

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

**Civil Action No. HBC 126 of 2018**

**BETWEEN:**            **DONALD SUNDRAM MANI**

**PLAINTIFF**

**AND:**                    **VINOD KRISHNA**

**1<sup>ST</sup> DEFENDANT**

**AND:**                    **SALVIN KRISHNA MUDALIAR**

**2<sup>ND</sup> DEFENDANT**

**Counsel:**                Mr. Niubalavu P for the Plaintiff  
                                  Mr. Krishna S and Ms. Sonika S for the Defendants

Date of Judgment    : 27.8.2025

**JUDGMENT**

**INTRODUCTION**

- [1]            This case concerns an accident that occurred on 17 .7. 2017 along the Queens Highway, near Nawai Police Post, Nadi. Plaintiff, was a passenger in a vehicle registered as “Da Mani,” driven by his daughter, Doris Mani. This vehicle collided with a post on the opposite side and this was result of first Defendant’s negligent act and speed of vehicle.
- [2]            First Defendant was driving a vehicle registered FK 356 and owned by the second Defendant, entered the main highway from a side road from left side, without proper lookout, negligently.
- [3]            Doris Mani, had no time to avoid the collision with vehicle registered FK 356 and she moved the vehicle to right side .
- [4]            This resulted the vehicle driven by Doris Mani colliding with an electric post and causing injuries to Plaintiff, but saved collision with vehicle bearing registration FK 356 thus preventing serious injury to first Defendant. There were no injury to first Defendant or damage to his vehicle.

- [5] First Defendant denied that he was negligent, but an independent witness who had vividly witnessed the events, and a good Samaritan who offered help to victims, explained the negligent manner first Defendant entered the main highway, thus causing Doris Mani to take evasive maneuvering to avoid a more severe accident.
- [6] Analysis of evidence show first Defendant was negligent in the manner he had entered the main road. First Defendant had to first look out for incoming vehicles from both side, before it entered the main road, as he wanted to turn and proceed to the right side of main road.
- [7] So Doris Mani had lost control of the vehicle due to the combination of negligent act of first Defendant and her own contributory negligence as to the appropriate speed considering circumstances, including her experience in driving.
- [8] Though the initial cause was due to first Defendant's action, Doris Mani had also contributed to the injury to Plaintiff due to her negligence in driving at a speed where she could not control it; in an emergency such as this.
- [9] Considering facts contributory negligence is assessed at 50%.as injury to Plaintiff had equally contributed by both first Defendant and Doris Mani.

## **FACTS**

- [10] On 17.7. 2017, the vehicle Registration " Da Mani " belonging to Plaintiff was on its way to Nadi, pass the Nawai Police Post and vehicle Registration No. FK 356 was entering unto the main road from a by road from left side of the road where Plaintiff was travelling in his vehicle bearing Registration 'Da Mani' driven by his daughter, Doris Mani.
- [11] The vehicle bearing registration FK 356, driven by first Defendant, was registered in the name of second Defendant. He was not employed by second Defendant hence no vicarious liability.
- [12] Second Defendant was the registered owner of vehicle No. FK 356 and first Defendants son and had allowed first Defendant to drive it. So no cause of action proved against second Defendant, but statutory third party liability to insurance is not affected.
- [13] First Defendant, entered main road in order to proceed to opposite side where Plaintiff was travelling.

- [14] The vehicle driven by Doris Mani , driven to right side of the road and then went out of the road to gravel part and in reentering main road it had collided with a lamp post on the side of the road. This post was 3.8 m from the edge of tar seal road.
- [15] The collision of Plaintiff's vehicle with post caused injuries to Plaintiff.
- [16] The rough sketch Plan tendered as Plaintiff's exhibit shows the position of the vehicle driven by Doris Mani after accident where it stopped. The van bearing registration FS 356 is parked by the side of road. This was not position of that vehicle when accident happened. First Defendant admitted he parked the van by the side of road after the accident.
- [17] The first Defendant was charged for the offence of Careless Driving by the Police and he had not accepted liability and not paid fine.

