

IN THE HIGH COURT OF FIJI, AT LAUTOKA
EXERCISING CIVIL JURISDICTION

ACTION NO. HBC 137 of 2015

BETWEEN : **MUNI MAHENDAR REDDY**, of Transmitter Road, Malolo, Nadi, Hotel Worker as Administrator of the Estate of **Muni Shalit Reddy** of Malolo, Transmitter Road, Nadi, Student, deceased.

PLAINTIFF

AND : **FIJI FOOTBALL ASSOCIATION**, having its registered office at Taramati Street, Jai Hanuman Road, Vatuwaqa, Suva

DEFENDANT

BEFORE : A.M. Mohamed Mackie-J.

COUNSEL : Mr. D.S. Naidu, with Mr. K. Chand- For the Plaintiff.

: Mr. Samuel.K. Ram, with Ms. Patel – For the Defendant.

DATES OF TRIAL : 4th April 2023, 03rd November 2023.

W. SUBMISSION : Filed by the Defendant on 28th February 2024.

: Filed by the Plaintiff on 3rd June 2024.

: Sup. Submissions filed by the Plaintiff on 16th July 2025.

DATE OF JUDGMENT : 21st July 2025.

JUDGMENT

A. INTRODUCTION:

1. The plaintiff, as the administrator of the Estate of his deceased Son MUNI SHALIT REDDY, on 24th August 2015, filed the above styled action against the Defendant seeking reliefs, inter alia, special damages and damages pursuant to the Compensation to the Relatives Act Cap 29 .

2. The Statement of Claim (SOC) was amended on 29th January 2020 pleading the principle of Res Ipsa Loquitur as well, in addition to the initially pleaded allegation of negligence on the part of the Defendant and the Defendant in turn filed its Statement of Defence (SOD) thereto on 25th August 2020 moving for the dismissal of the Plaintiff's claim with costs.
3. The claim arises out of the sudden death of Master **Muni Shalit Reddy** on 27th of January 2015 as a result of drowning in the **Vailoa Palauili** natural pool located in **Savaii – Samoa**, while the deceased was, admittedly, under the supervision, care and control of the Defendant / its agents, when they had gone on a sight-seeing trip to Savaii Island after participating in the 2015 OFC under 17 Soccer game held in **Samoa** from 9th January 2015.
4. The Plaintiff alleges that the death of the late Muni Shalit Reddy was as a result of the negligence on the part of the Defendant and/ or its agents.

Particulars of the alleged Negligence:

- a. *Failed to take any adequate precautions for the safety of the plaintiff (the deceased),*
 - b. *Exposed the plaintiff to a risk of injury or death which could have been avoidable by reasonable care,*
 - c. *Failed to inspect the swimming area / spot before allowing the plaintiff to use the swimming area,*
 - d. *Failed to keep any proper lookout.*
 - e. *Failed to warn the plaintiff of the dangers of the swimming in the swimming spot.*
 - f. *Failed to supervise the plaintiff and other soccer players,*
 - g. *Failed to adequately supervise the plaintiff and other soccer players in the swimming spot.*
5. The Plaintiff also alleges that due to the negligence of the Defendant and/ or its agents, the deceased's life was considerably shortened in consequence whereof his Estate has suffered loss and damages.

Particulars of Damages:

6. The Plaintiff claims \$4,000.00 as special damages on account of funeral expenses. The Plaintiff also claims damages pursuant to the Compensation to the Relatives Act Cap 29 for the benefit of the plaintiff **Muni Mahendar Reddy** (Father), **Sulochana Reddy** (Mother), **Muni Niklesh Reddy** (Brother) and **Devanshi Malvi Reddy** (Sister). By his latest amendment to the statement of claim filed on 18th October 2024, the Plaintiff has prayed for general damages as well.

B. STATEMENT OF DEFENCE:

7. The Defendant by its Statement of Defence (SOD) filed on 25th August 2020 to the Amended Statement of Claim (ASOC), admitted the contents of the averments in paragraphs 2,3,4,5 and 6 of the ASOC, wherein it had been averred **THAT**:
 - a. *Master Reddy was a Soccer player registered to play under 17 Soccer Team;*
 - b. *The Defendant is the official governing body of the sport of Football in Fiji;*

- c. *At all material times the Defendant and or its agents was responsible for the management and arrangements of the Fiji under 17 Soccer Team's participation in the 2015 OFC U 17 Championship held in Samoa from 9th January to 30th January 2015;*
- d. *On 9th January 2015 the late Muni Shalit Reddy travelled with the Fiji under 17 Team to Samoa accompanied by the officials of and or agents of the Defendant;*
- e. *On or about 27th of January 2015 in Samoa late Muni Shalit Reddy, whilst under the supervisions of the Defendant and or its agents, drowned in the **Vailoa Palauli** swimming spot in **Savaii, Samoa**.*
8. However, the Defendant, while denying the averments in paragraphs 7 and 8 of the ASOC, which are on the alleged negligence on the part of the Defendant and its agents, put the Plaintiff to strict proof of those allegations and pleaded by way of further defence, *inter alia*, **THAT**:
- *During their stay, the Tour Officials with the Samoa Football Federation organized tours, events and activities for the Team (vide - para 6 of the SOD).*
 - *As a part of an outing arranged, the team players were taken for a tour to Savaii Island for swimming at the **Vailoa Palauli** (Vide- para 7 of the SOD)*
 - *They (the Defendants) took due reasonable care under the circumstances to ensure the safety of the plaintiff and members of the Team.*

Particulars of Care;

9. The Defendant also averred, *inter alia*, the followings to show that they had taken due and reasonable care in the following manner;
- 9.1. *On or about 27th November 2014 they had obtained consent from the father of the deceased to allow him to travel to Samoa with the Team.*
- 9.2. *Prior to the departure, the Defendant had obtained information from each member of the team showing their health and abilities.*
- 9.3. *The Defendant was informed that the Plaintiff (deceased) had the ability to swim.*
- 9.4. *The Defendant determined that the area chosen for swimming was one of the popular tourist spots in Samoa and had favourable reviews from all participants.*
- 9.5. *There was an entry fees payable.*
- 9.6. *There were no warnings posted suggesting that the area was dangerous or prone to drowning incidents.*
- 9.7. *Prior to allowing the team members to enter the swimming spot, officials of the Defendant entered into the water to determine the shallow and deep sides.*
- 9.8. *Some officials of the Defendant went to the edge of the deep side and stood there to ensure that no one could go beyond the shallow side.*
- 9.9. *Other officials stayed on the shallow side to supervise.*

