

**IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 257 of 2016

**BETWEEN : VOLAU TAROGI  
PLAINTIFF**

**AND : ROAD SEALING SERVICES LIMITED  
DEFENDANT**

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**APPEARANCES/REPRESENTATION**

**PLAINTIFF : Mr. D. Singh [Daniel Singh Lawyers]**

**DEFENDANT : Ms. Fa [Law Solutions]**

**RULING BY : Acting Master Ms Vandhana Lal**

**DELIVERED ON : 15 February 2022**

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**INTERLOCUTORY RULING**

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1. This the Defendant's application to set aside an interlocutory judgment entered against it on 11<sup>th</sup> April 2018.
2. The said judgment was entered in default of a notice of intention to defend.
3. The Plaintiff's claim is for personal injury he claims he sustained during an incident whilst still in employment with the Defendant.
4. The Defendant acknowledges receipt of the writ however blames its previous solicitors who failed to file a defence within the requisite timeframe under the rules.
5. Only upon receipt of the interlocutory judgment it became aware that the previous solicitors took no action to defend the claim.

6. Thereafter only upon receipt of the summon for assessment of damages did the Defendant engage services of the current solicitors and made the current application for setting aside.
7. There has been a delay of one year after the judgment was obtained and two months short of a year when the Defendant was served with the interlocutory judgment.
8. In its defence, the Defendant states that the Plaintiff had pre-existing condition and of the 11 months he worked, he took 83 days off complaining of a bad back.

Furthermore, the Defendant claims that after the Plaintiff had jumped off the truck he was questioned and he (Plaintiff) informed his supervisor he was "Okay" and there was nothing wrong with him and he had continued with the work.

It was after 04 months of the incident he stopped working for the Defendant and lodged a complaint with the Labour Office. He had never complained about receiving injuries during that incident.

9. There is inexcusable delay since when the judgment was entered and when it was served on the Defendant till the day when the current application was made for setting aside the interlocutory judgment.
10. However, in its affidavit in support the Defendant has raised meritorious defence as outline earlier. It is only proper the claim be decided on merits.

The alleged incident occurred in November 2013. As per the medical record history the Plaintiff first sought medical attention 02 days after the incident; two weeks later he is said to have complete weakness of right upper limb and shoulder and was seen at Colonial War Memorial Hospital from March 2014.

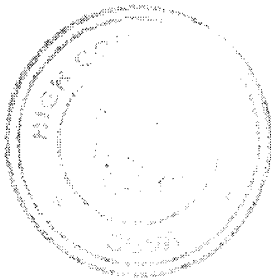
11. If the judgment is set aside and matter proceeds towards trial, the Plaintiff can be compensated with costs for the delay caused.


12. Hence the interlocutory judgment entered on 11<sup>th</sup> April 2018 is set aside on following conditions:

- (i) The Defendant to file and serve its statement of defence by 4 pm on 25 February 2022;
- (ii) The Defendant pays to the Plaintiff cost summarily assessed at \$1,000 by 4pm 25 February 2022;
- (iii) If the defence is filed and served as above, the Plaintiff to file and serve his reply to the defence by 4pm 11 March 2022;

Should the Defendant fail to abide by the above orders, the said interlocutory judgment shall remain on foot.

13. I will make necessary orders on the Plaintiff's summon for assessment of damages on next court date as required.



  
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**Vandhana Lal [Ms]**  
Acting Master  
At Suva.

**TO:**

1. **Suva High Court Civil Action No. HBC 257 of 2016;**
2. **Daniel Singh Lawyers, Solicitors for the Plaintiff;**
3. **Law Solutions, Solicitors for the Defendant.**