## **ANALYSIS**

- [18] Plaintiff in his evidence said that they have just passed Nawai Police Post and suddenly, he saw a white van bearing Registration No. FK 356 coming out from a by road that connects to the main highway.
- [19] The van FT 356 entered main left-hand side of main road and he yelled at his daughter, who was the driver, as it was too close and had seen imminent collision ,with vehicle bearing registration FK 356 's driver's side with the front of Plaintiff's vehicle. This could cause serious injury to first Defendant.
- [20] This was the reason for sudden and panic scream of Plaintiff. It is not proved that his daughter was unattentive to what was imminent, danger through collision.
- [21] Defendant's argue in the written submission "*when Plaintiff yelled at her(Doris Mani) to alert her of the Defendant's vehicle , she lost control of the vehicle and swerved to the other side*". According to this submission Defendant admit that Plaintiff yelled at Doris Mani. This submission supports Plaintiff's version that first Defendant had entered main road very close to Plaintiff's vehicle and was about to collide, and Plaintiff yelled to her daughter to avoid the collision with the van, driven by first Defendant.
- [22] Defendant's main contention supported by all Defendant's witnesses, was that accident happened after van bearing registration FS 356 passed the scene of accident about 50 meters was inconsistent and in analysis proves

that it is incorrect. If so there was no reason for Plaintiff to yell to Doris Mani, suddenly. It is normal human instinct to scream when danger is sudden.

- [23] This shows that Defendant was taking inconsistent positions due to false evidence. This is a material inconsistency, which proves that first Defendant and witnesses were not truthful .
- [24] Doris Mani , tried to save the collision with FK 356, from side and to avoided collision, she had moved the vehicle to the right-hand side. It had gone off the road from right side and when she tried to reenter it, and had collided with a post, about 3.8 m from edge of road. Police had recorded this fact in the sketch plan.
- [25] There was another vehicle, approaching from the Nadi side, and Doris Mani tried to avoid collision with that vehicle and, drove the vehicle off road. She tried to control the vehicle and to take it back to the road, but could not and the vehicle hit an electric post.
- [26] Doris Mani was not an experienced driver at that time , though she could drive with provisional licence. This is also a relevant fact to be considered as to the speed of her driving, and the safe speed of the vehicle to drive carefully at the moment of accident.
- [27] Plaintiff stated that place where accident happened , was a straight road and this was shown from the sketch and evidence of the Police officer.
- [28] He stated that the van came out of a by road and without proper look out and entered highway and half of the van entered main road and stopped somewhere in the middle of the road. This evidence is corroborated by independent witness who had clearly witnessed the events as there was clear visibility and he was driving towards the scene of accident from Nadi side on the opposite side to the scene of accident.
- [29] Defendants submission had picked some immaterial inconsistencies, that does not affect credibility of witness and the proof of negligence of first Defendant. Material evidence ,as to the negligence of first Defendant was proved and corroborated with evidence called by Plaintiff. So negligent act of first Defendant proved.
- [30] The Plaintiff said that his daughter was not speeding. He said he saw the vehicle bearing registration FK 356 suddenly entering main road. Plaintiff's evidence regarding the speed of the vehicle he was travelling cannot be accepted on circumstantial evidence.

- [31] Doris Mani also said that they were in no rush hence not speeding and this fact cannot be accepted from the place of vehicle after accident and manner in which it stopped. Proper speed of a vehicle depend on money factors and even within legal limit of speed can be considered negligent other factors.
- [32] She had seen FK 356, but it was too close and could not stop collision without applying brakes due to close proximity . She decided to drive into the opposite lane, and if not first Defendant would have been seriously injured as impact from side can even be fatal due to less safety features on the side and considering reinforcements on a side of a van. So decision of Doris Mani to move to right side was correct in the circumstances.
- [33] Doris Mani drove on to the right side lane, she saw an oncoming vehicle so decided to go off road. When she tried to reenter main road her vehicle hit the post, according to her evidence as well as Plaintiffs evidence. This shows that Doris Mani had lost control of her vehicle, after the vehicle went off road. The Post was 3.8 m away from tar seal road and had adequate distance to stop the vehicle without colliding with the post. This proves Doris Mani had driven at a speed not suitable at the moment.
- [34] So initially when Doris Mani and Plaintiff had seen part of the van driven by first Defendant entering the side of the main road. There after she had moved her vehicle to right side but there was an incoming vehicle from Nadi, and she had to drive to the outside of the road to avoid another collision with incoming vehicle. She had done so but due to he speed she could not stop her vehicle without colliding with post. Doris Mani had avoided a more serious accident from negligent act of first Defendant. Doris Mani's action is justified.
- [35] Defendan's contention that she had applied acceleration and that caused the accident cannot be accepted and not supported by evidence and remains improbable conjecture.
- [36] Independent witness who was a disinterested with the claims , Sonal Shivneel Prasad gave evidence. He was the driver of the on-coming vehicle from Nadi side towards the scene of accident and was the cause for Doris Mani to drive off road to gravel part. Speed and change of surface from tar sealed to gravel also contributed to loss of control of the vehicle.
- [37] He said that he was on his way to Suva. He saw the accident up close to he had stopped the vehicle and offered injured to be taken to hospital. He had driven his vehicle towards accident and there was no object to cover his vision.