- 9.10. *Players were on the shallow side of the pool to cool off and carry out water therapy.*
- 9.11. *The officials of the Defendant, which included four people, formed a perimeter around the Team in the shallow pool to ensure that no one crossed into the deep side.*
- 9.12. *The members of the team, including the plaintiff, were instructed to;*
- 9.12.1. *Remain in the perimeter formed.*
- 9.12.2. *Not to leave the shallow side; and*
- 9.12.3. *Not to enter and swim in the deep side.*

10. The Defendant alleges that the death was caused as a result of his (deceased's) sole or contributory negligence and by his engaging in activities not permitted by the Defendant. In this regard, the Defendant states THAT;

- 10.1. *The plaintiff failed or neglected to follow proper safety procedures laid down by the Defendant.*
- 10.2. *The plaintiff failed to follow the instructions given to remain in the shallow side and not to enter the deep side.*
- 10.3. *The plaintiff engaged in unauthorized activities and misrepresented to the Defendant's officials that he was leaving the shallow side of the pool to urinate.*
- 10.4. *The plaintiff had participated in water therapy activities in the shallow part of the rivers, pools and the sea.*
- 10.5. *The plaintiff failed to take proper precautions or follow specific instructions to ensure his personal safety and well-being.*

11. The Defendant, by denying the averments in paragraphs 9,10, 11 and 12 of the ASOC, put the plaintiff to the strict proof thereof and, particularly, on the plea of *Res Ipsa Loquitur* averred **THAT;**

- *The Defendant is unable to plead to the allegation **because the incontrovertible fact which speaks for itself has not been identified.** (Emphasis mine)*
- *The swimming area and the tourist spot was not in the exclusive or sole control of the Defendant.*
- *The cause of the accident leading to the death has a reasonable explanation as pleaded in the statement of defence.*
- *The drowning incident was one that could normally occur in the absence of any negligence on the part of the Defendant.*

12. Accordingly, the Defendant moved for the dismissal of the ASOC, with costs orders in its favour.

C. PRE-TRIAL CONFERENCE (PTC)

13. As per the PTC minutes filed on 24th November 2016, parties have recorded the following Agreed Facts, and Agreed Issues for determination by this Court.

Agreed Facts:

1. *The late Muni Shalit Reddy was a soccer player chosen and registered to play with the Fiji under 17 Soccer Team organized by the Defendant.*
2. *The Defendant is the official governing body of the sport of Football in Fiji.*
3. *The Defendant, its servant and agents were responsible for the management supervision, control and the arrangement of the Fiji Under 17 soccer teams' participation in the 2015 OFC U17 Championship, which was held in Samoa from the 9th to the 30th of January 2015.*
4. *On the 9th of January 2015, the late Muni Shalit Reddy travelled with the Fiji Under 17 Soccer team to Samoa.*
5. *The Fiji Under 17 team travelled to Samoa with the officials of Fiji Football Association.*
6. *That on the 27th of January 2015 in Samoa, the late Muni Shalit Reddy while under the supervision, control and care of the Defendant and or its servants, agents died due to drowning in the **Vailoa Palauili** swimming spot in **Savaii, Samoa.***

Agreed Issues:

1. **WHETHER** *the Defendant and or its agents was at all material times owed a duty of care to the Plaintiff/ the late Muni Shalit Reddy to take reasonable care for his safety.*

2. Negligence:

- a) **WHETHER** *the Defendant whether by itself or through its agents was negligent:*
 - b) **WHETHER** *the Defendant whether by itself or through its agents failed to take any or adequate precautions for the safety of the plaintiff.*
 - c) **WHETHER** *the Defendant whether by itself or through its agents exposed the Plaintiff to a risk of injury which could have been avoided by the exercise of reasonable care.*
 - d) **WHETHER** *the Defendant whether by itself or through its agents failed to inspect the swimming area/spot before allowing the late Muni Shalit use the swimming area.*
 - e) **WHETHER** *the Defendant whether by itself or through its agents failed to keep any proper lookout.*
 - f) **WHETHER** *the Defendant whether by itself or through its agents failed supervise the Plaintiff-and other soccer: players.*
 - g) **WHETHER** *the Defendant whether by itself or through its agents failed supervise the Plaintiff and other soccer players in the swimming spot.*
 - h) **WHETHER** *the Defendant whether by itself or through its agents failed to provide proper safety equipment.*
3. **WHETHER** *as a result of the Defendant's and or its agent's negligence the Estate of Muni Shalit has suffered loss and damages.*

4. **WHETHER** as a result of the Defendants and or its agent's negligence the Plaintiff has suffered loss and damages as a result of the injuries
5. **WHETHER** the Plaintiff is entitled to special damages in the sum of \$4,000.00 (FOUR THOUSAND DOLLARS).
6. **WHETHER** the Plaintiff is entitled to Damages under Law Reform (Miscellaneous Provisions) (Death and Interest Act, Cap 27 and under the Compensation of Relatives Act Cap 29)

D. THE TRIAL:

14. At the trial held before me for two days, the deceased's father, **Muni Mahendar Reddy**, and mother, **Sulochana Reddy**, gave evidence for and on behalf of the plaintiff by marking exhibits from "**P. ex-1**" to "**P. ex-7**", consisting of the following documents;
 1. Copy of the Letter of Administration marked as "**P. ex-1**" (Tab -3 in PBOD)
 2. Copy of Parent-Guardian consent letter marked as "**P. ex-2**" (Tab 2-4 in DBOD)
 3. A photograph wherein the deceased stands (tallest) marked as "**P. ex-3**" (Tab 5 in PBOD)
 4. A photograph of a pool with water-fall marked as "**P. ex-4**" (Tab 5 in PBOD)
 5. A Medical Report of Muni Mahendar Reddy marked as "**P. ex-5**"
 6. Police Report dated 28th Jan 2015 from SAMOA marked as "**P. ex-6**" (Tab 2-12 in DBOD)
 7. Inquest Report from SAMOA marked as "**P. ex-7**" (Tab 2-14 in DBOD)
15. On behalf of the Defendant, one **YOGENDRA DUTT**, Head of Education – Fiji Football Association (Co- Coach & Manager of the Team) and one **KAMAL KRISHAN SWAMY**, Coach of the Team gave evidence by marking 3 annexures as "**Dex-1**", "**Dex-2**" & "**Dex-3**". Both the Defence witnesses were none other than two officers of the Defendant Association, who had taken part at the Tour and were physically present at the time of this incident.
16. Both parties have tendered their respective written submissions as well for which I am thankful to both the learned Counsel.

