

In the High Court of Fiji
At Labasa
Civil Jurisdiction

Civil Action No. HBC 32 of 2020

Wahid Ali
Plaintiff

v

Waiqele Sawmill Limited
Defendant

Counsel: Mr S. Sharma with Mr A. Namua for the plaintiff

Mr A. Kohli with Ms S. Naidu for the defendant

Date of hearing: 15th and 16th June, 2022

Date of Judgment: 7th March, 2023

Judgment

1. The plaintiff was employed by the defendant to operate a skidder at a logging site. The statement of claim states that when he was ascending a small hill, the skidder suddenly choked and tumbled when he applied the brakes. The injuries were caused by the negligence of the defendant in providing an unsafe system of work. The plaintiff relies on the doctrine of *res ipsa loquitur*. He claims damages for injuries sustained by him in the course of employment.

2. The particulars of negligence pleaded read:
 - i. *Failure to provide fit and proper vehicle (skidder) with proper engine to the Plaintiff before he was directed to drive the skidder.*
 - ii. *Failing to provide the machinery namely the skidder with proper braking system.*
 - iii. *Failure to provide or maintain a safe and proper system of working, or to instruct their workmen including the Plaintiff to follow that system.*
 - iv. *Failure to provide adequate supervision at all times.*
 - v. *Failing to take any adequate precautions for the safety of the Plaintiff while he was engaged in his said work.*
 - vi. *Exposing the Plaintiff to a risk of damage or injury of which they knew or ought to have known.*
 - vii. *Failing to provide or maintain any or any safe or property system of work.*
 - viii. *Requiring the Plaintiff to engage in a dangerous activity alone without due regard to his safety.*
 - ix. *Instructing or allowing the Plaintiff to drive the skidder to pull the logs when the Defendant knew or ought to have known that it was dangerous and risky.*
 - x. *Failing to provide any care for the Plaintiff to attend to his surgical treatment abroad.*

3. The defendant denies it was negligent and states that any injuries suffered by the plaintiff were due to his sole negligence or recklessness or contributed by him. The plaintiff failed to keep a proper lookout, drove the skidder on a log and it tumbled down. Workmen's compensation was paid to him.

4. The plaintiff in his reply states that the accident was caused due to the mechanical fault of the skidder which resulted in the skidder driving down the hill. He sustained injuries due to the sole negligence of the defendant.

5. ***The determination***

Agreed facts

1. *The Plaintiff brings this action against the Defendant for injuries sustained by him in the course of his employment with the defendant on or about 16th day of July, 2018.*
2. *.at all material time the Plaintiff was employed by the Defendant as a skidder driver or operator who was directed by the Defendant to operate the skidder at a logging site at Railagi Koro Batiri, Seaqaqa.*
3. *The Plaintiff was paid a gross wage of \$198.45 per week.*
4. *. it was an implied term of the Plaintiff's contract of employment that the Defendant would by its servants and/or agents take all reasonable care to provide and maintain a safe system of work and effective supervision of the same and would not expose the Plaintiff to a risk of damage or injury of which they knew or ought to have known, and would take all reasonable measures to ensure that the place where the Plaintiff carried out his work and the machines he was required to operate and use were safe, and that the Defendant would provide and maintain a safe and proper system of working.*

Issues

1. *Did the defendant owe a duty of care to the plaintiff? What was the nature of that duty?*
 2. *Was there any instructions or established guidelines provided to the Plaintiff? If the answer is yes, then did the Plaintiff fail to adhere to instructions and established guidelines?*
 3. *Did the Plaintiff fail to exercise adequate precautions?*
 4. *How did the injury occur and what was the extent of such injuries?*
 5. *What caused the skidder to tumble?*
 6. *Was the injury caused by the negligence or breach of duty by the Defendant?*
 7. *Did the Defendant comply with the requirements of the implied terms of the Employment in providing a safe working system and take all reasonable means to provide a safe and proper working conditions?*
 8. *Does the doctrine of res ipsa loquitur apply?*
 9. *Did the Plaintiff sustain personal injury by accident arising out of and in the course of employment with the Defendant?*
 10. *Did the Plaintiff or wholly contributed the negligence as a result of which he sustained injuries?*
 11. *In the event liability is proved against the Defendant, then what should be the damages awarded to Plaintiff (if any)...*
6. It is an agreed fact that the plaintiff suffered injuries on 16th July, 2018, when he was operating a skidder at a logging site. The questions for determination are as follows: (i) whether the defendant failed to take all reasonable care to provide a safe system of work and adequate supervision; and, (2) whether the plaintiff failed to exercise adequate precaution.

