

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 148 of 2023

Civil Action No. 193 of 2023

BETWEEN: **AJAY ITENDRA PRAKASH** of Makita Street off Omkar Road, Narere,
Unemployed.

PLAINTIFF/APPELLANT

AND: **SAMUEL ROHIT SHRI LAL** of Muanikoso 7 Miles, Laqere, Nasinu, Self
Employed.

PLAINTIFF/APPELLANT

AND: **ACCIDENT COMPENSATION COMMISSION OF FIJI** a statutory
body established by the Accident Compensation Commission Fiji Act 2017
having its registered office at Nasinu in the Republic of Fiji.

DEFENDANT/RESPONDENT

BEFORE: **Justice Vishwa Datt Sharma**

COUNSEL: **Mr Singh D** for the Plaintiffs/Appellants
Mr Gordon S for the Defendants/ Respondents

Date of Judgment: **18th July, 2025 @ 9.30am**

JUDGMENT

**[Leave to Appeal Interlocutory Ruling of Master's Decision of 25th
July 2024]**

Introduction.

- (1) This is the Plaintiff/Appellants Interlocutory Summons coupled with the Affidavit in Support for Leave to Appeal the Interlocutory Ruling(s) of the Learned Master of 25th July 2024 in the two consolidated files, HBC 148 of 2023 and HBC 193 of 2023.
- (2) The Defendant/Respondent opposed the orders sought in the Appellant's summons.
- (3) Both parties to the proceedings furnished court with their respective submissions.

The Law

- (4) **Order 59 Rule 8(2) of High Court Rules** states:

"no appeal shall lie from an interlocutory order or judgment of the Master to a single judge of the High Court without the leave of a single judge of the High Court which may be granted or refused upon the papers filed."

- (5) **Order 59 rule 11 of the High Court Rule** provides as follows:

"11. Any application for leave to appeal an interlocutory order or judgment shall be made by summons with a supporting affidavit, filed and served within 14 days of the delivery of the order or judgment 25 January 2024."

Substantive Claim

- (6) The Defendant is sued pursuant to **Section 4 of the Accident Compensation Act 2017** in both cases.
- (7) The Plaintiff is seeking compensation for personal injuries arising out of a road traffic accident allegedly caused by an unidentified motor vehicle driver.
- (8) The particulars of negligence of the driver and injuries are outlined in the Plaintiff's respective Statement of Claim.
- (9) The contention of the Defendant in both cases is that the Accident Compensation Commission of Fiji [ACCF] is not the perpetrator and/or the Tortfeasor of the damages caused to the Plaintiffs and have the Plaintiff has no reasonable cause of action against the ACCF.
- (10) He was of further contention that ACCF has been set up with the primary objective of compensating any person when who may suffer damages as a result of an accident in Fiji. For this purpose, the Commission is the Statutory Body that is set up and is primarily responsible for compensating victims of accidents on a '**No fault scheme**'.

Interlocutory Strike Out Application

- (11) The Defendant's filed striking an application in both matters and sought for Plaintiff's claim to struck out and dismissed on the ground(s) that it discloses **no reasonable cause of action**.

Interlocutory Ruling.

- (12) The Learned Master heard the striking out application and delivered its Ruling on 25th July 2024.
- (13) Following were the orders of the Court:
- (i) The summons to strike out as filed by the Defendant's in both cases HBC No. 148 of 2023 and HBC No. 193 of 2023 is allowed subject to the following orders of the Court.
 - (ii) The writ of Summons and the Statement of Claim in both Civil Actions HBC No. 148 of 2023 and HBC No. 193 of 2023 is hereby struck out and wholly dismissed.
 - (iii) The Plaintiff shall pay a cost of \$3,000 in each case to the Defendant, as costs of these applications, as summarily assessed by the Court.
 - (iv) Proceedings in both Civil Action HBC No. 148 of 2023 and HBC No. 193 of 2023 are hereby wholly terminated.

Determination

- (14) The current application for Leave to Appeal the Learned Master's Ruling of 25th July 2024 is made under **Order 59 Rule 11 of the High Court Rules 1988**.
- (15) This Rule provides that any application for Leave to Appeal an interlocutory order or Judgment shall be made by Summon with a supporting affidavit, **filed and served within 14 days** of the delivery of the order or Judgment.
- (16) There is no dispute between the parties to the proceedings that the order sought to be appealed against is an **interlocutory order** and not the **final Judgment of the substantive matter**.
- (17) Therefore, **Order 59 rule 11** is mandatory that any party who seeks Leave to Appeal an **Interlocutory Order or Judgment**, shall have to make an application within **14 days from the date of the order or Judgment**. It is not only required to **file** the application, but the **service** should also be done within the said 14 days period and that is also mandatory.
- (18) The Defendant continuously labours the fact that the Order 59, Rule 11 is mandatory. It uses the word 'shall' and state the 'application shall**filed and served within 14 days of**

the delivery of the order or Judgment. These requirements must be strictly complied with.

