IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 188 of 2023

BETWEEN	**:**	**AMAR SINGH** **Plaintiff/Applicant**
AND	**:**	**RPA GROUP (FIJI) PTE LTD** **First Defendant/First Respondent**
	:	**COMMISSIONER OF POLICE** **Second Defendant/Second Respondent**

Counsel	**:**	**Mr V Filipe for Plaintiff/Applicant**
	:	**Ms S Sheik for First Defendant/First Respondent**
	:	**Mr V Ram for Second Defendant/Second Respondent**
Hearing	**:**	**10 September 2025**
Judgment	**:**	**15 December 2025**

JUDGMENT

(on an application for leave to appeal from a decision of the Master)

[1] The plaintiff sustained serious injuries in a motor vehicle accident in March 2017. More than six years later, he filed the present proceedings, claiming negligence against the first defendant in respect to the accident and negligence against the second defendant in respect to its investigation of the accident.

[2] As the proceedings were filed outside of the time permitted under the Limitation Act 1971, the plaintiff is required to obtain an extension of time from the court to file the late proceedings. In a ruling dated 7 June 2024, the learned Master declined to grant an extension. The plaintiff is dissatisfied with the Master's decision and seeks leave to appeal therefrom.

Background

[3] On 3 March 2017, the plaintiff was employed as a driver with Amrit Lal's Small Works and Sound System. At about 6pm that day, the plaintiff was driving the work vehicle, registration number DK991. According to the plaintiff, as he was turning left into a road, he was hit by another vehicle, being registration number HT337. The plaintiff suffered injuries to his right leg. He was taken immediately to CWM Hospital and hospitalised from 3 March to 13 March 2017. On 17 March 2017, the plaintiff underwent surgery to have a below right knee amputation.

[4] The Valelevu Police Station received a report of the accident on 3 March 2017 at about 9pm. It has a record of the report. However, it does not appear that the Fiji Police conducted an investigation into the accident.

[5] The plaintiff's employer terminated his employment following the accident. The plaintiff lodged a grievance against the employer with the Employment Tribunal in about 2018. Mediation resulted in a settlement between the parties on 20 March 2019. The mediated terms being that the plaintiff received backdated wages in the amount of $2,100.00 plus payment of $300.00 per month '*until the company is sold out*'[1].

[6] According to the plaintiff, his former employer stopped payments of $300.00 per month at some point in time - the date is not provided in his affidavit. At some point in time, possibly about the time his payments were stopped, the plaintiff sought legal advice and was advised that he could pursue proceedings against the other driver

[1] As per clauses 1.0 and 2.0 of the Settlement Agreement annexed to the plaintiff's affidavit sworn on 20 June 2023.

(and/or the employer of the driver) that was involved in the 2017 accident. Again, the plaintiff does not supply the dates for receiving this legal advice in his affidavit.

[7] The plaintiff appears to have been in communication with the Valelevu Police Station in about 2022/2023. He sought information regarding the accident. In a letter from the Valelevu Police Station dated 9 February 2023, annexed to the plaintiff's affidavit, the Fiji Police confirmed that the accident had been reported at about 9pm on 3 March 2017. The registration numbers of the two vehicles involved in the accident are noted in the correspondence, although it is unclear whether these details were supplied by the plaintiff or already held by the police.

[8] On 23 June 2023, the plaintiff brought the present proceedings. He filed an ex-parte summons, with a supporting affidavit, seeking an extension to file the writ of summons out of time. In his affidavit, the plaintiff provided details of the accident, his hospitalisation, and the events culminating in the filing of the 2023 proceedings. Documents annexed included photographs of his damaged work truck involved in the accident and a 2019 medical report from CWM describing his then medical condition. The plaintiff deposed that he did not know the identity of the driver of the other vehicle and only learned that the first defendant was the owner of the vehicle after he conducted a search of the other vehicle's registration number with the Land Transport Authority. The plaintiff does not state when he undertook the search but the date is recorded at the foot of the document annexed to his affidavit, being 11 January 2023. The plaintiff does not explain when or how he learned of the registration details for the other vehicle. He deposes that it was not until he received legal advice that he learned that he could pursue a claim against the first defendant as the employer of the unknown driver.

