

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CIVIL JURISDICTION**

**CIVIL CASE NO: HBC 157 OF 2025**

**BETWEEN:**            **RAJESH NAIDU** of Kuku, Bau Road            **PLAINTIFF**  
Nausori, unemployed.

**A N D:**                **THE NEW INDIA ASSURANCE**            **DEFENDANT**  
**COMPANY LIMITED** a foreign company  
duly registered in Fiji and having its registered  
office at Level 2, Harifam Centre, Corner  
of Graig Street and Renwick Road, Suva

**Counsel:**                Ms. S. Devan for the Plaintiff

**Date of Hearing:**      02<sup>nd</sup> July 2025

**Date of Judgment:**   13<sup>th</sup> August 2025

**JUDGMENT**

1. The Plaintiff filed an originating summons dated 29th of April 2025, seeking the following orders under Section 33 (a) (1) and 33 (b) (1) of the Workmen’s Compensation (Repeal) Act 2018, Section 4(4) of the Limitation Act, and the inherent jurisdiction of the High Court. The Plaintiff later amended the originating summons to include sections 10 (1) and (4) of the Insurance Law Reform Act. The orders sought are:

- i) *A Declaration that the Defendant is liable to indemnify Ambe Construction Limited against a Judgment obtained by the Plaintiff in Civil Appeal No. CBV 0014 of 2022/Civil Action No. HBC 341 of 2008 under the Workmen's Compensation Insurance Policy No. 922623/4105/254494 on the grounds that Ambe Construction Limited was insured for all legal liability in respect of its employees, including the Plaintiff under the Fiji Workmen's Compensation Act.*
  - ii) *That the Defendant pay and satisfy the Judgment that had been entered against Ambe Construction Limited arising out of workplace injury suffered by the Plaintiff being the subject of the claim in Suva High Court Civil Action No. HBC 341 of 2008.*
  - iii) *That the Defendant pay the costs of the within application to the Plaintiff assessed on a Full solicitor/client indemnity basis*
  - iv) *Further or other relief as this Honourable Court may deem fit.*
2. The Plaintiff, on 8th May 2025, filed an Affidavit of Service, confirming that the service of this Originating Summons and supporting documents was properly affected on the Defendant. There was no acknowledgement of service by the Defendant pursuant to Order 28, Rule 8; therefore, the Plaintiff moved the Court for a hearing, which was scheduled for 2nd July 2025. The Court heard the submissions of the Learned Counsel for the Plaintiff and was assisted by the filing of two written submissions.
3. Having carefully considered the Amended Originating Summons, the two Affidavits in Support of the Plaintiff, and the oral and written submissions of the Learned Counsel for the Plaintiff, I will now pronounce judgment on this matter.

4. Ambe Construction Ltd (the employer) employed the Plaintiff as a labourer and painter. In 2008, Ambe Construction Ltd engaged Formscaff (Fiji) Ltd (the Contractor) to undertake certain works at the Housing Authority Complex at Valelevu, Nasinu. During the course of the Contractor's work, the Plaintiff was injured and sustained permanently disabling injuries.
5. The Plaintiff initiated legal proceedings against the Employer and the Contractor seeking damages for the injuries he sustained. On 25 November 2016, Justice Amaratunga, delivering his judgment, granted the following orders:
  - a) *The 1<sup>st</sup> and 2<sup>nd</sup> Defendants are equally negligent for the injuries caused to the Plaintiff at 40% each. The Plaintiff's contributory negligence is 20%. (The aggregate damage with interest be apportioned at 40% to each Defendant)*
  - b) *The Plaintiff is granted general damages of \$125, 000 and interest of 6% per annum from 30.09.2008 to 25,11,2016.*
  - c) *For the future care a sum of \$67, 600.00 is awarded.*
  - d) *For loss of earnings in future a sum of \$68, 411.20 is awarded.*
  - e) *For special damages \$6868.44 is granted with interest from 2.4.2008 (date of incident) to 25.11.2016 at 3% assessed per annum.*
  - f) *The cost of this action is summarily assessed at \$6,000.*
6. The matter was appealed to the Fiji Court of Appeal and subsequently to the Supreme Court of Fiji. On 26th April 2024, the Supreme Court delivered its judgment, upholding Justice Amaratunga's decision in the High Court. Following the Supreme Court's ruling, the Defendant indemnified the Contractor's share of the damages awarded by the High Court but failed or refused to indemnify the damages awarded against the Employer. As a result, the Plaintiff issued this Originating Summons, seeking the order specified above.