- [38] According to him, he had seen the oncoming vehicle driven by Doris Mani and another vehicle coming out of a T-junction. It was a Nissan vehicle, a white vehicle that suddenly drove into the main road. This was the vehicle driven by first Defendant.
- [39] In cross examination he said he gave a statement to the Police on the same day. His statement to the Police was tendered as Plaintiff's Exhibit 2. It was consistent with oral evidence. So in evaluation his evidence is accepted.
- [40] Defendant in the submission had highlighted that Sonal Shivneel Prasad could not remember the registration of vehicle driven by first Defendant. This was stated in his statement to the Police but he had forgotten it with time and this proves that he was not a trained witness and disinterested party. The material fact in his evidence was the entrance of vehicle driven by first Defendant to main road and how close to vehicle driven by Doris Mani, not the minute details. He said he could not remember vegetable stall. Accident happened before 9 am and it is possible that this stall had not commenced selling so the structure may go unnoticed. People do not have photographic memories and material facts were not disputed.
- [41] First Defendant and witnesses called by him cannot be accepted due to their interest and relationship with first Defendant. First Defendant did not produce his statement to the Police and only produced an interview with insurance investigating person. His version cannot be accepted in the analysis of evidence.
- [42] Investigating Officer, PC 5000 Seruvi, stated that he attended to an accident pass Nawai Police Post on 17.7. 2017. As an investigating Officer he gathered evidence, rough sketch plan and attended to the scene. He said the driver of Vehicle No. FK 356 was charged for Careless Driving. It also shows lamp post and the manner vehicle driven by Doris Mani after the accident.
- [43] In cross examination, he stated that he was familiar with the area and stated that there was a stall on the left side of the road before the T-junction. He stated that the stall covers part of the entry at the T Junction and vision on incoming vehicles from Suva side on the main road. This makes first Defendant to be more careful before entering main road.
- [44] First Defendant, said that he was with one Shalendra Mani, his witness and they came to the T-Junction, stopped at the T-junction, he saw a 10-wheeler truck going from Sigatoka to Nadi. The road was clear; the Plaintiff's vehicle was too far, about 200 meters away. He drove into the main highway road, he saw the accident from the side glass, after turning the van and proceeding to Suva side. He stopped his vehicle on the side. He said that he drove about

50 meters when he saw the accident. He did not state how long he stayed before entering main road to assess the distance of in coming vehicle. His evidence cannot be accepted on test of probability. If he had already proceeded about 50 m there was no danger of an accident with vehicle drive by Doris Mani.

[45] According to him Police came and he was charged and fined and given 90 days to pay the fine. He had filed a Motion at Nadi Court before the 90 days had lapsed and did not pay the fine. First Defendant was not guilty found as charged. On balance of probability he was negligent irrespective of outcome of criminal charge.

[46] The Defendant's witness Chetty was in van bearing registration FK 356. He said he was sitting in front, at that time with first Defendant. He had observed that the vehicle driven by Doris Mani was speeding, he was on the passenger side. If so, first Defendant had ample time to observe, and should not have entered main road, when there was a speeding vehicle travelling towards the van.

[47] Chetty had seen a man sitting in the vehicle with a white collar on his neck . He said that he had known the first Defendant for more than 20 years and in the analysis his evidence cannot be accepted as a disinterested party on the circumstances. On analysis his version is improbable, and incorrect.

[48] The Defendant's third witness was a vegetable seller , had known first Defendant and his witness Chetty for more than five years. He stated that van bearing registration FS 356 had not entered the road suddenly. It had waited to his statement to the insurance investigator on 08.05.2019 first Defendant's vehicle had passed about 100 m from the T junction. On test of improbability this evidence rejected. Accident had occurred around 8.30 am and at that time vegetable sales on the side of main road is not usually done. Even if I am wrong on that his statement to insurance investigator was made, nearly two years from accident and rectified to Plaintiff's vehicle as "Black Van".

[49] Mohammed Kazim Yasin, the Insurer's Private Investigator but had not investigated the accident. He had not examined the statements made to the Police and relied on version of first Defendant and vegetable seller, and this report cannot be accepted in the analysis of evidence. He had not considered independent person's statement given to Police or evidence of independent witness.