7. The plaintiff, (PW1) in evidence in chief explained that a skidder is used to pull logs. On 16th July 2018, he serviced the machine and started work. The brakes were working. He had been driving a skidder and bulldozer for the defendant for 2 years.
8. In cross-examination, it emerged that he had 10 years of experience driving a skidder. He said that the engine had a proper braking system. There was no problem with the engine on the day of the accident. He operated the skidder only when he found the machine in proper condition and good working order. If there was anything wrong, he would notify his bosses who would send a mechanic to attend to it. He had already pulled logs 8 to 9 times that morning on the same route without any problem. He agreed that most logging sites (99%) are on a hill. The road was safe. Two wire boys accompanied him. Every day before he commenced driving, he and the wire boys checked the oil, filters, tyres and brakes. He did not require anyone to tell him how to do his work. With his experience, he knew that there were times when the skidder was not able to pull logs and starts skidding.
9. PW2, (*Abhilash Sharma, wire boy of the defendant*) in evidence in chief confirmed that he checked the oil and water in the skidder daily and on the day of the accident. The skidder operated 7 to 8 times on the same road on that day. His Supervisor was at the skid, the place where logs are stocked. The skid was 5 to 7 minutes walking distance away from the scene. Prior to the day of the incident, his Supervisor had explained safety procedures and advised him not to be behind the skidder.
10. DW1, (*Firoz Begg, Director of the defendant*) in evidence in chief said that the plaintiff had driven his skidder 8 to 9 times on that road the same day. He did not complain that the road was unsuitable. OHS and LTA had inspected and passed the machine. The defendant does not permit drivers to operate skidders if they are broken down or not functioning well. They had a fleet of 4 skidders in 2018. A driver has to obtain a certificate from the Forestry Dept to operate a skidder in the forest. On 9th April,2018, the Permanent Secretary for Employment, Productivity & Industrial Relations/Chief Health and Safety Inspector found the skidder to be “*in acceptable working condition. Inspection and relevant test was carried out with satisfactory result*”.

11. In cross examination, DW1 said that every week, Supervisors have a meeting with employees on safety measures and how to eliminate risk or injury. The defendant was never issued a notice from the OHS or Ministry of Labour stating its machines were unsafe. The oil is checked before the machine is started.
12. In my judgment, the evidence of the plaintiff, PW2 and the defendant reveal that the skidder was in good working condition on the day the plaintiff befell the accident. The brakes were working. The plaintiff traversed the same road 8 to 9 times on the morning of the incident in the skidder. The road was safe. The plaintiff had 10 years experience driving a skidder in logging sites. The machine was passed by OHS and LTA.
13. The circumstances in which the accident occurred were narrated by the witnesses as follows.
14. PW1 in evidence in chief said that on 16th July 2018, when he was ascending the hill to pull logs, the machine choked. He stopped the machine. It did not function. He took it sideways and the machine tumbled. He did not reverse, as the machine would have fallen into a deep slope. In answer to Mr Sharma, counsel for the plaintiff, he said that he did not jump out when the engine stopped, as it was a big machine. If he did, he would have got injured. After the first tumble, his helmet broke and he sustained head injuries.
15. In cross-examination, PW1 said that the skidder choked, skidded two metres back and stopped. Then he turned it sideways. He did not turn off the engine off and call for help, as if he stopped the skidder and it starts to roll, he and the boys would have got injured if they were at the back. He applied the brakes and turned the skidder sideways, so that no one would get injured. He reversed and the skidder tumbled. When the skidder choked the engine slowed down. It was put to him the boys could run faster than the machine as they were on the ground. The Forestry Department has advised that when a skidder climbs a hill and the machine chokes to turn it sideways, so that the machine does not roll and injure anyone. He turned the machine sideways, so that he could come out. It was also put to him that when the skidder came to a standstill, he could have told the two boys to seek help and let the skidder remain there till it started moving.

