

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No: HBC 18 of 2018

BETWEEN : **JOJI DUVAGA** of Cakau Housing Estate, Nasinu, Suva in the Republic of the Fiji Islands, unemployed.

PLAINTIFF

AND : **TEBARA TRANSPORT LIMITED** a limited liability company having its registered office at Sealark Hill, Edinburgh Drive, Suva in the Republic of Fiji Islands.

DEFENDANT

Counsel: **Plaintiff: Ms. Sauduadua. I**

Defendant: Mr. Singh V

Date of Hearing: 12.6.2023

Date of Judgment: 14.7.2023

JUDGMENT

INTRODUCTION

1. Plaintiff was employed by Defendant as mechanical serviceman. While attending to mechanical repair under an elevated bus inside the premises of Defendant, when someone had got in to the bus and this had led the bus to slip and fall on the back of Plaintiff. Due to the weight of the bus Plaintiff's spine got permanent damage that affected flexibility and movement of his body. Defendant in the statement of defence had pleaded contributory negligence, but did not lead any evidence on behalf of the Defendant. So contributory negligence is not proved. Plaintiff proved that he was not provided a suitable flat surface or suitable instruments to raise the bus, and he was advised to conduct the repair urgently as the bus required to submit for annual inspection for roadworthiness. Defendant was negligent in not providing safe environment such as flat surface and crowded the workshop with suitable spaces to conduct elevation of a bus, thus compelling Plaintiff to conduct the repair in an unsuitable place. Defendant had failed to supervise the work and take steps to prevent any person boarding the bus while in elevated position that can seriously affect its balance. It had also failed to provide a suitable instrument to elevate it and had failed to supervise and or compelled the Plaintiff to conduct the repair in the negligent manner that resulted serious injury to Plaintiff.

FACTS

2. Following facts are admitted in the pre trial conference minutes submitted to the court by the parties.
 - a. Plaintiff was a Mechanical Serviceman by occupation and briefly worked at Faizal Bulldozing Works Ltd.
 - b. The Defendant was the former employer of the Plaintiff,
 - c. Defendant is a limited liability company having its registered office and engaged in the business of providing public transportation.
 - d. On 22.5.2015, Plaintiff and Jone were issued with work orders.
3. Plaintiff and Jone gave evidence and they said that they were assigned to remove some springs of the bus belonging to Defendant.
4. Plaintiff in his evidence stated,
 - (a) At the time of the accident, he was 28 years old.
 - (b) On 22.5. 2015, he was employed by Defendant , as a mechanical service man and he was given a work order with one Jone Bosenalevu by his foreman Ronald to replace the broken springs of Bus No 023. The work required was to raise the bus, in order to remove the broken springs, and installation of the new springs.
 - (c) After being given the work order at around 8.30am to 9.00am and attending to the place where the Bus was parked, he noticed that it was parked in a sloped surface.
 - (d) He informed the foreman that the bus needs to be moved to a place where floor was level as it was not safe for the bus to be repaired, while part of the bus was slanted. The foreman upon checking directed that the work can still be done at the same place as the usual places for repair were all occupied. This Bus was required to submit for annual inspection to Land Transport Authority, which issue roadworthiness certification.
 - (e) He was not given proper equipment to elevate the bus and was given only a 'bottle jack' which is unsuitable for the work. He also said he needed extra 'packing' to stabilize the bus at elevated position and this was done by wood and used metal rims.
 - (f) Plaintiff had used proper elevation instrument for buses in his former working place but this was not available with Defendant's workshop at the time of injury at work place.
 - (g) The Plaintiff proceeded to raise the bus and after raising the same, he noticed that

the bus was not stable, He then approached the foreman and informed him again how unstable the bus is and how unsafe it would be to work underneath. However, the foreman insisted that the bus can still be repaired at that space as it required inspection by authorities for certification.