[50] On the balance of probability it is proved first Defendant had entered main highway from the left side by road without stopping at the edge of the road

and observing both sides of the road. There were vehicles approaching the scene of accident from both side at that time and first Defendant could not have driven the van to main road.

[51] Doris Mani was also negligent as she could not control the vehicle which had gone off the road more than 3.8 m and had hit the post while entering main road indicating negligence as to the speed she drove. The tar sealed road was about 20 m wide. The speed has to be assessed from the circumstantial evidence as there were no direct evidence to record its speed at the scene of accident. If she had control of the vehicle she should stop the vehicle once she drove off the road. There was a gravel area outside tar sealed part. When Doris Mani drove to gravel area she had avoided accident with FK 356 and also incoming vehicle was driven on the correct path and also at correct speed and was able to stop and offer help to Plaintiff and Doris Mani.

[52] Plaintiff had caused injuries from collision with his vehicle on the post. This was a combination of two negligent acts by first Defendant which required Doris Mani to drive vehicle off road but due to speed she could not stop it and lost control in entering main road and had hit the post by the side of road 3.8 m away from edge of tar sealed part. Considering Doris Mani's experience in driving and also not familiar with the area including feeder roads she was negligent as to speed, of the vehicle.

[53] Contributory negligence is accordingly attributed at 50% in terms of Section 3 of Law Reform (Contributory Negligence and Tortfeasors) Act 1946. So first Defendant's negligence was the first opportunity to avoid this accident but the last opportunity was with Doris Mani due to the speed. So contributory negligence is proved. First Defendants liability is reduced by half.

### **Assessment of Damages**

[54] Dr. Alan Biribo's evidence, confirms that the Plaintiff suffered C6–C7 subluxation requiring skull traction and anterior cervical discectomy and fusion with titanium plates and screws. He endured severe pain, and hospitalization for nine days according to the discharge summary marked P5.

[55] According to Dr. Alan Biribo's there were two surgeries conducted and first one was conducted under local anesthesia. He said that often there are complications after the type of surgery conducted to Plaintiff , but he had no such complications. This was due to his skillful surgery conducted by Dr Biribo and his team.

[56] Doctor said that he had to examine Plaintiff in order to conduct a permanent impairment assessment but this was not done.

[57] There was no reason for Plaintiff not to submit himself for such assessment which is helpful for assessment of Plaintiff's permanent impairment.

[58] Dr Alan Biribo said that the impairment would be around 20%, but impairment assessment must be evidence based after Plaintiff had reached Maximum Medical Improvement (MMI). This is subjective fact hence the assessment is always subjective. No general impairment can be assessed in terms of AMA guide line due to this fact. Even a severely injured person may recover fully without or less impairment compared with a person who had not recovered to that level of recovery, with similar injuries.

[59] Plaintiff must submit himself for examination for such assessment and then only AMA guide line can be applied for assessment. This assessment is evidence based and subjective .

[60] Text Cross on Evidence (NZ) under " Admissibility of expert opinion evidence"<sup>1</sup> stated,

"The function of an expert witness was succinctly captured by Lord Kerr for the Privy Council on appeal from the New Zealand Court of Appeal:<sup>2</sup>

It is the duty of an expert witness to provide material on **which a court can form its own conclusions on relevant issues. On occasions that may involve the witness expressing an opinion** about whether, for instance, an individual suffered from a particular condition or vulnerability. The expert witness should be careful to recognise, however, the need to avoid supplanting the Court's role as **the ultimate decision-maker on matters that are central to the outcome of the case.**

Consequently, expert opinion evidence that supplants the role of the court as decision-maker, or which lacks objectivity, invites speculation or descends into advocacy is improper, inadmissible and liable to criticism."(emphasis added)

[61] Without examination of Plaintiff and also condition of the Plaintiff and application of the facts to AMA guide line no impairment can be assessed.