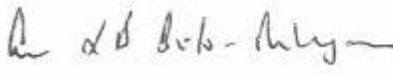
Mr Kohli, counsel for the defendant put it to PW1 that the machine skidded, drove on a log and the tyres went on top of the log. He replied that he did not see the skidder rolling on a log, as it was a big machine. It was the first time that the skidder choked.

16. In re-examination, this witness said that the defendant had not advised nor provided training as what to do when the skidder chokes. He acted on his own experience. If he had stopped the skidder halfway, he would not have been able to come out. It was a big skidder and as he turned it sideways, he could not see the log.
17. It transpired in the evidence of PW2 that the plaintiff did go over an idle log lying on the side of the road.
18. PW2, in evidence in chief said that he was with the plaintiff on the day of the incident. When the plaintiff was ascending a hill, the machine choked. He reversed and the tyre went over a thin wasted log. The machine slipped and tumbled as there was a slope. Chainsaw operators keep such logs beside the road. The plaintiff did not apply the brakes. If the brake was pulled, all 4 tyres would get locked.
19. In cross examination, PW2 said that the log was on the side of the road. If the tyre had not gone over the log, the skidder would not have rolled down. If the plaintiff applied the brakes, the skidder would have stopped. If a skidder chokes, they change the filter or call a mechanic.
20. DW1 explained the features of the skidder. It has steps to get in. One does not have to jump up or down. There are two doors on both sides, a pressure brake, which can hold for 10 to 15 minutes and a safety brake inside the cabin. The safety brake can be pulled and skidder left for a long time. It will not move even on a slope. The brakes are outside and once it is pulled, all the brake locks. If a driver has a problem with the skidder, he would tell him to park it until his mechanic attends to it. The skidder driver knows the risks involved. If a log is lying on the road it is the duty of the machine operator to remove the log.

The skidder only got punched. The skidder was found to be in order after the accident. DW1 said that he drove it back.

21. In cross examination, DW1 said that every Monday, he convenes a meeting with logging supervisors. There was no time to apply the safety break after the skidder rolled over the log. The witness agreed that operating a skidder on a road constructed with only mud was a dangerous activity.
22. In re- examination, DW1 said that when the machine starts choking, a prudent skidder driver should put the blade down , brake and pull the safety brake. The plaintiff had time to apply the brakes before the skidder went over the log. The skidder would have come to a standstill. If the plaintiff applied the brakes and yet it tumbles, then it was not his fault.
23. The plaintiff said he applied the brakes. PW2 said that the plaintiff did not.
24. I prefer the evidence of PW2. I found him to be a truthful witness.
25. In my view, common sense dictates that a prudent driver should have applied the brakes and stopped the machine immediately. DW1 testified that the pressure brakes in the skidder were such that it would stop even on a slope.
26. The plaintiff contended that he was not advised on what was to be done when the skidder chokes. However, in cross examination, he admitted that if there was anything wrong with the machine, he would notify his bosses who would send a mechanic to attend to it, as also testified by DW1. PW2 said that if a skidder chokes, they change the filter or call a mechanic. The supervisor was 5 to 7 minutes away in the skid.
27. The contention that the skidder would have stumbled and hurt the wire boys if he stopped the machine is unacceptable, as they could run faster than the machine as was pointed out in his cross-examination. Moreso, PW2 testified that wire boys were instructed not to be behind the skidder. The contention that the Forest Dept. instructed the plaintiff to turn the skidder sideways when he encountered a problem is untenable and was not supported by independent evidence.

28. In my judgment, the accident occurred as the plaintiff was negligent in failing to apply the brakes and stop the skidder. Instead, he reversed sideways going over a log lying beside the road which he passed 8 to 9 times earlier that day as testified by PW2. *Res ipsa* does not apply.
29. On a review of the evidence, in my judgment, the defendant had discharged its duty to provide a safe system of work and supervision. I do not find that the defendant was negligent. The defendant had not created a dangerous situation. There was no foreseeable risk which it knew or ought to have known.
30. The plaintiff's action fails.
31. **Orders**
- a. The plaintiff's action is declined.
 - b. I make no order as to costs.


A.L.B. Brito-Mutunayagam
JUDGE
7th March, 2023