E. PRIMARY ISSUES:

17. The primary issues are whether the Defendant and or its agents were at all material times owed a duty of care to the late Muni Shalit Reddy for his safety ? Whether the Defendant by itself or through its agents was negligent? Whether the Defendant by itself or through its agents failed to take any or adequate precautions for the safety of the deceased? and whether the death of Muni Shalit Reddy was caused as a result of the negligence of the Defendant and/or its agents as pleaded in the ASOC (liability issue).
18. Secondly, if the primary issues are answered affirmatively, whether the Defendant is liable to pay loss and damages to the Plaintiff and in what quantum it should be?

F. DISCUSSION:

19. The claim arises out of an incident of drowning and the resultant immediate death of Master **Muni Shalit Reddy**, occurred on 27th January 2015 in a Natural Pool located in the VAILOA PALAUILI Island in Samoa, when the deceased had jumped into the water from a rock situated there, while he, along with his co-players, was engaged in water therapy activities, as more fully described in the Agreed facts above.
20. The deceased was a under 17 Soccer Player representing Fiji in a Soccer tournament held in Samoa and the tour was organised by the Defendant. He was under the supervision, control and care of the Defendant and/ or its agents during the tour and at the time material to the incident as per the recorded agreed fact No-6. The plaintiff has brought this claim as the administrator of the Estate of the deceased.

The Plaintiff's Witnesses & Evidence:

21. The plaintiff called 2 witnesses, who were both the father and mother of the deceased, and they testified as "PW-1" and PW-2" respectively. The evidence of both the said witnesses was mainly on the deceased's involvement in the game of Soccer, his selection for the tour, giving their consent for their Son to participate, training activities, his alleged inability to swim and on his preparations for the tour & departure. They also gave evidence on how they got to know about the tragedy, Defendant brought the body to Fiji, paid \$3,000.00 for funeral expenses, as to what occurred till his burial and on the local investigation carried out by the Defendant.
22. They did not speak about the incident as to what actually had happened on the fateful day (27th January 2015) since none of them were present in Samoa and at the place of incident. Their evidence was mainly on as to what happened prior to and after the incident. Nevertheless, the PW-1 during his cross examination, as per pages 26, 27 & 28 of the transcript, admitted the correctness of the most of the crucial points revealed in the report that came out pursuant to a local investigation conducted by the Defendant.
23. Notably, not a single witness either official or non-official was summoned by the Plaintiff from Samoa to speak about the incident as to how the incident exactly occurred. The Court had to fully rely only on the defence evidence to ascertain as to what and how it actually happened, and on the documentary evidence, being the Inquest Report and the Death Certificate, which revealed that the cause of death was "drowning".
24. Though, adjournments had been obtained for the Plaintiff to summon witnesses from Samoa to speak of the incident on behalf of the Plaintiff, as admitted by the "PW-1" under his cross examination in page 24 of the transcript, they failed to do so.
25. An attempt on the part of the Plaintiff's Counsel was seen in his written submission wherein he referred to PW-1 criticizing the manner of handling the incident and communicating it to them by the Defendant, and on the correctness and transparency of the report by the Defendant. These were neither part of the pleadings nor issues on it were raised for this Court to delve into at this stage. The relevancy of those submissions was either nil or very minimal in deciding the issues before the Court.

26. The Plaintiff at least could have called the fellow player/s or other individuals as witnesses, who were members of the team from Fiji and were present at the scene of incident, to narrate the Plaintiff's side of story before this Court, in order to elicit the truth. But, for the reason best known to the Plaintiff and/ or his Solicitors, they did not do so.
27. The evidence of the PW-2, the mother of the deceased, also did not make any contribution for a favourable consideration as far as the negligence allegedly exhibited on the part of the Defendant / its agents at the time material to the incident.
28. A pertinent point that I observe is in the Agreed fact No-06, which reads as follows;

“06. That on the 27th of January 2015 in Samoa, the late Muni Shalit Reddy, while under the supervision, control and care of the Defendant and or its servants and agents, died due to drowning in the Vailoa Palauli swimming spot in Savaii, Samoa”.

29. The learned Counsel for the Plaintiff, having agreed for the above to be a part of the Agreed facts in the PTC minutes, which is a clear admission to the effect ***that the deceased was in fact under the supervision, control and care of the Defendant and or its servants and agents***, in his written submissions has slightly deviated from his admission by terming it as “**Purported** supervision and control of the Defendant and its agents”. However, since number of issues have been framed on the question of negligence, which have vitiated the said agreed fact No-6, this Judgment will address all those issues appropriately.

The Defendant's Witnesses & their Evidence:

30. I find that the defence has adduced clear and convincing evidence, through its two officers who, along with other officers and players, were present at the scene of the incident. They categorically stated as to how they got themselves involved in supervising the boys in overall activities there, how they gave prior instructions, how they did the briefing and prior assessments, took precautions, and particularly as to how they acted promptly soon after this incident. Though, they were subjected to thorough cross examination, their evidence has remained un-assailed.
31. In my view, both the Defence witnesses, along with the other officers, had left no stone unturned within their control and capacity in order to avoid any unfortunate incidents of this nature, and no blame can be pinned on them for this unfortunate incident
32. Let me reproduce some pertinent parts of their evidence, which in my view, along with the rest of the evidence, would throw sufficient light to arrive at a safest conclusion that the Defendant and its agents, within their capacity and control, had taken all the possible and reasonable steps and precautions for the safety of the players including the deceased.
33. The “DW-1” in his evidence, as per pages 66 and 67 of the transcripts, had the following to say;
- Q: *So, let's talk about this pool that you saying is a little bit smaller than this room. What with the pool you say, what happen then, what did the players go into the pool, how did it happen?*

A: *First of all, we all got together we offered a prayer because that's the fine culture of our country it's a new place for us we got lots of blessing then and slowly we move into the fresh water pool.*