[9] At the direction of the Master,[2] the application was required to be heard inter-parties. The Commissioner of Police filed an affidavit in opposition on 13 October 2023. RPA Group (Fiji) Pte Ltd (**RPA Group**) filed an affidavit in opposition on 18 October 2023 from Ranesh Kumar, the Managing Director of RPA Group. Mr Kumar deposed that as the Managing Director he would have been advised in 2017

[2] On 6 September 2023.

of the accident but was not and that he had no knowledge or awareness of the alleged accident until these proceedings were filed in 2023.[3]

[10] The plaintiff filed an affidavit in reply in November 2023.

[11] The parties filed written submission in advance of the hearing before the Master. The plaintiff took issue with the Master hearing the matter inter-parties, arguing that section 17 of the Limitation Act required the application to be determined on an ex-parte basis. With respect to the substance, the plaintiff argued that the two causes of action were made out on the deposed facts and that the delay filing the proceedings was reasonably explained by the fact that the plaintiff did not know the identify of the other driver, the impact of COVID-19 and his unawareness that he had a worthwhile action against the employer of the unknown driver (until he received legal advice[4]).

Master's Ruling

[12] The Master noted in his ruling that pursuant to section 4(1) of the Limitation Act the plaintiff was required to file these proceedings within three years but noted that the court had power to extend the time where the party satisfied the following requirements under section 16(3):

> *The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the* ***material facts*** *relating to that cause of action were or included* ***facts of a decisive character*** *which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which –*
>
> *(a) either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period;and*

[3] I find this difficult to accept given the damage to the plaintiff's work vehicle evidenced by the photographs annexed to the plaintiff's affidavit – very likely, RPA Group's vehicle also suffered substantial damage which will not have gone unnoticed in March 2017.
[4] Again, the date this legal advice was received is not provided by the plaintiff.

(b) in either case, was a date not earlier than twelve months before the date on which the action was brought.[5]

[13] 'Material facts' is defined at sections 19 and 20 of the Limitation Act. The Master cited several passages from decisions from the United Kingdom which have discussed the interpretation to be applied to the definition. At the conclusion of this analysis, the Master identified two questions for determination being, firstly, whether '*there is sufficient evidence to support a cause of action against the intended Defendants*' and, secondly, whether '*pursuant to sec. 16 (3) of the Limitation Act...it is proved that material facts relating to that cause of action were or included facts of a decisive character which were at all times outside of the knowledge (actual or constructive) of the plaintiff*'.[6]

[14] In respect to the first question, the learned Master accepted that the facts as deposed by the plaintiff sufficed to support the causes of action against the two defendants.

[15] With respect to the second question, the learned Master determined that the fact that the plaintiff was unaware of the identity of the driver of the other vehicle was not a 'material fact' as this fact remained unknown. The only fact that could be construed as a material fact here is the identity of the employer (RPA Group) which was available to the plaintiff to discover from the date he was aware of the registration number of the other vehicle (by a search of the LTA records). While the Master noted that this information was always known to the plaintiff (being the registration number of the other vehicle), from my perusal of the affidavit of the plaintiff, the date that the plaintiff first learned of the registration number of the other vehicle is not provided. The Master rejected the plaintiff's contention that a material fact included his unawareness he could bring proceedings against the other driver's employer until he received legal advice. The Master determined that this was not a material fact but a lack of legal appreciation - the latter not falling within section 16(3).

[5] My emphasis.
[6] Paragraphs 24 and 25 of the Master's Ruling.

Leave to appeal

[16] The plaintiff filed a late summons for leave to appeal[7] from the Master's decision on 15 July 2024. He filed a summons seeking an extension of time on 13 September 2024.[8] The second respondent filed an affidavit in opposition on 14 August 2025.