- (19) Therefore, one must bear in mind the very essence of the Rule stipulated at **Order 59 Rule 11**, in particular that there is a time limit for making an application for Leave to Appeal the interlocutory ruling and/or order(s) of the Master made on 25th July 2024.
- (20) It cannot be disputed that the Plaintiff(s) Summons and Affidavit in Support was filed on 8th August 2024, which of course was within the prescribed and/or stipulated timeframe of the Rule of 14 days, that is 14 days from the day/date of the Master's Ruling of 25th July 2024.
- (21) However, Order 59 Rule 11 of the High Court Rules 1988 has two mandatory limbs to it which ought to be complied with by the Plaintiff(s).
 - (i) *First Limb* - filing within time has been complied with by the Plaintiff(s).
 - (ii) *Second Limb* - service within time has not been complied with by the Plaintiff(s).
- (22) The second limb requirement is mandatory that the Plaintiffs after filing the application subsequently serves the application (Summons and Affidavit in Support) within 14 days' timeframe of 25th July 2024 when the Master's Ruling was delivered on the application for striking out the Plaintiff's Action filed by the Defendant, ACCF.
- (23) However, the Plaintiffs Summons and Affidavit in Support with the stamp of the High Court bearing the filing date of 8th August 2024 was only served on the Defendant's solicitors and the ACCF by email on 2nd October 2024. Subsequently, the Plaintiff's solicitors also served Gordon & Co. on 3rd October 2024 with a printed copy of the filed Plaintiff's Summons and Affidavit in Support.
- (24) Obviously, there is evidence that cannot be encountered and challenged by the Plaintiff(s) that the said summons and affidavit in support was in fact not served on Gordon & Co. and/or the ACCF within 14 days of delivery of the Ruling of 25th July 2024.
- (25) Whilst bearing in mind that the Plaintiff's Summons and Affidavit in Support was filed and sealed into the High Court Registry on 8th August 2024, was in fact served on onto Gordon & Co on 2nd October 2024 and ACCF which is a period of 69 days after the 25th July 2024 and outside the stipulated time frame requirement of 14 days in respect of Order 59 Rule 11.
- (26) Even the Counsel for the Plaintiff when questioned by this Court about the Second Limb of service of 14 days requirement in terms of Order 59 Rule 11, that he replied admitted that service was effected on 2nd October 2024, 56 days after filing the application.
- (27) If the application is not properly made in conformity with the High Court Rules Order 59 Rule 11 and is therefore incompetent.

(28) Therefore, it is very clear to the Court and evident that the Summons and Affidavit in Support filed by the Plaintiff(s) into Court on 8 August 2024 seeking for Leave to Appeal the Master's Interlocutory Ruling of 25th July 2024 is **out of time**.

(29) Case of **Abcco builders Limited v Challenge Engineering Limited** states:

"49. When the application is clearly out of time to seek Leave to Appeal the Master's Decision, this Court is not interested or not required to look into the merits or demerits of the Interlocutory Decision of the Learned Master of 25th July 2024."

(30) Whilst seeking the Leave to Appeal, the Plaintiff(s) have set out six(6) proposed Grounds of Appeal within their Affidavit in Support :

Grounds (i) and (iii)

(i) *That the Learned Acting Master erred in Law and in fact is holding that the Plaintiff's was bringing in Common Law against the Accident Compensation Commission when no Common Law action is pleaded in both the Writ of Summons.*

(ii) *The Learned Acting Master wrongly held that the Common Law position hasn't been changed in any way by that Act.*

(31) The Plaintiff's Statement of Claim pleaded a Common Law action founded in **Negligence** and **breach of duty of care** and gives particulars of the negligence of a driver and injuries sustained by the Plaintiff's.

(32) The Plaintiff's action is brought against the only Defendant ACCF.

(33) The plaintiff just cannot file an action founded on Common Law and Negligence and not name the tortfeasor as a Defendant. This is trite law.

