

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 181 of 2018

BETWEEN

ARVIN KUMAR of Lot 12 Cigani Road, Vere Road,
Laucala Beach Estate, Driver.

PLAINTIFF

AND

NILESH PRASAD of Lot 23 Vere Road,
Laucala beach, Driver.

DEFENDANT

Counsel	:	Mr. D. Singh for the Plaintiff Defendant in person
Date of hearing	:	06th August 2020
Date of Judgment	:	04th September 2020

JUDGMENT

- [1] The plaintiff filed this writ of summons seeking damages for the injuries caused to him due to the alleged negligence of the defendant.
- [2] The particulars of negligence averred in the statement of claim are as follows:
- (a) Failing to stop while a pedestrian crossing.
 - (b) Failing to keep any or any proper look-out or to have any or any proper regard for the Plaintiff crossing the said road.
 - (c) Driving at an excessive speed having regard to all the circumstances.
 - (d) Failing to stop, to slow down, to swerve or in any other way so to manage or to control his said vehicle as to avoid the said collision with the Plaintiff.
 - (e) Failing to exercise such degree of care and control over his said vehicle as was warranted having regard to all the circumstances.
 - (f) Failing to give precedence to the Plaintiff crossing the road.
 - (g) Failing to apply the brakes on the said motor vehicle in time or at all to avoid the said accident.
 - (h) Failing to see the Plaintiff insufficient time or at all to avoid the said collision with him.
 - (i) Failing to give any or any adequate warning of his approach.
 - (j) In the premises, failing to drive with due care and attention and driving below the standard of a careful and prudent driver.
- [3] At the pre-trial conference the parties admitted the following facts:
- The plaintiff resides at Vere Road, Laucala Beach and was born on 7th October, 1967.
- The defendant has been at all material times the driver of the motor vehicle registration number SNAP.
- The defendant is the registered owner of the said motor vehicle registration number SNAP which was insured at the material time in accordance with the Motor Vehicles (Third Party Insurance) Act with Dominion Insurance Company Limited.
- [4] The plaintiff could not walk without assistance and he could not see properly. In his evidence the plaintiff said the accident happened while he was crossing the road and at the time of the impact he was about to reach the footpath.

- [5] The plaintiff tendered in evidence the sketch prepared by the Police Officer who investigated in to the accident, marked as "P3". According to the sketch at the time of the impact from right side of the vehicle driven by the defendant to the footpath on the right side of the road the distance is 3.00 meters and from the left side of the vehicle to the left side of the road the distance is 5.2 meters and the entire width of the road is 9.8 meters. The evidence of the Police Officer is that the point of impact was on the middle of the road. Both the plaintiff and the defendant say that the plaintiff was hit on the left side of the car. Therefore, the point of impact should be somewhere close to the middle of the road and the evidence of the plaintiff that he was almost reaching the footpath on the opposite side of the road cannot be correct.
- [6] The main issue to be determined here is whether the accident was due to the negligence of the defendant and if so to what extent. The plaintiff adduced hardly any evidence on the negligence of the defendant. However, it appears from the evidence adduced by both the plaintiff and the defendant that the defendant, at the time of the accident, had been driving the car without keeping a proper lookout on the other users of the road.
- [7] What the court understands from the defendant's own evidence is, he did not see the plaintiff crossing the road it was his niece who was travelling with him told that a person is on the road and it was too late to take preventive actions.
- [8] The defendant says the plaintiff came from the right side of the road and was hit on the left side of the vehicle which means before the impact the plaintiff had crossed the path of the vehicle and if the defendant drove the vehicle keeping a proper lookout he could have noticed the passenger crossing the road and this amounts to negligence on the part of the defendant.
- [9] Dr. Pauliasi Bauleka is not the doctor who treated the plaintiff. He had seen the plaintiff only once that is on 3rd August 2020, three days before the trial. He said there is a possibility that the plaintiff's gait deformity will affect the rest of his life. However, the doctors who treated the plaintiff have not expressed such an opinion in their reports.
- [10] The medical report of Dr. Vueta Scott Buadromo says inter alia, as follows;

Upon arrival at the emergency department, he was noted to have acute confusion state. He was admitted for a brain scan to rule out serious injury and observed for danger signs overnight. He was discharged safely once he had been cleared by the neurologist.

One year later he complains of back pain with associated left leg pain. According to Mr. Kumar he cannot walk by distances and at times he needs pain killers. He continues to work as a driver at Vinod Patel but he no longer does background gardening. Something he used to enjoy and provided him with some subsistence foods.

Arvin Kumar has reached maximum Medical improvement and his rateable impairment is a Mild Gait defamatory,

Using AMA5e mild Gait Derangement is awarded 7% whole person impairment.

[11] In the Medical report dated 25th September 2017 (P1) it says;

On arrival to the Emergency department, Mr. Kumar was noted to be slightly disorientated with a GSC of 14/15. His vital signs were stable and apart from several facial abrasions, examination of other systems were all normal.

[12] GSC 15 indicates a fully awake patient. GCS (Glasgow Coma Scale) is a neurological scale which is used to assess a person's level of consciousness after a head injury. From the above it is clear that the plaintiff has had no serious head injury.

[13] Although the plaintiff says his situation was serious the medical reports do not support his contention. The plaintiff had been in hospital only for three day and the plaintiff's evidence is that after discharging from the hospital he stayed in bed for six months but his wife's evidence is, the plaintiff stayed at home on for two months after discharging from the hospital.

[14] Whether after two months or six months the plaintiff had reported back to work and there is no evidence that he confronted any difficulties in performing his duties as a driver. As I stated earlier the court observes that the plaintiff is now not in a position to walk without the assistance of someone and he cannot see properly but there is no evidence that the difficulties he is now facing are connected in any way to the injuries he sustained from the accident.

[15] Taking all these factors into consideration the court orders the defendant to pay the plaintiff \$15,000.00 as damages for pain and suffering.

[16] Plaintiff in the statement of claim by way of special damages also claims damages for loss of wages for 16 weeks. The evidence adduced by the plaintiff on the issue of loss of wages are contradictory. As I have stated above according to the plaintiff he stayed at home after

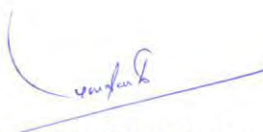
discharging from the hospital for six months and his wife says he stayed at home only for two months and in the statement of claim he claims wages for 16 weeks. The plaintiff in his evidence referred to his pay sheet (Last document in the bundle of documents) according to which his weekly salary was \$182.16. Special damages must be specifically pleaded and proved. The evidence before this court as to the period within which the plaintiff could not went for work cannot be relied on since the evidence of the plaintiff and his wife are contradictory.

- [17] Apart from loss of wages and FNPF contribution the plaintiff has sought \$494.04 as special damages for travelling to the hospital and back, medicine and for obtaining the police reports and medical reports. The defendant has not challenged this claim and therefore, court awards as special damages \$494.04.
- [18] The plaintiff's wife in her evidence said she claims \$50.00 per week for looking after her husband, \$2500.00 for medicine, \$1500.00 as travel expenses and \$45.00 and \$120.00 for the loss of his mobile phone and the wrist watch.
- [19] None of these have been pleaded in the statement of claim of the plaintiff. I have considered above in paragraph 17 above.
- [20] For the reasons set out above the court makes the following orders.

ORDERS

1. The defendant is order to pay the plaintiff \$15,000.00 as general damages and \$494.04 as special damages.
2. The defendant is also ordered to pay \$2000.00 as costs of this action.




Lyone Seneviratne

JUDGE

04th September, 2020