Decision

[17] In *Devi v Shah* [2024] FJHC 316, Mackie J set out the test for the grant of leave to appeal as follows:

> *10. In Prasad v Republic of Fiji & Attorney General (No 3) [2000] FJHC 265; [2000] 2FLR 81 Justice Gates (as his Lordship then was) dealing with an application for leave to appeal to set aside interlocutory order stated:*
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> > *"In an application for leave to appeal* ***the order to be appealed from must be seen to be clearly wrong or at least attended with sufficient doubt and causing some substantial injustice before leave will be granted*** *see Rogerson v. Law Society of the Northern Territory [1993] NTCA 124; [1993] 88 NTR 1 at 5-33; Niemann v. Electronic Industries Ltd. [1978] VR 451; Nationwide News Pty. Ltd. (t/a Centralian Advocate) v. Bradshaw (1986) 41 NTR 1.*
> >
> > *Fiji's legislative policy against appeals from interlocutory orders appears to be similar inter alia to that of the State of Victoria, Perry v Smith [1901] ArgusLawRp 51; (1901) 27 VLR 66 at 68; and also with appeals to the High Court of Australia, see Ex parte Bucknell [1936] HCA 67; [1976] 56 CLR 221 at 223. If it is necessary for instance to expose* ***a patent mistake of law in the judgment or to show that the***

[7] With a supporting affidavit.
[8] It appears that I granted the extension on 11 November 2024.

result of the decision is so unreasonable or unjust as to demonstrate error, then leave will be given *Niemann (supra) at 432. It is not sufficient for an appeal court to gauge, that when faced with the same material or situation it would have decided the matter different.* ***The court must be satisfied that the decision is clearly wrong*** *(Niemann at 436).*

Leave could be given for an exceptional circumstance such as if the order has the effect of determining the rights of the parties *Bucknell (supra) at 225; Dunstan v Simmie & Co. Pty Ltd [1978] VicRp 62; [1978] VR 669 at 670. This is not the case here. Leave could also be given if "****substantial injustice would result from allowing the order,*** *which it is sought to impugn to stand," Dunstan (supra) at 670; Darrel lea (Vic.) Pty Ltd v Union Assurance Society of Austria Ltd [1969] VicRp 50; [1969] VR 401 at 408."*

11. *I am also guided by the decision in* ***Ali v. Radruita [2011] FJHC 302 (26 May 2011****. This was an application for leave to appeal an order made by the Master that the defendant should pay $10,000.00 as interim damages to the plaintiff within 28 days. Calanchini J (as His Lordship then was) said that "It is well settled that* ***only in exceptional circumstances will leave be granted to appeal an interlocutory order****. Leave will not normally be granted unless some injustice would be caused (page 4). Then at page 6 he said:*

"The exceptional circumstances that the Defendant is required to establish in the present application are that the ***Master has acted upon a wrong principle, or has neglected to take into account something relevant, or has taken into account something irrelevant or that the amount awarded in so much out of all reasonable proportion to the facts proved in evidence****. In my judgment the*

Defendant must also establish that it is necessary in the interests of justice for the Master's award to be reviewed".[9]

[18] Has the plaintiff shown the learned Master's decision to be '*clearly wrong or at least attended with sufficient doubt and causing some substantial injustice'*? Leave may be granted if the plaintiff shows that the decision is so unreasonable or unjust so as to demonstrate error, or '*acted upon a wrong principle, or has neglected to take into account something relevant, or has taken into account something irrelevant'*.

[19] Mr Filipe urged the court to consider the plaintiffs arguments afresh in a different light to that taken by the learned Master. He noted that the plaintiff was unrepresented during the employment proceedings against his employer in 2018 and 2019 and was unaware he could pursue a claim against RPA Group. He was also critical of the Fiji Police for failing to undertake an investigation into the accident. Mr Filipe argued that the learned Master failed to consider that the second cause of action against the Commissioner of Police has a six-year limitation period.