Q: *And who got into the fresh water pool first, you or the players?*

A: *No, the first people to enter were Nishant and Beniamino.*

Q: *That's the gold keeper coach and the Physiotherapy?*

A: *Yes, sir.*

Q: *What did they do when they got into the pool?*

A: *First they explore the depth of the water then they decided where or which part of the pool would be used by the boys because Beniamino and Nishant were the tallest out of the group so they marked off the area in the pool whereby the boys were not allowed to go beyond then.*

Q: *So, got in to the pool after that?*

A: *After that the boys slowly moved into the pool.*

Q: *And where were you when they went into the pool?*

A: *I was on the shallow side of the pool.*

Q: *Which way were you looking, were you looking towards the pool or away from then?*

A: *Yes, I was looking towards the pool.*

Q: *That's 3 people, where were the other 2 people?*

A: *Kamal was near me and also Mr. Subramani who was the Chef he was also on the shallow side of the pool.*

Q: *Now, the all the players were in the pool from your memory? If you don't recall it you can say so?*

A: *I, yes those were there with us in the pool.*

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Q: *So, Munit was also in the pool?*

A: *Yes, sir.*

Q: *Did you see him in the shallow side of the pool?*

A: *He was up to the depth as per his height about chest height.*

Q: *He was about his chest height of the water?*

A: *Yes, sir.*

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34. In page 68 and 69 under further examination in chief, the "DW-1" stated as follows;

Q: *Now, I'd like you to recall as the best as you can to what happen with Muni Shalit Reddy when he was in the pool and when did you find out something had happened, so if you can describe what happen. Now, you are watching the pool and you seeing all these players, how did you become aware how this did happen to Munit Reddy?*

A: *We all were watching the boys in the pool cooling off into swimming but cooling off, moving about in the water from inside, Beniamino and Nishant were supervising them and from the shallow end Kamal, Chef and I we were there. The only time I came to know something has happened when Kamal shouted Muni!!....no, no Kamal always say Salit to him, Kamal said Salit!! Don't do that, then I became aware that something had happen.*

Q: *Did he say that in English or in Hindi?*

A: *In Hindi Sir.*

Q: What was the word he says in Hindi?

A: "Shalit! Nai jao wah"

Q: So, those are the words he used in that tone usually?

A: Yes.

Q: So, then you turn,

Mr. Naidu: Just, who use that tone, Kamal?

A: Yes, Kamal.

Q: So, now when Kamal did that what happen next?

A: When Kamal did that then I asked him what happen, he said Muni had jump in the water so, we quickly asked the other boys to some and Nishant and Ben started looking for him in the Water.

Q: Did you seek Muni Shalit at this time anywhere when he yells when Kamal yell, did you see him anywhere?

A: No.

Q SO, when you came out of the water, where did you go?

A: We all gathered on the top side of the pool, outside of the pool.

Q: And did anybody try to look for Munit Ali?

A: It was Ben and Nishant.

Q: And where did they look for him?

A: In the water.

Q: Which part of the water. Shallow or Deep

A: No, behind them where they marked off the area not that area but behind the area.

Q: So they were looking for him not in the condone area but on a different area?

A: Yes.

Q: Was that the deep area?

A: It was

Q: And was did they eventually find Muni shalit Reddy?

A: Yes, they did.

Q And was he found?

A: In the deep side of the pool.

Q: Who found him?

A: Actually, it was one the players who said that he can help Nishant and Ben in terms of looking for Shalit.

Q: Alright. So, Ben and Nishant were jumping in the pool looking for him?

A: Yes, Sir.

Q: So, eventually when they found him, what did they do?

A: They brought him to the side of the pool and then and there Nishant applied the CPR exercises on Shalit.

Q Nishant did CPR?

A: Yes, Sir.

Q: Was he qualified to do that?

A: All Physios are qualified to do that Sir, as per my knowledge.

Q: And did you call anybody? What happened after that?

A: After that, after CPR I asked Nishant and Nishant said we need to transport him to the hospital so the transport which we went to the pool it was there so Muni was transported to the hospital in that minivan.

Q: And did you find out later what happen to Munit Shalit when you went to the hospital?

A: Yes, when we arrived at the hospital, we other players then we found out, yes, Munit Shalit was no longer with us.

35. The next witness for the Defendant “DW-2” in his examination in chief as per pages 86 to 88 gave evidence to the following effect, which is found to be crucial.

Q: Okay. And how far away was this waterfall area?

A: This was in another island which was organized by him.

Q: So how did you get to the island?

A: We went in a boat.

Q: And how many of you went, do you recall?

A: I can't recall. I think one player did not travel with us. He was sick.

Q: Okay. And when you went to that waterfall site you said there was a pond. Could you explain what was the place like, what was the pond like, how did it?

A: The waterfall was far and there was one rock and then the pond. Shallow part was this side and I think before we left for the trip the Manager had a briefing with the players, and when we boarded the vans again before reaching, we had a small meeting with the players and then everybody went down there.

Q: If I could just stop you there you said there was a first briefing, right?

A: Yes.

Q: Were you present at this briefing.

A: Yes. The first briefing I was present.

Q: And who conducted the briefing?

A: Mr. Yogendra Dutt conducted the briefing.

Q: And what happened in this briefing – what did he say?

A: He reminded about the safety rules and we are not going for a swim we are going for a cooling down session.

Q: Okay. And then you said there was another briefing session when you arrived?

A: Yes Sir. About travelling in the minivans, not taking out the hands and shouting because it is a foreign country and all those things.

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Q: Okay things like that. So when you arrived at the waterfall site, what did you do?

A: The Physio and the Goalkeeper Coach went in to see the place, how safe it is and then they give the mark from where they that side the boys cannot go on the deeper side, and we put all the boys on the shallow water. At our back was a stone wall and Yogend was sitting at

the stone wall and I was sitting at the entrance since I had a boil on my leg so I did not go in the water. So, anybody going out has to inform me going out and anybody coming in I will inform Yogend that the boy is coming in so then only he will allow to get in. And then the Physio and the Goalkeeper Coach was on the deeper side (about chest height water) they were standing there.

Q: What were they doing standing there?

A: They were giving the mark for nobody to go that side.

Q: Nobody to cross to the other side?

A: Cross their line.