7. Section 10 of the Insurance Law Reform Act 1996 deals with the rights of the third party to recover against the insurer when the insured is dead or cannot be found under a contract of liability insurance. Section 10 of the Insurance Law Reform Act states:

1) *Where—*

a) *the insured under a contract of liability insurance is liable in damages to a person (in this section called the “third party”);*

b) *the insured has died or cannot, after reasonable enquiry, be found; and*

c) *the contract provides insurance cover in respect of the liability, the third party may recover from the insurer an amount equal to the insurer's liability under the contract in respect of the insured's liability in damages.*

2) *A payment under subsection (1) is a discharge, to the extent of the payment in respect of—*

a) *the insurer's liability under the contract; and*

b) *the liability of the insured or of his or her legal personal representative to the third party.*

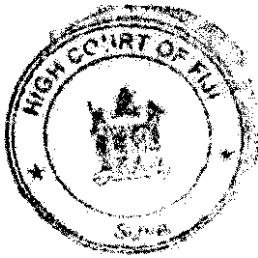
3) *This section does not affect any right that the third party has in respect of the insured's liability, being a right under some other law of Fiji.*

4) *This section applies to or in relation to contracts and proposed contracts in relation to personal injury or death as a result of an accident arising out of and in the course of employment.*

8. Accordingly, a third party is entitled to recover from the insurer under the liability insurance contract, if:

- i) There exists a valid insurance contract under which the insured is liable for damage caused to a third party.
  - ii) The insured is either deceased or cannot be located after a reasonable inquiry.
9. Under Section 10 (4) of the Insurance Law Reform Act, the rights of third parties have been expanded to include contracts concerning personal injuries or death resulting from accidents occurring during employment.
10. Having reviewed the two affidavits of the Plaintiff, I am convinced that a valid insurance contract existed between the employer and the Defendant Insurance Company, covering the employer's employees, at the time the Plaintiff sustained his injuries during the course of his employment. (*Vide RN 2 as annexed to the Plaintiff's affidavit*). Pursuant to the judgment of the High Court, which the Supreme Court later upheld, the employer is liable for damages to the Plaintiff regarding the injuries he sustained during the accident that occurred while he was at work.
11. The Plaintiff further demonstrated to the Court that the insured employer no longer exists as it was deregistered under Section 759 (1) of the Companies Act. An insured deregistered company can be appropriately regarded as an insured that cannot be located under Section 10 (1) (b) of the Insurance Law Reform Act.
12. As outlined above, the Plaintiff successfully established that he is entitled to recover the damages awarded against the Employer from the Defendant under Section 10 of the Insurance Law Reform Act.
13. I accordingly make the following orders as prayed in the Amended Originating Summons:

- i) That the Defendant is liable to indemnify Ambe Construction Limited against the judgment obtained by the Plaintiff in Civil Action HBC 341 of 2008 and Civil Appeal No 0014 of 2022.
- ii) That the Defendant pay and satisfy the judgment entered against Ambe Construction Limited in Civil Action HBC 341 of 2008.
- iii) The cost of FJD \$1000 is summarily assessed to be paid to the Plaintiff.



A handwritten signature in black ink, appearing to be "R. D. R. T. Rajasinghe".

.....  
**Hon. Mr. Justice R. D. R. T. Rajasinghe**

**At Suva**

13<sup>th</sup> August 2025

**Solicitors:**

Messrs. Neel Shivam Lawyers for Plaintiff.