[20] Having carefully read the papers and the Master's Ruling, I am satisfied that the learned Master is correct.

[21] While the plaintiff takes issue with the Master's direction to hear the application inter-parties, the plaintiff does not suggest that the Master has incorrectly identified the law or misapplied the legal test under section 16(3). The plaintiff filed this proceeding late. The cause of action against RPA Group was required to be filed within 3 years while the cause of action against the Commissioner of Police was required to be filed within 6 years. The claim was filed 6 years and 3 months after the accident.

[22] In order for the court to extend the time it must be satisfied that there were material facts relating to the cause of action, of a decisive character, not known to the plaintiff until within 12 months of filing the present proceedings. I agree with the

[9] My emphasis.

learned Master that the identity of the other driver cannot be a material fact in respect to the first cause of action because it is not the fact which led the plaintiff to realising he had a worthwhile case – the identity of the other driver remains unknown. The only fact that may be construed as a material fact (for the first cause of action) is the identify of the employer of the unknown driver. That fact was available for the plaintiff to discover from the time the plaintiff was aware of the registration number of the other vehicle. In this regard, the plaintiff does not assist his own case. The plaintiff is seeking a significant indulgence from the court. It is necessary that the plaintiff provide sufficient information to the court. Yet, the plaintiff has failed to supply many critical details. For example, the date he first learned of the registration number of the other vehicle and how he learned this fact. The date he first sought legal advice on the matter and why he did so at that time. And, in respect to the second cause of action, the date he first approached the Fiji Police seeking details regarding its investigation. These facts are known to the plaintiff and he ought to have supplied them.

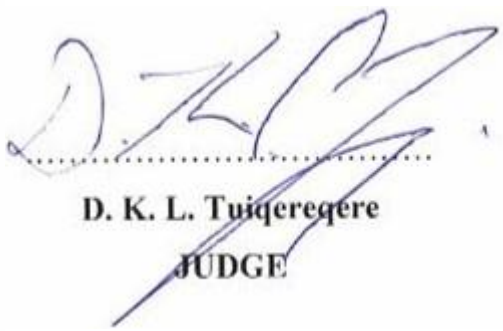
[23] The other difficulty for the plaintiff is that on the facts as can safely be gleaned from his affidavit, it is the timing of receipt of the legal advice that led to the filing of these proceedings. Even assuming this advice was within the requisite statutory period under section 16(3), it cannot as the Master found constitute a material fact. The learned Master's reliance on the following passage from *Central Asbestos Co. Ltd v Dodd* (1972) 2 ALL ER 1135, at 1148 and 1149, suffices to demonstrate that the learned Master is correct:

> *In order to strike that balance Parliament would have to draw a line somewhere between the kind of ignorance which is to be a sufficient excuse for lateness in bringing an action and the kind of ignorance which is not to be a sufficient excuse for such lateness. It seems to me that Parliament has drawn the line between ignorance of facts (Material and decisive facts) and failing to draw the conclusions which a reasonable man, with the aid of expert advice, would have drawn from those facts as to the prospect of success in an action. If the plaintiff did not know one or more of the material and decisive facts, his lateness in bringing the action is excused. If he knew all the*

material and decisive facts, but failed to appreciate his prospects of success in an action because he did not take expert advice or obtained wrong expert advice, his lateness in bringing the action is not excused. It seems to me that is the broad effect of sub-ss(3) and of s 7 of the Act. That is where the line is drawn.

[24] I have every sympathy for the plaintiff who suffered serious injuries from the accident and has been left with a life long outcome with the below knee amputation. However, he ought to have taken timely steps to obtain legal advice and to prosecute his claim. The delay is not properly or reasonably explained by the plaintiff. Accordingly, his application for leave to appeal is dismissed.

[25] There will be no order as to costs.



D. K. L. Tuiqereqere
JUDGE

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