Q: And what was on the other side if they crossed?

A: About a distance of 10 meters was the waterfall so it was deep that side because the waterfalls I think that place will be deep so that is our assumption. Nobody went there so that is why we send those two to give the mark. In fact I think Shalit was the tallest guy but we did not take his mark – we took the 2 (the Goalkeeper Coach and Physio's mark) for safety reason.

Q: And this pond area, this area that was shallow how big was it compared to this room; it was this room's size or how big was it?

A: It was bigger than this.

Q: Bit bigger or a lot bigger?

A: A bit bigger.

Q: Alright. So, you are all in the pool, the boys got in the pool, you said you're on the side, the other two people on the deep side, can you tell this Court what happened? (In particular we want to know what happened to Muni Shalit)

A: Shalit was inside the water then he came out. Then I asked Mr. Yogendra what happened to him. Yogendra Dutt told me he said that he wants to go out and I asked him what happened and he said he wanted to go to the Convenience. The convenience was about 15 meters away so I directed him to the convenience and then I came back and sit down there watching the boys because 2 were giving the guide and myself and Yogend were watching the boys and then I looked once he did not turn up but later, I heard the jump and I turned and saw Shalit. I shouted Shalit and then I told Ben, Shalit – 30 seconds he didn't come out then I told Ben, Ben something is wrong you go and then Nishant and Ben ent but they could not find.

Q: Alright. So, you said you saw Shalit jump into the water?

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A: Someone passed behind me and by then he was in there, because there's a rock.

Q: So he went on the rock and jumped in?

A: Jumped from there. The mark was there but he thought that that place is shallow.

Q: So, he jumped?

A: So, he jumped.

Judge: You saw him going on the rock?

A: No, I could just feel that someone passed like this. When I turned, he was already in the air.

Q: So, he went fast?

A: Yes.

Q: So when he jumped and you said hey Ben there's something wrong?

A: 30 seconds; when he did not come out. Ben was in there so he quickly came to the spot and dived and he said I can't find. Nishant went and can't find.

Q: I see.

A: So, we pulled out everybody and Nishant and that one was still searching then one boy jumped and found him.

Q: And then what happened after you found him?

A: After that happened, I think the most qualified person was the Physiotherapist. He did the CPR and by then I shouted to the Samoan representative, he brought the van, we put him in the van and I think Nishant kept on doing the CPR and they took him to the hospital.

Q: Oh, I see. Alright. In terms of him being in the water and you not finding him coming out, Nishant doing CPR, who got him out of the water?

A: One of the soccer players.

Q: Do you remember who it was?

A: I can't remember the name. By face I can remember.

Q: Okay. Do you recall if there was an investigation carried out by the Samoan Police in relation to this?

A: Yes Sir.

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- 36.** Although, these two witnesses were cross examined by the Plaintiff's counsel in length, their evidence in chief remained un-assailed and their answers under re-examination found to be further strengthening their evidence in chief.
- 37.** Initially, the plaintiff filed action without pleading the principle of *Res ipsa loquitor*. However, subsequently, amended his statement of claim to include the said plea apparently after realizing the absence of any direct evidence to substantiate the alleged negligence on the part of the Defendant and its agents. After the closure of the trial, the Plaintiff once again amended the Statement of Claim only to include the prayer for general damages, which was not objected to by the Defendant's Solicitors. However, the question of damages will be visited only if and when the Defendant is found liable.

Duty of Care

- 38.** Negligence is dependent on duty of care being owed. The plaintiff's case is founded on the alleged negligence and the principle of "*Res ipsa loquitor*". The first question then to be asked is that whether the Defendant and its agents failed in their duty of care towards the deceased Shalit Reddy. It is to be noted that the Parties are not at variance that the Defendant and its agents owed a duty of care to the deceased. The agreed fact No-6, with no reservations, went to the extent of admitting that the deceased was under the care, control and supervision of the Defendant at the time material to the incident that led to the drowning and resultant death.
- 39.** The next question is as to what extent the duty of care was expected of the Defendant and / or its agents? And whether the Defendant or its agents had exercised reasonable control, care and supervision at the time material to the incident.

40. In *Richard v State of Victoria (1969 V. R. 137)*, a leading Australian decision in which allegations of negligence in relation to failure to supervise student in the classroom were considered, The Full Court of the Supreme Court of Victoria noted that during school hours a child is beyond the control and protection of his parents and placed under the control of a teacher, who is in a position to exercise control over him and afford him reasonable care and protection from injury.

Breach of Duty of Care?

41. It is undisputed that the Defendant owed a duty of care towards the plaintiff. The question that would arise is whether there was breach of the duty of care by the Defendant. The Defendant through its 2 witnesses have adduced crystal clear evidence as to how the incident occurred and what precautions they had taken for the safety and to avoid this type of incidents. In the absence of evidence by the plaintiff as to how the incident happened, I am inclined to accept the Defendant's version on how the incident occurred.
42. What Lord Denning said in *Clark v Mon Mouthshire County Council (1954) 118 J.P 244 (C.A.)*, was cited by **Jiten Singh J in the case of Amnish Chand v Sudhakar Chandra & Others (HBC 0135 of 2000L)**, where the duty of a teacher was assessed as follows:

'The duty of a school master does not extend to constant supervision of all the boys all the time. That is not practicable. Only reasonable supervision is required.'

43. In *Van Oppen v Clerk to the Before Charity Trustees [1989] 3 A11ER 389 Balcombe LJ* of the Court of Appeal quoted with approval the remarks of Boreham J at first instance:

'There are risks of injury inherent in many human activities, even of serious injury in some. Because of this, the school, having the pupils in its care, is under a duty to exercise reasonable care for their health and safety. Provided due care is exercised in this sphere, it seems to me that the school's duty is fulfilled.'

