

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Civil Action No. HBC 250 of 2016

Shanjivan Padarath  
Plaintiff

v.

Savaira Tabua  
First defendant

Fiji Broadcasting Corporation Limited  
Second defendant

Counsel: Mr V. Kumar with Mr M. Khalim for the plaintiff  
Mr E. Narayan with Ms S. Narayan for the defendants

Date of hearing: 11<sup>th</sup> and 12<sup>th</sup> April,2022

Date of Judgment: 16<sup>th</sup> March,2023

**Judgment**

1. The plaintiff, a medical Doctor claims damages for a cyber libel published on both the second defendants' website and facebook page in September, 2016. The article titled "*Fake Doctor to appear in court*" was reported by the first defendant, a news reporter employed by the second defendant. The article has a photograph of the plaintiff. The plaintiff claims that as a result of the publication, he has suffered loss and damage to his fame, profession, dignity, prospect of promotion, employment abroad, mental distress, anxiety, pain and suffering. He claims \$2 million as damages.

2. The plaintiff in his statement of claim states that the entire public in excess of two million could view the post. The photograph was used to sensationalize the news and is defamatory of him. He never gave instructions to the defendants to use his photograph. The words used in the statement in their natural and ordinary meaning and innuendoes with the photograph| meant, are capable of conveying and were understood to mean that:
- (i) *That the Plaintiff is not a qualified doctor and carried fake qualification;*
  - (ii) *The Plaintiff practice deception and therefore is dishonest in his treatment with the patients and the society as a whole;*
  - (iii) *The Plaintiff engage in lies, deceit and corrupt practices to further his own greed and to detriment of the patient and the community as a whole;*
  - (iv) *The Plaintiff engages in such criminal and corrupt practices for his own gain regardless the welfare of the patient and society;*
  - (v) *That friends and family are making a big joke of the Plaintiff;*
  - (vi) *That it puts bad image of the Plaintiff to the public and he is called by the members of the public as a fake doctor when he travels or passes by;*
  - (vii) *That the picture put bad image on his carrier, his promotion and other opportunities that are open to him locally and abroad of being a qualified doctor;*
  - (viii) *That the Plaintiff started to have problems of people staring at him and has started having problem with his male friends and female friends whom he is associated with;*
  - (ix) *His image is tarnished and lost the opportunity to get married to a female of his standing;*
  - (x) *He had suffered demoralization in his entire life.*
3. The plaintiff states that the representations were false, untrue, inaccurate and misleading. The defendant assassinated his character and brought injury to his reputation and feelings. He has suffered distress, embarrassment and mental anxiety. The use of his photograph is malicious, deliberate and recklessness. The defendants removed the photograph without any public apology and compensation after 7 days.
4. The defendants, in their amended statement of defence state that the plaintiff had given the defendant an interview including necessary instructions and consent to publish his photograph. They deny the article was defamatory in nature and was intended or understood to mean that the plaintiff is not a qualified doctor and as a result brought his reputation into public scandal as alleged.

5. The publication was done in good faith without malice. The article was an innocent publication in the discharge of the second defendant's duties. The publication were matters of fair comment, free speech and true and accurate based on material within the knowledge, information and belief of the defendants. The defendants have always maintained sensitivity regarding the publication of its articles and complied with the Media Industry Development Act (MIDA).
6. The plaintiff in his reply states that it is the ethical duty of the defendants under the MIDA to do a thorough check of the authenticity of any news prior to its release for public consumption before it ruins an innocent's reputation. Neither an interview, instructions nor any authority or consent was obtained from him to publish his photograph.

***The hearing***

***PW1***

7. The plaintiff, (PW1) in evidence in chief said that he graduated from FSM,(now FNU) in 2013 with Honours. He pursued a post graduate diploma in non-communicable diseases. After his internship, he was employed at Samabula Health Centre earning \$55,000 per annum. His mother called and told him that she saw his photograph and an article on Facebook stating that he was a fake doctor. She sounded quite flustered. The article was on Facebook Mirchi FM page with his photograph and linked to the FBC website. Mirichi FM is a channel of the second defendant. PW1 said that the picture was taken at SHC. The article with his picture alongside There were 4444 comments. There are “61 (emojis) 38 Comments 10 Shares”. PW1 agreed that there were not 4000 comments .He referred to the several comments. After the publication, he could not be engaged in general practice as patients and colleagues asked if he was the fake doctor. He had to request a transfer to a specialist clinic. Patients asked him if he was the fake doctor. Patients from the Media Industry Development Authority asked him if he was Dr Shanjivan because of the picture and complaints they received. He was in the sexual reproductive clinic for one year. He could not continue in his passion, which was general practice. He went to the University of Auckland to pursue a Masters in Public Health, which took two years. When he came back, he could not find employment, until he got an opportunity at Fiji National University.

