

IN THE MAGISTRATE'S COURT AT LABASA
CIVIL JURISDICTION

Civil Action No. 184 of 2009

BETWEEN : **SATISH CHAND**

PLAINTIFF

AND : **DREKETI CONTRACTORS LIMITED**

DEFENDANT

For the Plaintiff : **Mr Prasad. S**

For the Defendant : **Mr Sen. A**

Judgment : **23 June 2017**

JUDGMENT

1. The initial writ of summon was filed on 22 December 2009, where Sanjay Binesh Lal was the first defendant and the present defendant was the second defendant.
2. The second defendant (now the Defendant) filed its statement of defence on 24 May 2010. The Plaintiff filed his reply to the Defendant's statement of defence on 26 January 2012.
3. With the leave of the court, the Plaintiff on 24 March 2015, filed a proposed amended writ of summon against the Defendant. On 22 July 2015, the Counsel for the Defendant informed the court that they will rely on their statement of defence earlier filed on 24 May 2010.

4. The pre-trial conference minutes was filed on 10 December 2015, by the Counsel for the Plaintiff.
5. The Plaintiff is claiming for damages for the injuries he sustained on 14 April 2007, while employed by the Defendant as a chainsaw operator and rely on the doctrine of *res ipsa loquitur*
6. The statement of claim provides that on 14 April 2007, the Plaintiff was cutting pine tree at Lekutu, Bua, when Sanjay Lal negligently and recklessly cut and felled a tree on the Plaintiff thereby causing serious injuries to the Plaintiff.
7. In the statement of claim the Plaintiff claimed that the Defendant was negligent for;-
 - a. *Failure to maintain a safe and proper system of work and fail to instruct its workmen Sanjay Lal to follow a proper system of work.*
 - b. *Failure to provide adequate supervision.*
 - c. *Failure to take adequate precaution for the safety of the plaintiff when engaged at his work.*
 - d. *Fail to provide adequate training to Sanjay Lal who negligently cut and fell a tree on the Plaintiff.*
8. The Defendant in its statement of defence denies the claim made by the Plaintiff.
9. The agreed facts are;-
 - a. *The Plaintiff was a chainsaw operator and was at all material times the employee of the Defendant and was carrying out his duties as chainsaw operator.*
 - b. *One Sanjay Binesh Lal was also a chainsaw operator and employed by the Defendant.*

c. The Defendant owned a duty of care to the Plaintiff and it was the terms of the contract of employment that the Defendant would provide and maintain a safe system of work and take a reasonable care of the Plaintiff.

d. The Plaintiff sustain injury during the course of his employment with the Defendant when Sanjay Binesh Lal negligently and without the knowledge of the Plaintiff cut and felled a tree on the Plaintiff.

10. The case proceeded for hearing on 3 June 2016. There were three witnesses for the plaintiff. There was only one witness for the defendant. The Plaintiff filed his closing submission on 5 July 2016. The Defendant filed its closing submission on 14 July 2016. I have considered all the evidence adduced at the hearing and the submission filed by the parties in this judgment.

11. I will now consider if the Defendant is negligent as claimed by the Plaintiff. I refer to the agreed facts in particular (c) and (d) in paragraph 9 above. The Counsel for the Defendant in his oral closing submission submitted that liability is not much an issue and the issue only is on the quantum of damages. That is a clear admission of liability which shows and proves that the Defendant was negligent and therefore liable to pay for the damages claimed after assessment. This judgment will now focus on the damages.

12. The details of the Plaintiff's injuries are provided in paragraph 6 of the Plaintiff's claim, and they are ;-

a. Laceration about 1.5cm long below the left eyebrow.

b. Swelling and laceration over occipital rejoin.

c. Nasal Bleeding.

d. Contusion and tenderness over the right shoulder.

e. Neck pain at all times.

f. Continuous and severe head ache.