44. Turning back to the present case, the deceased **Muni Shalit Reddy** died as the result of suffocation due to airway obstruction caused by drowning when he plunged into the pool from a rock. The deceased had escaped the attention of the Defendant's agents, under whose custody, care and supervision he was at that time of the incident. The incident appears to have happened all of a sudden. The victim had walked out of the pool stating that he is going for urination, which need not have alerted the Defendant's agents at all to any degree.
45. The deceased was the tallest one in the group, apparently, giving a matured look (Vide the photograph marked "**Pex-4**"). There were 16 other students in that group. Here the role of the Defendant's agents / officers at that time was similar to that of a teacher/s of a class in the aforesaid case law authorities. The circumstances may not have warranted the Defendant's agent to wait till the victim had eased himself in the toilet or to follow him after urination. He showed him the toilet and returned to his point from where he was supposed to have an eye on the other boys who were still in the pool. Even if the Defendant had exercised the needed care, control and supervision, the Defendant / its agents could not have prevented the incident as it happened unexpectedly. I can see no evidence on how the Defendant was in breach of the duty it owed to the deceased. The Plaintiff has not adduced evidence as to exactly in what

manner the Defendant failed in its duty of care. In the circumstances, I would conclude that there was no breach of duty of care by the Defendant.

Contributory Negligence:

46. The Defendant had pleaded contributory negligence on the part of the plaintiff. However, for obvious reason, not a single issue on it was framed warranting the adjudication of it at the trial. However, since I have found that there was no breach of duty of care by the Defendant, I need not lay my hand on the issue of contributory negligence. I would simply say that the issue of contributory negligence does not arise.
47. Since the plaintiff purported to have particularised negligence of the Defendant/ its agents, the onus is on the plaintiff to prove his allegations on the balance of probability, which is the civil standard of proof.
48. In civil cases the burden of proof lies on him who affirms a fact, not on him who denies it (*Ei Qui Affirmat, Non ei Qui Negat, Incumbit probatio*) (See: ABC of Evidence by Bartley and Brache 3rd Edn). This ancient rule should not be departed without strong reasons (see: Joseph Constatine Steamship Line Ltd v Interpeial Smelting Corporation Ltd).
49. In this case, it was incumbent on the plaintiff to prove on the balance of probability / on preponderance of evidence that when the deceased Muni Shalit Reddy, along with other team members, was in the pool engaged in Water-Therapy at the said tourist destination in Samoa at or around 10.30 am on 27th January 2015, the Defendant/ its agents/ officers failed to exercise their duty of care in the manner expected of , and as a result of their failure the deceased died of drowning.
50. I should say that the plaintiff's witnesses (parents of the deceased) who were called to establish the Defendant's alleged negligence, did not prove which act or omission on the part of the Defendant and/or its officers constituted the failure in taking proper care for the safety of the deceased.

Res Ipsa Loquitur:

51. Having failed to prove negligence of the Defendant through direct evidence, the plaintiff attempted to rely on the principle of Res ipsa loquitur to prove the Defendant's negligence.
52. The attempt by the plaintiff to invoke and rely on the principle of Res ipsa loquitur was only an afterthought. The plaintiff pleaded this rule in his amended statement of claim probably after realizing that they had no direct evidence for the proof of negligence on the part of the Defendant. I find that the said principle is not assisting the Plaintiff for the reasons to be discussed below.
53. However, I did not find that the counsel for the plaintiff trying to rely on the principle of Res ipsa loquitur, by asking relevant questions that supported the application of that rule at the trial.

54. Res ipsa loquitur (the facts speak for themselves) is a rule of evidence that allows the injured parties to bypass the usual proof of negligence in their claim to recover damages from the responsible parties. It comes to play where an accident of an unknown negligence on the part of the Defendant in control of the object, place or activity, which injured the plaintiff or caused damages to his property.
55. On the applicability of the rule of res ipsa loquitur, the High Court (Connors J) in **Ali v Ali [2006] FJHC 98; HBC 236.2000L (17 February 2006)** said [at paragraphs 19-23]:

"[19] I have had the benefit of written submissions filed on behalf of the plaintiff and on behalf of the defendants. The plaintiff's written submissions in addition to referring to relevant parts of the evidence makes a submission based upon res ipsa loquitur. Res ipsa loquitur is however not pleaded in the statement of claim. Notwithstanding the submission relies upon the English authorities and is based upon Swan v Salisbury Construction Co Ltd [1966] 2 All ER 138 at 142.

[20] The issue of res ipsa loquitur was considered by the High Court in Abh where Finnigannigan J considered Schellenberg v Tunnel Holdings Pty Ltd [2000] HCA 18; [2000] 200 CLR 121.

[21] In Schellenberg, Gleeson CJ and McHugh J said at paragraph 22:

"Although Australian and English Courts have diverged as to the scope and effect of the principle of res ipsa loquitur, in this country its scope and effect have been decisively settled by series of decisions of this court. Those decisions make it clear that the trial judge was correct when he said that the principle is not a distinct, substantive rule of law, but an application of an inferential reasoning process, and that the plaintiff bears the onus of proof of negligence even when the principle is applicable."

[22] Their Honours later said at page 134:

"What flows from the statement of principles is that, while res ipso loquitur may ameliorate the difficulties that arise from a lack evidence as to the specific cause of an accident, the inference to which should give rise is merely a conclusion that is derived by the trier of fact from all the circumstances of the occurrence. When it applies, the trier of fact may conclude that the defendant has been negligent although the plaintiff has not particularized a specific claim in negligence or reduced evidence of the cause of the accident. But it does nothing more."

[23] Even if res ipsa loquitur had been pleaded it would not assist the plaintiff as he would still bear the burden of establishing that the defendant was in fact negligent."

56. The plaintiff, according to decided cases, bears the onus of proof of negligence even when the principle of res ipsa loquitur is applicable.
57. Th Plaintiff in this case seeks recourse to the rule of Res ipsa loquitur, when he failed to discharge the onus of proof of negligence of the Defendant or its agents through direct evidence. The plaintiff hereof, in my opinion, is not entitled to invoke assistance of the rule of res ipsa loquitur, when he failed to discharge his onus of proof of the Defendant's negligence, through direct evidence.