8. When he had relationship proposals, his family had to explain that he was not a fake doctor and was qualified. He has lost many friends. He left networks. He is no longer on facebook as it brings back memories. He changed his career paths from a general practitioner to an academic, so he would not have to deal with the general public, but he is exposed to students.
9. In cross-examination, it was put to PW1 that the article states that a fake doctor allegedly administered cough mixture. He agreed that an i-Taukei man was charged, and he has not been charged as the fake doctor. The picture in colour shows part of his face, hair, an ear, shoulder, hand , left cheek, left ear and an outline of the left eye. The article does not give a name. His mother as well as his colleagues contacted him. His peers, friends and colleagues recognized him and others confronted him regarding the photograph. Academic lecturers get more when they work in the government sector. He now earns \$90,000, which was more than the \$55,000.00 he was earning at SHC.
10. In re-examination, PW1 said that most of the comments were from people who knew him. The picture shows his definition from head, partially his forehead to chin circumscribed by his ears. The picture was taken during the conjunctivitis outbreak in 2016. He has never been charged. The publication had an impact on his career prospectives. With his Masters, he would have been Chief Medical Officer earning \$150,000 per annum.

*PW2*

11. PW2, (*Poonam Rajnita Pal, Nurse*) said that she recognized the plaintiff in the Mirichi FM post as well as the FBC webpage. The plaintiff and she were working together at SHC. She recalled that there were lots of comments. Obviously the picture was her first attention and then the article. She recognized his face absolutely. She has known the plaintiff professionally and personally through his sister. The first thing that came to her mind was that the article was entirely false. If she did not know him, her first thought would have been if he was really an actual doctor, a certified doctor or not. He withdrew in the aftermath of the publication. He was a passionate doctor and she felt he moved from

providing patient care to teaching after the publication. She would definitely know it's a fake and false article.

12. In cross examination, PW2 confirmed that the plaintiff was her friend and colleague. He did not get terminated from his job at SHC for the reason that he was the fake doctor.

*PW3*

13. PW 3,(*Dr Pretty Bal Govind*) said that the plaintiff and he were colleagues at CWM Hospital during their internship. She read all the comments on the facebook page and commented on the post as well. Most of the comments said to remove the picture and that the plaintiff was a qualified doctor.

14. In cross-examination, she said that she recognized his side profile and read all the comments. She could not see the plaintiff's eyes, nose, chin, forehead in the picture nor his face from his chin to his forehead.

15. In re-examination, PW3 said that the side profile of the plaintiff was featured in the photograph. They worked together for a year. He read the picture and article as a whole.

*PW4*

16. PW4,(*Akshay Ashneel Kumar* ) said that he recognized the plaintiff from his side view of his picture . All the comments refer to the plaintiff. He commented to take this matter to Court, as the plaintiff was a qualified professional doctor.

17. In cross-examination, he said that he knew the plaintiff from birth. They were first cousins. He commented "*What the government is doing since he is a qualified doctor working for ministry of health..shame on u*". PW4 said that he could recognize the plaintiff because he knew him for at least 35 years. In re-examination, he said that the picture belonged to the article.

*DWI*

18. DW1, (*Indra Singh, Manager, News & Sports of the second defendant*) said that a general picture was used. There is as no mention of a name nor a caption which would usually identify a person. There was no malice at all. It was a general picture depicting or portraying a medical situation. On seeing this picture, he would not be able to identify the plaintiff unless he was very much related to him. There is no facial feature. There is nothing there to identify a particular person. One cannot see his eyes, nose nor lips. The article concerns an alleged allegation against a particular individual who was at that point in time alleged to be a so-called fake doctor. The picture does not relate nor identifies that the fake doctor is the plaintiff.
  
