court are set out in Order 37 rule 18 and 19 of the Magistrates Court Rules 1945 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)

11. The power of the High Court regarding the Appeals from a Magistrate's Court in terms of Rule 18 and Rule 19 of Magistrates Court Rules 1945 is extensive and can make any order in order to determine real question in controversy in appeal including rehearing on the documents.
12. It is axiomatic that such re hearing on documents can extend to calling of the records of the proceedings in court below through an order if such records are not available. In this instance both records of SCT and court below are available for perusal and there is no need to call for records.

13. 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 Caviars Inc [1983] 1 All ER 699).'

14. 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])......'

15. 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)^[1].

Appeal Ground one reads;

"The Learned Magistrate erred in fact and law in not failing to uphold the Appeal of the Appellant under section 33 of the Small Claims Decree;"

Section 33 of the Small Claims Tribunal Act 1991 reads

Appeals

33 (1) Any party to proceedings before a tribunal may appeal against an order made by the tribunal under section 15(6) or section 31(2) on the grounds that—

(a) the proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; or

*(b) the tribunal exceeded its jurisdiction.
.....” (emphasis added)*

16. So appeal from SCT to court below is restricted to two grounds stated above. There is no interpretation needed as to the excess of jurisdiction but what can constitute as to unfair proceedings that had affected the appellant is interpreted by courts
17. *Aaryan v Enterprise v Mahek Unique Fashion* [2011] FJHC 727 Civil Appeal 17.2011 (10th November 2011), delved deeply into the subject of section 33 of the Small Claims Tribunal Act and observed the following;

“In essence the ground allows for an appeal to the Magistrates on the grounds that the appellant has been denied natural justice in the form of procedural fairness which has prejudicially affected the result of the proceedings. The other allowable ground of appeal under the Decree is that the Tribunal exceeded its jurisdiction. Together they represent a limitation on the general principle that an appellant’s right to appeal is as of right in respect of an error of law and/or fact. It is a right of appeal which requires the appellate court (the Magistrates Court) to review the proceedings conducted by the Referee in the Small Claims Tribunal and determine whether the applicant’s complaint has any merit. There is certainly no right of appeal in respect of any error of law nor in respect of any factual error. The procedure to be adopted is clearly one of review and not one of re-hearing”.

18. Justice Fatiaki, in, *Sheet Metal & Plumbing (Fiji) Ltd v Deo* [1999] FJHC 26; Hba0007d.99s (14 April 1999);

“...ground (a) specifically refers to ‘the manner’ in which the referee conducted the proceedings as the crucial concern of the right of appeal on that first ground. Furthermore not only must the conduct complained about be ‘unfair to the appellant’ it must, in addition, ‘prejudicially’ affect the result.

As to the ‘manner’ or procedure required to be followed by the referee in conducting a proceeding under the Decree these are principally to be found in Sections 24 to 29 (inclusive) under the heading ‘HEARINGS’. A cursor examination of these provisions serves to highlight the informal, non-adversarial nature of the proceedings before the Small Claims Tribunal and militates against a general appeal on the merits or for errors of law.”

Additionally, he provides;

*“Even more trenchant is the view expressed by Greig J. in *Hertz New Zealand Ltd. v. Disputes Tribunal* (1994) 8 PRNZ where his honour said in*

rejecting the appeal in that case, at p.151:

‘... there is no appeal on the merits even if there is a clear and fundamental error of law in the conclusion of the Tribunal.’

Quite plainly in my view not only is this second ‘ground of appeal’ misconceived in so far as it seeks to question the ‘merits’ of the referee’s decision without pointing to any ‘procedural unfairness’ but further, in so far as it purports to be predicated on the difficult legal principle of ‘unjust enrichment’ it fails to properly appreciate the function and nature of a non-legally qualified referee exercising what in effect is an equity and good conscience jurisdiction.” (emphasis added)

19. Appellant had not indicated in the appeal ground one with clarity, but at the hearing only stated that SCT decision did not consider tax assessments of the Respondent that were submitted to SCT to arrive at loss of income due to the accident.
20. In the report to the referee it was stated that both parties were present at the hearing and there is no dispute on that. Referee had tried to settle the parties and had reduced the amount of claim to \$1,700 from \$1,821.80. The report state that decision regarding amount was made from ‘the submissions and other documents tendered’. This is allowed under section 26(1) of Small Claims Tribunal Act 1991
21. So the contention of appellant that tax assessments were not considered, is without any merit. These documents were available to the referee and reference to Car Loan and the manner in which accident happened indicate all the documents were considered.
22. Respondent’s damage to the vehicle was borne by insurance but there is economic loss due to the deprivation of source of income for 18 days. This needs to be calculated by all the evidence before SCT. It is wrong to rely only on tax assessment which consist only net income after deductible expenses such as car loan. These needed payment irrespective of vehicle was used as Taxi or in the garage.
23. There is no evidence that referee had not examined tax assessments. There is evidence that such documents were considered and loss was determined \$1,700. So there was no prejudice in the manner in which SCT conducted this matter.

GROUND TWO

24. The Appellant has forwarded the following as the second Ground of Appeal;

2. The Learned Magistrate erred in fact and in law in not accepting that the Referee had;
- a) The proceedings were conducted by the Referee in a manner which was unfair to the appellant and prejudicially affected the result of the proceedings; and
 - b) The Tribunal exceeded its jurisdiction.
25. There is certain freedom granted to SCT to deal with merits and justice of the case in terms of Section 15(4) of Small Claims Tribunal Act 1991 which reads
- 15 (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.*
26. As stated in ground one of the appeal above, tribunal conducted its hearing in terms of Section 15(4) of the Small Claims Tribunal Act 1991. There was no need to call oral evidence when all the documents were not disputed. Referee has discretion to determine amount of damage. (see section 26(1) of Small Claims Tribunal Act 1991)
27. There is no evidence that proceedings were conducted in a manner that was unfair to the appellants. Respondent's tax assessments were submitted and they include tax return where gross income varied between 30,000 to 35,000 for past three years. In the circumstances I cannot see any prejudice to Appellant as he had requested and relied on these documents. So there was no need to conduct an oral hearing as referee could see the income and expenses in the tax return. Though report of the referee had not mentioned specifically about the tax returns, he had mentioned about repayment of loans which was a deductible expense from gross income. The fact of loan payment is only found in tax returns. In the circumstances considering limited freedom granted to expeditiously decide matters there is no evidence that proceedings were conducted in unfair manner that would affect result of the proceedings.
28. SCT had not exceeded its jurisdiction and this was not appeal dismissed without cost.

FINAL ORDERS

- a) The appeal is dismissed and learned Resident Magistrate's decision is affirmed.
- b) There is no order as to costs.

Dated at Suva this 22nd day of May, 2020.


Justice Deepthi Amaratunga
High Court, Suva