(34) The Law requires that for the Plaintiffs to institute, maintain, continue and/or succeed in a personal injury action founded on a tortious wrongdoing, the Plaintiff's must identify a and/or the Tortfeasor that wronged him and name the Tortfeasor as a party to the substantive action herein. He must then plead a cause of action founded in TORT against that Tortfeasor.

(35) However, the question herein arises 'whether the Plaintiff's in the two actions identified the Tortfeasor and joined the Tortfeasor as a Defendant?

(36) The answer is in negative. The Plaintiff has not identified any Tortfeasor and/or joined the tortfeasor as a Defendant in these proceedings and failed to plead a cause of action founded in tort against the tortfeasor.

(37) However, the Plaintiff pleaded Common Law action founded on Negligence and breach of duty of care.

- (38) Therefore, I hold that the Learned Master was correct in holding that Plaintiff's in these two actions were bringing an action in Common Law.
- (39) The counsels will note that the action for personal injuries founded on negligence and breach of duty of care is one of the oldest Common Law Causes of Action.
- (40) The Accident Commission Act [ACA] has not altered, abrogated or changed that common law with the exception of introduction of a statutory 'No Fault' scheme Compensation that has nothing to do with Common Law Action for personal injuries founded on negligence and breach of duty of care.
- (41) The ACA mandates that all applications for personal injuries arising out of an alleged motor vehicle accident must be dealt with as a no-fault application first. Section 18(3) of the ACA specifically sets out a no-fault Compensation scheme and another by the way of an awarded judgment.
- (42) So, there are two (2) alternatives to seek for Compensation:
- (i) No-fault Compensation, and
 - (ii) Court awarded judgment.
 - No-fault scheme is administered by the ACCF, where party seeking compensation has to show no-fault i.e an accident happened on a road and resulted in the applicant being injured.
 - A court of law has no jurisdiction or authority under the no-fault scheme.
 - There is no right of appeal [Section 22(2) of the ACA if no-fault scheme is either refused and/or declined and/or no offer made and therefore no-fault scheme comes to an end therein.
- (43) An Applicant may, however, after refusal and/or decline on any offer after Commission refusal approval of the application, file a Common Law action founded on **Negligence and breach of duty of care** and dealt by a Court of Law. **Section 25 of the ACA** refers.
- (44) Nothing stops an Applicant from filing and/ or commencing a direct Common Law application without first making an application to the Commission. Section 26 of the ACA refers.
- (45) The Court will then decide if negligence is proved and if it is then quantum of the compensation to be awarded. However, one must bear in mind, if negligence has to be proved, a Tortfeasor needs to be sufficiently identified and named and made the party to the proceedings.
- (46) If the action is founded in Common Law, as the ACA mandates, then such Common Law action must identify and name of the Tortfeasor, as the Defendant.
- (47) I find for aforesaid rational that there is no merit on these two grounds (i) and (iii) and accordingly fails and is dismissed.

Ground ii, iv and v

- (48) The Acting Master erred in Law and in fact in law not finding that an action has against the ACCF as the nominal Defendant and the Plaintiff's must be compensated under 'no-fault' scheme.
- (49) The Learned Acting Master should have held that the ACCF is strictly liable to provide relief under the no-fault scheme to the unidentified driver and that the ACCF can be sued as the nominal defendant without going beyond the ampt of pleadings.
- (50) The Learned Acting Master erred in law and in fact, that a Cause of Action must be established against the ACCF when the Act allows none to be established under the 'no-fault' scheme and there is no restrictions in Law from suing ACCF as the nominal Defendant.
- (51) The High Court Rules 1988 contains no provisions for the nominal Defendant.
- (52) The ACA does not expressly permit and/or allow the Plaintiff to sue the ACCF as a nominal Defendant.
- (53) However, for the Plaintiffs to be able to sue the ACCF as the nominal Defendant in place of and/or in lieu of the original Tortfeasor, the Act or some other legislation must expressly permit and/or allow the Plaintiff's to do.
- (54) It can be noted that the legislation overseas does expressly permit and/or allow a Plaintiff to sue a statutory body, authority or insurer as nominal Defendant in place and/or in lieu of Original tortfeasor, but not Fiji.
- (55) I reiterate that there are two schemes under the ACA which are independent of each other:
- (i) no-fault compensation, and
 - (ii) Court awarded Judgment.
- (56) Under the first scheme of no-fault compensation, at Section 18 of the ACA, the Plaintiff's did not avail themselves of this scheme.
- (57) The Plaintiff chose not to make any application to the ACCF for no-fault compensation as was required under Section 20(1) of the ACA. However, the Plaintiff's dated to file and commence founded on Common Law of Negligence in a Court of Law without naming the tortfeasor as a Defendant or sufficiently identifying the Tortfeasor in their proceeding and pleadings.
- (58) Further, the Plaintiff's failed to identify the motor vehicle that allegedly bumped them as the ACCF levy imposed on the vehicle and not a driver is paid at the LTA.
- (59) Hence, the question of substantive issue of negligence is the sole prerogative of the Court, not the ACCF.