- (h) It was safer to use the trolley jack and a jack stand. This was not available with Defendant, at that time. The Jack stand holds the bus steadily. The trolley jack is steady as it has four wheels and wide base then a thin tall bottle jack.
- (i) At the material time of being given the work order, he was not informed that he needed guidance and/or supervision or directed as to what the proper equipment to be used. There was no notice to inform the staffs not to enter the bus when work has been undertaken under the bus.
- (j) There were no safety induction or meetings by the Defendant and no issuance of work safety gear provided by the Defendant.
- (k) At around 1pm, they started removing the broken springs with Plaintiff sitting right underneath the bus. At the material time, he felt the bus moved as it sounded like someone entered the bus and all of a sudden the bus slipped and from the packings and fell on him. The bus fell on him and folded him down bending forwards fracturing the vertebrae.
- (l) While he was repairing, some were replacing seats.
- (m) Whilst the bus was on him, he thought he was going to die from the fracture and pain he was feeling at the time. He felt a sever pain at that time and also mental agony of death under the weight of the bus.
- (n) He was also finding it difficult to breathe and, he also had injuries to the shoulder/arm.
- (o) After about five to ten minutes, co-workers around including Jone, raised the bus and pulled the Plaintiff out from underneath the bus. He felt so much pain from the injuries he sustained whilst waiting for the Ambulance.
- (p) After about half an hour, the ambulance arrived and transported him to the CWM Hospital. At the hospital, he was taken for scans and x-rays to ascertain the extent of the injury and he had one surgery to wire the spines to hold in place.
- (q) This wire was removed later due to pain and some other issues. He further stated

that he was discharged in June, 2015 and when he was discharged, the wound on his back did not heal and he would have puss or fluid oozing out of the wound with the wire .He went back for surgery to remove the wire. Even though the wound has healed, he still have pains in his back and shoulder, could not sit for long and would suffer from the pain when the weather changes especially from good weather to bad weather.

- (r) He suffered permanent injury to his spine and movements restricted and feels pain if stayed in one posture.
- (s) The Plaintiff further stated that at the time he was working for the Defendant, he was getting work home pay as \$125.00 per week, but his salary information provided shows that his salary as \$139.50 per week before deductions.
- (t) He tried working as truck driver and taxi driver but would leave the job because he would start feeling the pain as he can't sit for long or lean backwards against the seat.

5. Dr. Alan Birbo, the Consultant Neurosurgeon who was in charge of team of Doctors who treated Plaintiff gave evidence and stated.

- a) Plaintiff was admitted on 22.5.2015 in the Emergency department and came under his care. He came in as trauma and on the day, he couldn't turn or move and was unable to sit up and they had to turn him to check the injury and he was in so much pain.
- b) After inspection and x-rays done, they noticed that he had fractured his T₁₁ vertebrae and it was an unstable fracture which required surgery, in order to prevent neuro deficit, which can cause severe disabilities to Plaintiff.
- c) 2.6. 2015, a medical team under his directions and or supervision, operated on him and performed an interspinous wiring which was carried out from T₁₀ to T₁₂ which meant the wiring together of 3 vertebrae's.
- d) He was discharged on 12.6. 2015 and Plaintiff was reviewed in clinic. However, a couple of months later, he developed wound infections and therefore they had to remove his implants as the spine has healed, specifically the wire and plate was removed.
- e) Plaintiff will have backpain throughout his lifetime because of the injury and will get worse as he ages and a possibility that he may develop arthritis.

- f) Impairment assessment on 19.5.2017, under AMA guide is 23% whole body impairment.

JONE BOSENALEVU

- 6. In his evidence Jane Bosenalevu who assisted Plaintiff for the work assigned to Plaintiff on 22.5.2015 stated,
 - a) After the work order was given, they went to the bus and noticed that the part of the bus was parked on a slopped area. Plaintiff informed the foreman Ronald that the bus is not parked on a levelled surface and it was unsafe to do the work assigned underneath such a bus.
 - b) The foreman insisted to do the work there and told them to proceed with it. He and Plaintiff thereafter proceeded to raise the bus using bottle jack rim, wood and broken springs to pack the bus. After raising the bus, they noticed that it was not stable after which Plaintiff informed the foreman again who then directed to proceed with the work and the place was safe to conduct the repair.
 - c) It was safer for them to use the trolley jack and jack stand to raise the bus as it would be stable because the trolley jack has a wide base and the jack stand would steadily hold the bus. Defendant, never provided with any safety equipment and there was not notice to use them. There were no notices to inform other workers not to enter the bus whilst work is being undertaken underneath the bus.
 - d) Plaintiff was sitting underneath the bus changing the springs when the bus shook, as if someone had entered the bus causing the bus to slide sideways and fell on Plaintiff.
 - e) Plaintiff was sitting bent forward and the bus sitting on his back resulting in the fracture of his backbone. The accident report tendered as P 4.
 - f) He further stated that Joji was in so much pain after which the workers raised the bus and pulled Joji out from underneath the bus and after about 15 to 20 minutes the ambulance arrived and rushed Joji to the CWM Hospital.