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<sup>1</sup> Cross on Evidence (NZ)

Legislation current to: June 2025 • Commentary Last reviewed: November 2024

<sup>2</sup> *Pora v R* [2015] UKPC 9, (2015) 27 CRNZ 47

- [62] So I do not accept 20% impairment suggested by Dr. Alan Biribo, without examining Plaintiff, but need to assess general damages for future loss due to injury considering Plaintiff's evidence as well as Dr. Alan Biribo's evidence as to type of surgical interventions. There were complex and post operative precaution require.
- [63] Plaintiff stated that he could not sit on wooden seat which he used to sit before, when he drove water taxi for amusement and adventure business for tourists. He also hired items for carnivals and self-employed. After accident he cannot directly in adventure activities.
- [64] He stated that he owned this business and he closed this after his injury. He did not state why he could not employ a hired driver and how much he had to pay for such hired driver. Plaintiff was also unable to prove his income other than his oral evidence that he earned about \$500 per week. His earning capacity was reduced due to injury. He had not suffered any complication from surgery and loss due to his injury to be assessed from available evidence.
- [65] He had two business operations for entertainment and adventure and was travelling for business when accident happened. He hired items needed for amusement and entertainment so he had income from his business but failed to quantify this from accounts or receipts Plaintiff's evidence is analysed and reduction due to injury is assessed \$350 per week.
- [66] Plaintiff was fifty six years old at the time of accident and considering type of high adrenaline adventure activities he was not suitable for a longer time even without injury. So his future loss is limited to five years considering the age and other factors. It was also evidenced that pandemic and economic downturn also caused his business activity adversely. So the closure of his business was not only due to his injury, so entire loss cannot be attributed to injury.
- [67] Plaintiff had suffered severe pain and suffering from the time of accident till he was brought to Suva and two surgical interventions done. So for past pain and suffering assessed \$50,000.
- [68] Taxi fare of \$200 and purchase of neck collar \$80 and hotel accommodation \$200 allowed as special damages.
- [69] Plaintiff was in the hospital for nine days from 18.7.2017 and his family members looked after him for this \$100 per day allowed as gratuitous care.
- [70] For general damages 6% interest and for special damages 3% interest allowed.

[71] Damages

(a) Special Damages:

Plaintiff needed medical care from Suva and required to be transferred to Suva as Ambulance was not available in a taxi

Nadi to Suva taxi fare expenses:	\$200
He was required special type of neck collar after surgery for six weeks.	
Neck Collar expenditure	\$80
Accommodation expense at Nadi (Plaintiff stayed overnight at Nadi in a hotel) for that	\$200
Total for special damages	<u>\$480</u>
Interest from date of accident 17.7.2017 to take of Judgment 3%	\$117
Total with interest	<u>\$597</u>

(b) General Damages

Pain and suffering Suffering and Loss of Amenities): Considering the severity of injury and precedents,	\$50,000
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(c) Gratuitous Care:

Based on wife and daughter's care during hospitalization (from 18.7.2017 to 27.7.2017) nine days \$100 per day	\$900
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Total (General Damages)	<u>\$50,900</u>
Add Interest from the date of writ to date of judgment at 6%	<u>\$24,758</u>

**TOTAL** **\$75,658.00**

(d) Loss of Future Earnings:

Reduction of income for a year $52 \times 350 = \$18,200$ Considering the age at the time of accident for five years loss of earning is assessed (multiplier of 5) loss of future earning for 5 years $(18,200 \times 5)$	\$91,000
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<b><u>TOTAL:</u></b>	<b><u>\$167,255.00</u></b>
50% reduction for contributory negligence (rounded off)	\$83,628

**CONCLUSION**

[72] Plaintiff got injured due to collision of vehicle he was travelling on a post about 3.8 m away from edge of tar sealed road. The reason for the said deviation from main road was due to careless manner in which first Defendant entered main road without lookout for incoming vehicles. So the first opportunity to avoid the accident was with first Defendant. The last opportunity to avoid the accident was with Doris Mani. The speed on which the vehicle driven had also caused the collision. So the accident was due to first negligent act of first Defendant that necessitated Doris Mani to take evasive action to drive off the road but due to her speed she lost control of the vehicle and hit a Post about four meters from main road. The road was more than 20 m wide . So contributory negligence was assessed at 50%. Plaintiff 's total damage after 50% reduction due to contributory negligence is assessed at \$83,628 against first Defendant. Cost of this actions is assessed at \$3000 to be paid by first Defendant within 21 days.

**FINAL ORDERS**

- (a) Judgment for the Plaintiff against first Defendant in the sum of \$83,628.00;
- (b) Costs of this action is assessed summarily to be paid by first Defendant assessed at \$3,000 to be paid within 21 days.



*[Handwritten Signature]*  
 -----  
 Deepthi Amaratunga  
 Judge

**At Suva** this 27<sup>th</sup> day of August, 2025.

**Solicitors:**  
 Oceanica Law  
 Krishna Lawyers