13. The medical report (*PE1*) tendered by PW1- Dr Sunil Kunal Harish confirmed the injuries from (c) to (d) in paragraph 12 above.

14. As a result of the injuries, the Plaintiff is claiming for \$2,102.00 as special damages for the following:-

a. <i>Loss of pay</i>	-	\$900.00
b. <i>Medical Expenses</i>	-	\$200.00
c. <i>Transport Expenses</i>	-	\$930.00
d. <i>Loss of FNPF Contribution</i>	-	\$72.00

15. There was no receipt tendered for any of the loss and expenses referred to in paragraph 14 above. I agreed with the Defendant that special damages must be proved if pleaded. That requires some documentary evidence. In absence of such evidence in this case, I dismiss the claim for loss of pay and FNPF contribution. In compliance to the approach taken by case authorities in Fiji and without any documentary evidence, I grant \$100.00 for medical expenses and \$200.00 for transport expenses as the reasonable and justifiable amount in the circumstances of this case.

6. The Plaintiff claimed for general damages for the following:-

- a. *Pain and suffering*
- b. *Loss of amenities of life*
- c. *Loss of future earnings and earning capacity*

7. I will deal with each sub heading separately.

Loss of future earnings and earning capacity

Before the injuries, the Plaintiff was paid \$30.00 a day with earning of \$180.00 a week. After the injuries he suffered, he continued to work as chainsaw operator for the Defendant which is the same work he was doing before the injuries. There was no evidence on his current wage to prove any loss of earnings. He also stated that he cannot obtain other certificate for other things after the injuries. PW1 stated that there cannot be any permanent disability from the injuries suffered by the Plaintiff. I therefore find that there is no excuse for the Plaintiff not to pursue any further certificate. From the evidence, there is no loss of earning for the Plaintiff and I dismiss the claim under this subheading.

Loss of amenities of life

The Plaintiff stated that he cannot do some of the things he used to do before like playing soccer, swimming, catching crabs and fishing because of the cold as the effects of the injuries. He cannot carry heavy things. He still operating chainsaw but cannot look up straight, he has to look sideways if he want to look up. He is not operating the chainsaw like before. There was no evidence from the Plaintiff's family members or working colleagues to support and substantiate this claim. Again there is no permanent disability and there cannot be any as stated by PW1. I therefore, dismiss the claim under this sub heading.

Pain and suffering

The Plaintiff (PW2) in his evidence stated that the injuries were paining and the pain still there. He still has the neck pain when it is cold. PW1 stated that pain is a matter of subjective feeling he cannot say if pain is there or not, he has to accept it and treat it. He stated that pain after 5 months later is possible. I am satisfied that the Plaintiff is entitled for some damages under this subheading.

18. The Defendant submits that if the Plaintiff is entitle to any general damages it should be for \$3,000.00. The Plaintiff submits \$14,000.00 as the amount for

Pain and Suffering. There was no evidence adduced to justify the amount claimed. The case authorities cited by the Plaintiff were distinguishable from the present case in forms of the injuries sustained, fracture and disability. There were also huge differences on the number of days of hospitalisation and the treatment where operation and surgery were involved. In this case, there is no fracture, no disability, and no surgery or operation. Considering the pain and suffering in this case I will award \$5,000.00 as the reasonable and justifiable amount in the circumstances of the case.

19. The Plaintiff in his prayer in the writ is seeking alternative compensation under the *Workmen's Compensation Act* for an amount not exceeding \$10,000. There was no evidence led to support this claim or to show to the court which section of the Act applies to this claim. I therefore will not make any grant on this prayer.

20. The award of damages are as follows;-

a. Special Damages

- i. Medical Expenses - \$100.00
- ii. Transport Expenses - \$200.00

b. General Damages

- i. Pain and suffering - \$5,000.00

c. 5 % Interest - \$ 265.00

\$5,265.00

d. Cost - \$ 500.00

TOTAL \$ 5,765.00



C. M. Tuberi
RESIDENT MAGISTRATE