ANALYSIS

- 7. Plaintiff is claiming the Defendant owed him duty of care and this was breached by Defendant and or its agents or servants.
- 8. From the undisputed evidence it is clear that Plaintiff had informed the danger of not placing the Bus on firm flat surface before elevation of the same. After elevation, foreman

of Defendant had ignored the concerns of the Plaintiff, as to risk of serious injury to Plaintiff and other workers.

9. Plaintiff was not provided a safe place and or environment to conduct the elevation of the bus.
10. Plaintiff was not provided roller jack which is suited to raise a bus as it has wide area for its base and more heavier hence more stable to elevate a large vehicle such as a bus. By not providing such a roller jack Defendant had breached its obligation for duty of care.
11. Apart from that Defendant had not provided sufficient work bay to elevate a vehicle such as bus and crowded the available spaces and compelled the Plaintiff to conduct the repair on an uneven surface.
12. Defendant had failed to supervise and or warn the other workers not to enter the bus in elevated position while work was done under it.
13. Plaintiff was not provided safe environment to conduct the work order given to him by the workshop foreman, as he was compelled to conduct the repair.
14. In *Baleiwai v Attorney General of Fiji [2021] FJHC 274*, Byrne J(as his lordship then was)stated that;

"There is no longer any mystery about the legal liability of an employer to its employees who suffer injuries during the course of their employment. The law may be stated simply thus:

It is the duty of an employer to provide and maintain work premises in as safe a condition as reasonable care by a prudent employer can make them..."

Assessment of Damages

General Damages for pain and suffering (past)

15. Plaintiff was working in the workshop under a bus when it fell on him and this was a terrifying experience and he said he thought that he would die. He was in this mental trauma for more than five minutes before he was taken out. By this time some permanent injury was caused to his spine and arrival of an ambulance took about 20-30 minutes and was taken to hospital. At hospital he stayed from 22.5.2015 to 12.6.2015.
16. So Plaintiff was in severe pain prior to his surgery and after surgery in hospital. After discharge he had pain and again he was admitted to remove the wire that was used to stabilize vertebrae. Considering all these for past pain and suffering \$60,000 is granted. Interest of 6% for past pain and suffering from date of action to date of judgment (2003 days)= $60,000 \times 6\% \times (2003 \text{ days}) / 365 = 19,755.62$

Loss of future income

- 17. Plaintiff suffered 23% whole person permanent impairment. His injury left him unable to employ him as a mechanic due to unstable fracture to T₁₁ vertebrae. He is ‘unable to sit up or mobilize due to pain’ (P3 – medical report).
- 18. Plaintiff obtained a gross pay of \$ 139.50 prior to injury according to P2.
- 19. He was 28 years old and multiplier of 20 is used considering his young age and other uncertainties in life. So, Future loss of Income (139.50x52) x20 = \$145,080.00

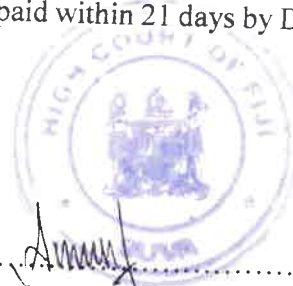
Calculations		
Damages for past pain and suffering		60,000.00
Interest of 6% for past pain and suffering from date of action to date of judgment(2003 days) [18.1.2018 to 14.7.2023]=days (365x5+178) =2003]	60,000x6% (2003 days)/365 (aprox)	19,755.00
Future loss of Income	139.50x52x20 =	145,080.00
Total		\$224,835.00

- 20. Cost of this action is summarily assessed at \$6,000.

FINAL ORDERS

- a. Plaintiff is awarded a sum of \$224,835.00 as damages against Defendant.
- b. Cost of this action is summarily assessed at \$6,000 to be paid within 21 days by Defendant.

Dated at Suva this 14th day of July, 2023.



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Justice Deepthi Amaratunga
High Court, Suva