- (60) I find that the Plaintiff's having elected to file a Common Law action founded in negligence; the Plaintiff elected not to proceed with a no-fault compensation application and therefore, now cannot turn back and insist on no-fault compensation consideration by the ACCF or even the Court for that matter.
- (61) Further, no breach of statutory has been pleaded by the Plaintiff against the ACCF. The only allegation against the Defendant, ACCF is contained in paragraph 2 of the Plaintiff's Statement of Claim which reads:
- "The Defendant and corporate body, is sued pursuant to section 4 of the Accident Compensation Act 2017, which provides the relief to the Plaintiff."
- (62) The question that comes to mind is **'whether section 4 of the ACA creates or pleads any cause of action in fact or in law against the Defendant, ACCF?'**
- (63) The answer is in negative. It does not formulate any direct cause of action against ACCF and/or creates any direct liability on the part of the ACCF.
- (64) The Plaintiff's Statement of Claim nowhere else mentions ACCF or any act or omission on the part of the ACCF pleaded giving rise to a Cause of Action or reason for any loss or damages caused or suffered by the Plaintiff(s).
- (65) **Section 28 of the ACA:** [Dealing with proceedings for personal injury or death in a Court or Tribunal] and **Section 29** [Dealing with Commission to satisfy Judgments does not create any cause(s) of action against the ACCF in these proceedings.
- (66) Further, the Clarity sake section 10 of the Insurance Law Reform Act 1996 will also not apply as ACCF is not an insurer or an insurance company and there was no insurance contract in force or in place at the time of the alleged collision.
- (67) However, ACCF can be termed as the statutory insurer which has 'no-fault' compensation scheme, but ACCF not a contractual insurer and ACCF cannot be formed as a party to the current proceedings under any factual circumstances.
- (68) I find as discussed hereinabove, that under Grounds (iii), iv) and (v), there is no cause of action against the ACCF.
- (69) For the Plaintiff's purported cause of action against the ACCF for breach of statutory duty, then was that the Plaintiffs must plead a cause of action founded on a breach of statutory duty against the ACCF. The Plaintiffs have failed to do so herein.
- (70) A cause of action founded a breach of statutory duty in a Common Law Cause of Action and is not codified in any statute. This is Trite Law.
- (71) Section 17 of ACA 2017 is referred to and clarifies that any alleged cause of action against the ACCF is prohibited and is estopped by the statute ACA of 2017 accordingly.
- (72) For the above reasons, I find no merit in Plaintiff(s) Appeal on Grounds (iii) (iv) and (v) and is dismissed in its entirety accordingly.

Ground vi

- (73) The Learned Acting Master erred in law and in fact in holding the statement of claim discloses no reasonable cause of action against the defendant and is scandalous, frivolous or vexatious and it is an abuse of the process of the court.
- (74) There is no factual nexus between the Plaintiff's and the Defendant, ACCF.
- (75) The Plaintiff's Statement of Claim [pleading] if the fact are assessed to be proven against the Defendant, ACCF, all that will be proven is that. The Defendant, ACCF is the body corporate pursuant to **Section 4 of the ACA**.
- (76) On 11th August 2020 an unidentified motor vehicle driver drove negligently and unskillfully collided with the Plaintiff whilst crossing the road and knocked him down causing serious injuries, loss and damages.
- (77) Above obviously is No cause of action against the Defendant, ACCF.
- (78) Further the pleadings do not even identify the driver of the car nor has the description and registration of the vehicle which knocked the Plaintiff down.
- (79) Therefore, there is no Common Law Cause of Action and enlivened as of yet against the Defendant, ACCF.
- (80) I find that there is no merit in ground vi and is accordingly dismissed.