19. In cross-examination, he said that the words fake doctor means a person who is not qualified to be called a doctor. The plaintiff has not been identified. The pictorial depicts a medical situation of the alleged running of a clinic. He denied that the publication was intentional or reckless with no regard for the truth. The plaintiff's face is not shown.
  
20. In re-examination, DW1 reiterated that the photograph does not give the identity of the plaintiff. There are no identifying features of him.

***The determination***

21. *Issues*
  - a. *Whether the Plaintiff is a duly qualified doctor, a young man, single, well known by the members of his professional organization and resides at 3 Maqbool Road, Nadera, Nasinu?*
  - b. *Whether the 1<sup>st</sup> Defendant whilst being employed by the 2<sup>nd</sup> Defendant published an article online with the picture of the Plaintiff along with the heading "Fake Doctor to appear in Court"?*
  - c. *Whether the said article had on it the picture of the Plaintiff?*
  - d. *Whether the said article along with the picture was published on the official website of Fiji Broadcasting Corporation Limited which was then shared on Mirchi FM Facebook page?*
  - e. *Whether this article along with the picture was then shared and/or distributed and by commented by the members of the public for their consumption?*

- f. *Whether the Plaintiff had given to FBC an interview including necessary instructions and consent to publish his photo?*
- g. *Whether the Defendants and/or any representative of the Defendant and approached the Plaintiff at any time for his consent for his picture and/or interview to be used in the article headed as “Fake Doctor to appear in Court”?*
- h. *Whether the Plaintiff is a “Fake Doctor” as per it heading “Fake Doctor to Appear in Court”?*
- i. *Whether the said article along with the picture is defamatory in nature to the Plaintiff?*
- j. *What is the exact and/or full meaning and effect of the said article and the picture?*
- k. *Whether the article namely “Fake Doctor to Appear in Court” alongside the picture of the Plaintiff has caused much disrepute of the Plaintiff which has affected his personal, professional, and social life?*
- l. *Whether the publication (if any) was done in good faith without malice and in compliance of the Media Industry Development Decree 2010?*
- m. *Whether the said article and the picture was an innocent publication in the discharge of FBC duties?*
- n. *Whether the publication concerning the Plaintiff were matters of fair comment, true and accurate?*
- o. *Whether the Defendants can rely on free speech, innocent publication and protection as per the Fijian Constitution and the Defamation Act Cap 34 as a defence?*

22. I will set out the words complained of in full :

***Fake Doctor to appear in Court***

***A man pretending to be a doctor will appear in court today.***

*The individual who allegedly ran a clinic from his home in Nasinu, has been exposed as a fraud with no medical qualifications.*

*Chief Executive of the Fiji Medical and Dental Council Dharmesh Prasad say he was arrested on Wednesday after a patient came for a review and became suspicious of his medical treatment.*

*“He has some sort of medical equipment whereby he can tell what someone has and for each consult he was charging \$75 without giving any receipt, this is highly irregular and illegal.”*

*The so-called fake doctor had been operating for the last three months and according to the Fiji Medical Council; this is quite a serious matter because the individual allegedly administered cough mixture to people who had heart problems.*

23. The plaintiff’s case is that his picture read with the article as a whole is defamatory and refers to him as the fake doctor. The defendants contend that it was a general picture

depicting or portraying a medical situation. The publication was done in good faith without malice and were matters of fair comment, free speech and true and accurate based on material within the knowledge, information and belief of the defendants.

24. It is not in dispute that the article featured a side view picture of the plaintiff.
25. PW1 said that his photograph was taken while he was working at Samabula Health Centre during an outbreak of conjunctivitis.
26. DW1 in evidence in chief said that the plaintiff's photograph was in the second defendant's library. The plaintiff had given an interview "*sometime back.. and that is when this picture ..was taken*". In cross examination he said that the plaintiff had given his consent to the first defendant for the photograph to be taken for a story she was doing at that time. DW1 could not recall the story. He agreed that the first defendant did not have the consent to feature it with the impugned article.
27. Both parties in their closing submissions have extensively referred to the judgment of Pathik J in *Rabuka v Fiji Daily Post Company Ltd*, [2005] FLR 125 (8 July, 2005) as to the test which should be applied in determining what the meaning the words would have been understood to mean. Pathik J stated:

*To establish a cause of action in defamation it must be shown that the defamatory words of and concerning the plaintiffs have been published. There are three aspects to this requirement, namely, (a) the nature of defamatory statement; .., (b) **the way in which it refers to the plaintiff**; this has already been done, and (c) the means by which it was published; ..*

*A defamatory statement has been defined as one that is of a kind likely to lead ordinary decent folk to think less of the person about whom it is made. A statement is sufficient if he or she is dishonoured...*

*The next thing is to see what those words would convey to an ordinary man. How an 'ordinary man' looks at them is very well stated by **Lord Reid** in the classic judgment in *Lewis v Daily Telegraph Ltd* [1964] A.C. 234 at 258-260 as follows:*

*"There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by a knowledge of the rules of*



*construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs... What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But the expression is rather misleading in that it conceals the fact that there are two elements in it. **Sometimes it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer.** But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning... Generally the controversy is whether the words are capable of having a libellous meaning at all, and undoubtedly it is the judge's duty to rule on that." (emphasis added)*

*One of the guiding principles on which the Court has approached the task of deciding the meaning to be attributed to the words used is that:*

***"a statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally, or be likely to affect a person adversely in the estimation of reasonable people generally."*** (Lord Justice Neill in *Gillick v British Broadcasting Corporation and Anor.*, 20 October 1995 *The T.L.R* 527 at 528) (emphasis mine)

28. In my view, in order to determine whether the publication is libelous, the title, article and photograph must be considered as a whole to ascertain the character of the alleged libel and to determine the person against whom the libel is directed.
29. I note that the impugned publication does not name the plaintiff, neither in the caption nor in the body. The photograph published is a side view picture of the seated plaintiff with two people seated in front of him.
30. The reader is told that a man pretending to be a doctor with no medical qualifications has been exposed as a fraud and the so-called fake doctor had been operating for the last three months.
31. In my judgment, the natural and ordinary meaning which would have been conveyed to the ordinary reasonable reader by the article and the photograph is that the plaintiff was the

fake doctor with no medical qualifications. Any reasonable man would come to this conclusion. Why else was the plaintiff's picture used and not an animated picture?

32. It was strongly contended by the defence that the entire face of the plaintiff was not depicted.

33. The material fact in my view, is that the plaintiff was in fact identified by several people as testified by PW1, PW2, PW3 and PW4 and accessed by a substantial number of people, as evident from the interactions and comments made to the pos.

34. Mr Kumar, counsel for the plaintiff has cited the following passage from *Duncan and Neill on Defamation*, (5<sup>th</sup> Ed) at para 7.12 :

*Although the issue of identification is to be decided by the objective test- whether reasonable people would reasonably understand the statement to refer to the claimant- the claimant is entitled to call witnesses to prove that they in fact understood the statement to refer to them*

35. As Pathik J said in *Rabuka v Fiji Daily Post Company Ltd*, (supra):

*The authorities even go to the extent of stating that they 'need not be specifically mentioned or identified, nor need there be so much as a "peg or pointer", so long as the tenor reasonably implicates him.'* (The Law of Torts by John F. Fleming 9th Ed. [1998], p.590)...

36. Next, it was also contended for the defence that the article speaks of an allegation.

37. The answer to that contention is contained in the following passage from the judgment in *Rabuka v Fiji Daily Post Company Ltd*, as referred to by Mr Narayan, counsel for the defendants in his closing submissions:

*It falls within the province of the judge to give his interpretation of defamatory statements and he does that in the way that an ordinary reasonable person would; in the case of a newspaper article the hypothetical reader or listener is less concerned with the precise words used and more with the overall impression gained."* (Balkin & Davis -supra at 562-563...) ....

*All that is important or relevant is that ‘some ordinary reasonable people reading the publication would understand it to refer to the plaintiff.’*

38. Lord Reid in *Lewis v Daily Telegraph Ltd*, (*op.cit*) said that it is not necessary to go beyond the words themselves, as where the plaintiff has been called a thief or a murderer, in the present case a fake doctor with no medical qualifications. That is what the ordinary man will infer and that is their natural and ordinary meaning.

39. The intention of the defendants is irrelevant. I would again cite Pathik J as follows:

*“The law of defamation does not even look to the meaning intended by the writer or speaker, but to the meaning attached by a reasonable reader or listener.”* (Fleming, *ibid* at 596).