58. The defence witnesses in this case gave convincing evidence on behalf of the defence and explained the circumstances that led to the incident. The Defence witness clearly testified as to how the deceased got out of the pool saying that he was going for urination, which may sometimes be a false excuse to escape the attention of the defendant's agents. The purpose of urination alone need not have, necessarily, prompted him to come out of the pool, which was fortified by a nearby water fall and the water in the pool was not stagnated, but running. He may have used it as an excuse to escape from the attention of the "DW-1" for him to go on the top of the rock.
59. However, whether he actually urinated or not, he managed to escape from the attention of the "Dex-1", went on the rock and jumped into the water "within a blink of an eye" leaving no room for them to prevent him from doing so.
60. The defence witnesses were extensively cross examined by counsel for the plaintiff. However, their evidence remained unshaken by the cross examination and they remained firm in their explanation as to how the incident occurred.
61. The Defence witnesses gave clear and straightforward evidence. Their evidence appeared to be credible. I would accept their evidence as to what caused the incident of drowning, and it was beyond the control of the Defendant's agents.
62. If the claimant is unable to prove precisely how an accident took place, they may be able to rely on the maxim of *res ipsa loquitur*, 'the thing speaks for itself'. This means that the facts of the case suggest an element of negligence on the part of the Defendant. It applies where the causes of an accident are unknown, but the inference of negligence is clear from the nature of the accident. (Definition derived from Halsbury's Laws of England). There was nothing in the scene to tell the story as to how the incident occurred.
63. In law, it's a doctrine that infers negligence on the part of a Defendant based on the very nature of the accident or injury, even if there's no direct evidence on the Defendant's specific negligent act. Here's a more detailed explanation:

Lack of Direct Evidence:

- It's particularly useful when the plaintiff can't pinpoint exactly what wrong did the Defendant do? but the event itself strongly indicates negligence.

Example:

- If a barrel falls from a building and injures a pedestrian, *res ipsa loquitur* might apply because such an event wouldn't normally happen without negligence, even if the specific cause of the barrel falling is not immediately clear.

Conditions for Application:

- Generally, for *res ipsa loquitur* to apply, the incident must be of a kind that doesn't usually occur without negligence, the Defendant must have had exclusive control over the instrument that caused the injury, and there should be no evidence of the plaintiff's contributory negligence, according to some legal resources.

64. On a review of the evidence, in my judgment, the Defendant had reasonably discharged its duty to provide the needed care, control and supervision of the deceased in this matter. 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.

65. In **CIVIL APPEAL NO. ABU 013 of 2021 [High Court at Suva Case No. HBC 376 of 2017]** In paragraph 19 it was stated

“19. Faced with an absence of evidence as to the cause of the collision, we apprehend the appellant in effect sought to rely on the doctrine of res ipsa loquitur. Commonly known as the ‘but for’ test. Under that doctrine, where the collision in question is such that it would not have happened in the ordinary course of things if the defendant driver had used proper care, then the fact of its occurrence affords reasonable evidence, in the absence of any explanation by the Defendant, that it arose from a want of care”.

66. In the case of **Lloyde v West Midlands Gas Board [1971] 1 WLR 749 at 755** it was held:

‘More generally the claimant may invoke the doctrine known as res ipsa loquitur or “the event speaks for itself”. This means that under circumstances the claimant may raise a presumption of negligence simply by detailing the manner in which the accident or the loss in question occurred. Negligence will be presumed where the means by which the damage was inflicted were under the defendant’s sole control or where, on first sight, no explanation other than carelessness by the defendant is possible’.

67. Lord Griffiths in **Ng Chun Pui v Lee Chuen Tat [1988] RTR 298; [1988] UKPC 7** made the following observations;

“This does not mean that the burden of proof is formally reversed. The claimant has the burden throughout of establishing his case on balance of probabilities and the judge must make an assessment whether there has been lack of due care on all the evidence presented to him. Another way of putting this is to say that the defendant does not formally have the burden of disproving lack of care on the balance of probabilities simply because res ipsa loquitur has been successfully raised against him. All res ipsa loquitur is to assist the claimant in establishing his case and to raise prima facie finding of lack of care against the defendant. But in practice the application of res ipsa loquitur may effectively settle a case where neither side can offer a convincing explanation of the event in question”.

68. Res ipsa loquitur has been applied to help establish that the Defendant breached a duty of care owed to the claimant in the following types of cases:

- The defendant performed a minor operation on the claimant’s hand and after the operation was over the claimant lost the use of his hand; (**Cassidy v Ministry of Health [1951] 2 KB 343**);
- The claimant was working in the defendant’s factory and an electrical panel fell on his head; (**Bennet v Chemical Construction [1971] 1 WLR 1571**);
- The claimant was injured when a coach driven by the defendant suddenly veered across the road into the claimant’s path; (**Ng Chun Pui v Lee Cheun Tat [1988] UKPC 7; [1988] RTR 298**);
- The defendant cleaned a suit belonging to the claimant and the claimant suddenly developed dermatitis on wearing the suit again. (**Mayne v Silvermere Cleaners [1939] 1 All ER 693**).

69. However, a plea of *res ipsa loquitur* was not allowed in the case where a door on a moving train operated by the Defendant suddenly opens and the claimant falls out. The fact that the door opened suddenly did not of itself indicate that the Defendant was careless in operating the train; the door could just as well have opened because of the fault of another passenger.
70. In the instant case, how the deceased drowned resulting his death is a fact within the exclusive knowledge of the plaintiff's witnesses and therefore the burden of establishing that the defendant failed to discharge the duty of care owed toward the deceased, is on the plaintiff. In the circumstances a plea of *res ipsa loquitur* cannot be allowed.
71. To apply the maxim *res ipsa loquitur* the facts must be such that the most natural explanation what happened is that the Defendant was careless. In the case of ***Scott v London and St Katherine Docks Company (1865) 3 H & C 595, 601; [1865] EngR 220; 159 ER 665, 667 Erle CJ***. Held:

'Where the thing [which caused the accident complained of] is shown to be under the management of the defendant And the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants that the accident arose from want of care.'