In conclusion

- (81) It is Trite Law that leave will not be generally be granted from an interlocutory order unless the Court sees the substantial injustice will be done to the Applicant. Further, in an application for Leave to Appeal, it is incumbent on the Applicant to show that the intended appeal all have some realistic prospect of succeeding.
- (82) The Courts have thrown their weight against the appeal from interlocutory orders or disclosures for very good reasons and hence Leave to Appeal are not readily available and/or given.
- (83) Order 59 rule 11 under which this application seeking for Leave to Appeal the Master's Ruling of 5th July 2024 was filed had mandatory two limbs to comply with in terms of:
- (i) Filing - which was complied by the Plaintiff
 - (ii) Service - the application within 14 days from 25th July 2024, i.e. service to be effected by 8th August 2024 in order for proper and competent application to be made before a Judge of the High Court.
- (84) However, the service of the Leave Application was effected on ACCF and Gordon & Co representing the Defendant in 69 days after the date of ruling of 25th July 2024.

- (85) The requirements of service was not complied with by the Plaintiff's and therefore, it is very clear that the Summons filed by the Plaintiff seeking for Leave to Appeal the Master's Interlocutory Ruling is not properly made in conformity with the High Court Rules 1988 and is therefore incompetent and must fail accordingly.
- (86) However, moving further ACCF is not the perpetrator or the tortfeasor of the damages caused to the Plaintiff's and as the Plaintiffs have no reasonable cause of action against the Commission.
- (87) ACCF is a relief provider is created by Law in Fiji for damages suffered by the party as a result of an accident that occurred in Fiji.
- (88) ACCF is mandated by the Act to compensate the claim under a 'no-fault' scheme, the Plaintiff need not establish fault on any party and thus can only sue the ACCF for the damages.
- (89) It is noteworthy that at Common Law that there shall be no action possible if the party suing is unable to identify a wrongdoer and/or a Tortfeasor.
- (90) In an action for 'Negligence' at Common Law, a Plaintiff is required to duty plead negligence against the named Defendants in a case.
- (91) This is not the case here. Neither the wrongdoer [the driver] nor the vehicle have been identified and pleaded in the Statement of Claim.
- (92) I find that the Acting Master had very thoroughly analyzed the affidavit evidence oral and written submissions case authorities and the Laws applicable herein whilst deliberately on the Defendant's application/Summons seeking for striking out of the Plaintiff's Writ of Summons and the Statement of Claim and aimed at his correct decision on 25th July 2024 wherein he:
- i) Allowed the Defendants summons to strike out the Plaintiff's claims in both Civil Action No. HBC 148 of 2023 and HBC No. 193 of 2023 and wholly dismissing the same.
 - ii) Made an order for the Plaintiffs to pay a summarily assessed costs of \$3,000 in each case to the Defendant.
- (93) I uphold the Ruling of the Acting Learned Master of 25th July 2024.
- (94) I refuse to grant the Plaintiff's Summons seeking an order for Leave to Appeal against the Rulings of the Learned Acting Master delivered on 25th July 2024 in both files HBC No. 148 and HBC No. 193 of 2023.
- (95) Further, the Defendant Grounds of Appeal is enumerated in the Affidavit in Support of the Plaintiffs has no merit and therefore each of the six (6) Grounds of Appeals for reasons shown hereinabove in my Judgment is dismissed accordingly.

Costs

- (96) The Plaintiff's summons on Leave to Appeal against the Ruling of the Learned Acting Master proceeded to full hearing on the oral and written submission filed into Court coupled with Affidavit evidence.
- (97) It was vigorously contested by the Defendants and thus took up much of the Court's valuable time.
- (98) Therefore, it is only appropriate that I order each of the Plaintiff's in HBC No. 148 2023 and HBC No. 193 of 2023 to each pay a summarily assessed cost of \$3,000 (each) to the Plaintiffs a total of \$6,000 within 21 days' timeframe accordingly.

Orders

- (i) The Plaintiffs summons filed on 8th August 2023 seeking an order for Leave to Appeal the Learned Acting Master's Ruling delivered on 25th July 2024 is struck out and accordingly dismissed.
- (ii) Each of the two (2) Plaintiffs in HBC No. 148 of 2023 and HBC No. 193 of 2023 is hereby ordered to pay a summarily assessed cost of \$3,000 [total of \$6,000] to the Defendant within 21 days' time frame accordingly.
- (iii) File is closed.

Dated at Suva this 18th day of July, 2025.




VISHWA DATT SHARMA
PUISNE JUDGE

cc: Daniel Singh Lawyers, Suva
Gordon & Co., Lautoka.