*“a person charged with libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff if in fact he did both.”* (*Lee v Wilson* [1934] HCA 60; (1934) 51 C.L.R 276 at 278 (Dixon J).

*The authorities even go so far as to say that ‘not only is the intention of the writer immaterial in considering whether the meaning of his statement is defamatory, but it is equally irrelevant that he did not mean to refer to the plaintiff at all’.* (Fleming *ibid* at 596). (emphasis added)

*“a person charged with libel cannot defend himself by showing that he intended in his own breast not to defame, or that he intended not to defame the plaintiff if in fact he did both.”* (*Lee v Wilson* [1934] HCA 60; (1934) 51 C.L.R 276 at 278 (Dixon J).

*‘some ordinary reasonable people reading the publication would understand it to refer to the plaintiff.’* (Balkin & Davis - *supra*).

40. On the question of malice, Pathik J(*op.cit*) stated:

*Whether there was malice or not in the publishing of the article ‘remains of importance today only for the purpose of defences of qualified privilege and fair comment, or a reason for awarding exemplary damages’* (Fleming *ibid*). *It is to be borne in mind that ‘in 1825 it was finally settled that absence of ill-will against the person defamed and honest belief in the truth of the allegation did not excuse’.* (*Broomage v Proser* [1825] EngR 42; (1825) 4 B & C 247; 107 ER 1051).

41. I also do not find that the defence of fair comment has been made out.

42. In **Branson v Bower**, [2002] QB 737 Eady J stated:

*I have therefore come to the conclusion .. that the only two requirements in this context are (1) that a defendant should have expressed the opinions honestly and (2) that he should have done so upon facts accurately stated.*

43. The plaintiff has claimed general damages.

44. Lord Goddard L.J in **English & Scottish Co-operative Odhams Press Ltd**, [1940] 1 KB 440 at page 461 said:

*There is no obligation on the plaintiffs to show that they have suffered actual damage ... In every case (a plaintiff) is entitled to say that there has been a serious libel upon him, that the law assumes he must have suffered damage, and that he is entitled to substantial damage.*

45. Windeyer J in **Uren v John Fairfax & Sons Pty Ltd** , [1967-68] 117 CLR 118 at 150 stated:

*It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. For this reason, compensation by damages operates in two ways – as vindication of the plaintiff to the public and as consolation to him for a wrong done. Compensation is here a solatium rather than a monetary recompense for harm measurable in money.*

46. The plaintiff has also claimed aggravated and exemplary damages in his prayer with a statement, but no grounds are pleaded

47. “ A plaintiff is required to include a statement to that effect and their grounds for claiming such damages” :**Duncan and Neill on Defamation**, (op.cit) at para 25.15

48. The Fiji Court of Appeal in **Borron v Fiji Broadcasting Commission & Newspapers of Fiji Limited**, (Civ Appeal No. 40/81 FCA at page 5):

*Exemplary damages are damages which are awarded to punish a defendant and vindicate the strength of the law. In considering whether exemplary*

*damages should be awarded the Court should ask itself whether the sum it proposes to award as compensatory damages, which may include an element of aggravated damages is adequate in all the circumstances for compensating a plaintiff and also for punishing or deterring a defendant. Only if it is inadequate for the latter purpose should the Court consider awarding exemplary damages.*

The Court of Appeal stated that “*exemplary damages are exceptional and only in rare cases are they awarded*”.

49. Widgery J in *Manson v Associated Newspapers Ltd*, [1965] 1 WLR at pg 1043 said that it is *only in very exceptional cases in which exemplary or punitive damages are permissible where the publication was done with a deliberate, calculated view to making a profit out of that publication*”.

50. Considering all the circumstances of this case, I award the plaintiff a sum of \$ 50,000.00 as general damages, which I find adequate in all the circumstances.

51. The claim for aggravated and exemplary damages is declined.

**52. Orders**

- a. The second defendant shall pay the plaintiff a sum of \$ 50,000 as general damages.
- b. The second defendant shall pay the plaintiff costs summarily assessed in a sum of \$4000.00.



*A.L.B. Brito-Mutunayagam*

A.L.B. Brito-Mutunayagam

JUDGE

16<sup>th</sup> March, 2023