72. In ***Ng Chun Pui v Lee Chuen Tat [1988] UKPC 7; [1988] RTR 298***, Lord Griffiths, speaking for the Privy Council said:

*"This does not mean that the burden of proof is formally reversed. The claimant has the burden throughout of establishing his case on the balance of probabilities, and the judge must make an assessment of whether there has been a lack of due care on all the evidence presented to him. Another way of putting this is to say that the defendant does not formally have the burden of disproving lack of care on the balance of probabilities simply because *res ipsa loquitur* has been successfully raised against him.*

73. The Fiji Court of Appeal in ***Fiji Forest Industries v Naidu (2017) FJCA 106 ABU 0019.2014 (14th September 2017)*** relied on *Fontaine v British Columbia (Official Administrator) (1998) 1 SCR 424*, where in the Supreme Court of Canada held as follows;

*"Res ipsa Loquitur, or "the thing speaks for itself", has been referred to in negligence cases for more than a century. In Scott v London and St Katherine Docks Co (1865) 3 H & C 596 (1865) EngR 220, 159 E.R 665 at p 596 and P 667, respectively, Eric CJ defined what has since become known as *res ipsa loquitur* in the following terms. There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things done not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from what of care..*

*..The doctrine applies (1) when the thing that inflicted the damage under the sole management and control of the defendant, or of someone for whom he is responsible or whom he has a right to control: (2) the occurrence is such that it would not have have happened without negligence, if these two conditions are satisfied it follows, on a balance of probability, that the defendant, or the person for whom he is responsible, must have been negligent. There is however, a further negative condition (3) there must be no evidence as to why or how the occurrence took place. If there is, then appeal to *res ipsa loquitur* is inappropriate, for the question of the defendant's negligence must be determined on that evidence...*

If the facts are known, the inference is impermissible, and it is the task of the court to review the facts and to decide whether they amount to the plaintiff having satisfied the burden of proof which is upon him".

74. The evidence adduced for the Defence in this case before me clearly demonstrate that the Defendant, within its capacity and control, had done what were needed for the supervision, control and care of the team members, including the deceased. The event was basically not meant for swimming for them to be provided with life-saving kits. However, the position taken by his parents that he never knew swimming, contrary to the information given in the check list, cannot be accepted, particularly when the deceased Shalit Reddy was said to be aspiring to be a Police Officer in future. If he did not know swimming or was a novice, he would not have decided to jump into an unknown depth.
75. I have already evaluated the degree of duty of care required to be given to Muni Shalt Reddy by the Defendant at the time material, by comparing the scenario hereof to that of a teacher handling the students inside or outside of a class. The action of the deceased, where he perhaps after urination, swiftly going on the rock and jumping from it was something beyond the control, care and supervision of the Defendant's agents, who were in and around the pool.
76. In this case before me, it was not foreseeable that a person engaged in water exercise would drown in a shallow pool. **More importantly, the pool and the place of incident here were neither owned nor was under control of the Defendant or its agents.** They all were new to the place. The evidence did not reveal that there were signs of warning. However, the Defendant still took all reasonable precautions to ensure the safety and rule out such an incident.
77. It was not foreseeable that only the deceased Muni Shalit Reddy would go on the rock and jump from it, while none of the remaining 16 players had opted or dared to do so. There was no any other action that the Defendant or its officials could have taken, apart from the actions that they took to prevent Mr. Reddy from engaging in such an act.
78. In my view, the alleged negligence alone would not have paved the way for the occurrence of this incident hereof. The deceased Shalit's action was not foreseeable under the given circumstances. The Defendant, through its agents, had taken all reasonable precautionary steps within its capacity for the safety of the players.
79. In *Clark v Mom Mouthshire County Council (1954) 118 J.P 244 (CA)* it was stated as follows in relation to the teacher's duty of care towards the students.
- "... the duty of a school master does not extend to constant supervision of all the boys all the time. That is not practicable. Only reasonable supervision is required..."*
80. The above authority was cited by Justice Jiten singh in *Amnish Chand v Sudhakar Chandra & other (HBC 0135 of 2000 L)*. In this case the Defendant's officials could not have constantly supervised (especially since Mr Reddy was going for urination and he was at the age of 15 or so years old). Further, it was not foreseeable by the officials that he would not follow the instructions. As such, there was no reason for constant supervision of Mr. Reddy since he was out of the pool water already.

81. The remaining consideration for the application of the principle of *Res ipsa loquitur* is whether there is no evidence or explanation for the occurrence? The Defence has adduced sufficient and convincing evidence as to how the incident occurred. There is plausible explanation. Thus, I find no role for the Principle of Res ipsa loquitur to play here.

82. I have already ruled out the claim that Mr. Reddy did not know how to swim? The issue is not why he jumped? No party knows why he jumped but the fact does not change that Mr. Reddy did jump. However, from the facts the following are relevant;

82.1. The trip to the water pool was organised for water therapy and cooling off. This did not require any of the players to swim.

82.2. A shallow area was picked, which did not require the players to swim.

82.3. The size of the shallow area was about the size of this Court-room, and it would not be possible for 17 players to swim in such a small area of extent.

82.4. There were 17 players and all remained in designated shallow area, except for Mr. Reddy exited the designated area and jumped off the rock.

82.5. Mr. Reddy had prior to the incident in Samoa attended a water therapy session in Fiji.

83. Accordingly, there is considerable evidence available, which does not necessitate any presumption of negligence arising through Res ipsa loquitur calling upon the Defendant to disprove. The burden of proof in this matter still lies with the Plaintiff to establish negligence on the part of the Defendant.

G. CONCLUSION

84. For the reasons set out above, I conclude that the incident occurred with great rapidity. The claim of negligence on the part of the Defendant has to fail necessarily. The plaintiff failed to establish, on balance of probability, that the Defendant was negligent in taking care, supervising and controlling the deceased in a way which would have prevented the incident or would have reduced the seriousness, preventing the tragic end of the deceased's life.

I conclude that the plaintiff failed to discharge that burden of proof. This simply translates that the plaintiff has not proven that the death of the deceased was caused by any negligent act or omission on the part of the Defendant. The plaintiff is, therefore, not entitled to claim damages from the Defendant. I would accordingly, with no alternative, dismiss the Plaintiff's claim and strike out the Amended Statement of Claim filed on 18th October 2024, however with no costs.

H. ASSESSMENT OF DAMAGES:

85. The question of assessment of damages does not arise because the plaintiff had failed to establish the liability of the Defendant to pay damages.


I. FINAL OUTCOME:

85. The final outcome of this judgment is that:

- A. The Plaintiff's claim fails and his action is hereby dismissed.
- B. The Statement of Claim, together with the Amended Statement of Claim filed on 29th January 2020, struck out.
- C. No order as to costs.

On this 21st Day of July 2025 at the Civil High Court of Lautoka.




A.M. Mohamed Mackie.
Judge
High Court (Civil Division)
Lautoka.

SOLICITORS:

Messrs; PILLAI NAIDU & ASSOCIATES - Barristers & Solicitors- For the Plaintiff.
Messrs; SAMUEL RAM LAWYERS – Barristers & Solicitors – For the Defendant.