

**IN THE RESIDENT MAGISTRATE'S COURT**  
**AT SUVA-CIVIL DIVISION**

**Civil Action No. MBC 294 of 2019**

**BETWEEN:**           **JEFFREY ANTHONY LIN** of 9 Naimawi Road, Lami, Chief Executive Officer.

**1<sup>st</sup> PLAINTIFF**

**QBE INSURANCE (FIJI) LIMITED** a limited liability company having its offices at QBE Centre, Victoria Parade, Suva, Fiji.

**2<sup>nd</sup> PLAINTIFF**

**AND:**               **RONEEL DHARMESH CHAND** of Lot 50, Vatoa Road, Narere, Suva, Taxi Driver.

**1<sup>st</sup> DEFENDANT**

**UNAISI ULUILAKEBA** of C/P O Box 15709, Suva, Taxi Proprietor.

**2<sup>nd</sup> DEFENDANT**

**Appearances**

**For the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs** : Mr. Suguturaga (Haniff Tuitoga Lawyers)

**For the 1<sup>st</sup> Defendant** : No Appearance

**For the 2<sup>nd</sup> Defendant** : No Appearance

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**Ruling- Formal Decree**

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1. The plaintiffs bring this action against the 1<sup>st</sup> and 2<sup>nd</sup> defendant seeking a total sum of \$16,278.79 plus pre and post Judgment interest as a result of damages sustained to motor vehicle registration no. JAL (JZ434 or VNJLIN) due to a motor vehicle accident which occurred on 11<sup>th</sup> April 2019 by motor vehicle registration no LT 6342 which was driven by the 1<sup>st</sup> Defendant at the material time.
2. The 2<sup>nd</sup> named defendant is the registered owner of motor vehicle registration no LT 6342 and has been named a defendant on the basis of vicarious liability.
3. The affidavit of service filed confirms that both defendants had been duly served.

4. The 1<sup>st</sup> defendant has never appeared in court whilst the 2<sup>nd</sup> defendant had appeared on a few occasions only. The 2<sup>nd</sup> Defendants last appearance in court was on 22<sup>nd</sup> September 2020.
5. There is no Notice of Intention to Defend filed by both Defendants and neither is there a Statement of Defence.
6. As there is no statement of defence filed the court accepts that the statement of claim is therefore unchallenged.
7. Even though the above was the case, the court pursuant to Order 30 Rule 3 of the *Magistrates Court Rules* has considered the evidence adduced from the Plaintiff witnesses via Affidavits of Evidence in Chief<sup>1</sup>.
8. The three Affidavits highlighted the following:
  - i. That the motor vehicle of the 1<sup>st</sup> Plaintiff at the material time motor vehicle registration no. JAL (JZ434 or VNJLIN) whilst commandeered by Nishita Liana Lin and parked along Nailuva Road, Suva on 11<sup>th</sup> April 2019 at 10.30pm was hit from its rear side.
  - ii. A police report was lodged as confirmed in Annexure ‘NLL1’ of the Supplementary Affidavit of Nishita Liana Lin attested on 13<sup>th</sup> April 21.
  - iii. The police report showed that the vehicle which collided into motor vehicle registration no. JAL (JZ434 or VNJLIN) was vehicle registration No. LT6342, which was commandeered by a Roneel Dharmesh Chand, a taxi driver whose residential address was Lot 50, Vatoa Road, Narere. This information is a match for the 1<sup>st</sup> Plaintiff.
  - iv. As a result of the accident the 1<sup>st</sup> Plaintiff lodged a claim with the 2<sup>nd</sup> Plaintiff, which is evidenced at ‘NLL5’ of the Affidavit of Nishita Lin attested on 26<sup>th</sup> February 2021.
  - v. Jainendra Prakash Govind whom is a claims officer for the 2<sup>nd</sup> plaintiff in his Affidavit stated that following the lodgement of the claim with the 2<sup>nd</sup> Plaintiff, the 2<sup>nd</sup> Plaintiff completing its due diligence paid the 1<sup>st</sup> Plaintiff the sum of \$28,100 as ‘write off’ value.

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<sup>1</sup> Affidavit of Jainendra Govind attested on 26<sup>th</sup> February 2021, Affidavits of Nishita Liana Lin attested on 26<sup>th</sup> February and 13<sup>th</sup> April 2021.

- vi. Consequently what remained 'salvage' of motor vehicle registration no. JAL (JZ434 or VNJLIN) was auctioned, wherein after the sale of the salvage the sum of \$14,100.00 was recovered. This amount is claimed by the 2<sup>nd</sup> Plaintiff along with additional expenses amounting to \$2,178.79. The total as deposited by Jainendra Prakash Govind amounts to \$16,278.79 which translates to the amount claimed.
  - vii. Further as deposited by Mr. Govind and evidenced at annexure JG13 of his Affidavit motor vehicle registration LT 6342 at the material time was listed as being owned by the 2<sup>nd</sup> Defendant and also the reason why the 2<sup>nd</sup> Defendant is claimed to be vicariously liable.
9. None of the above was challenged because of the absence of both Defendants.
  10. Be that as it may, this court must consider the issue of vicarious liability.
  11. In ***Ram Pal v. Ise Lun trading as Wing Fat Bakery*** [1971]17 FLR 8 Hammett CJ (as he was then) held at page 13 that:

‘The authorities are clear that in order to impute to the owner of a car the negligence of its driver, it must be proved that the driver was the servant or agent of the owner.’
  12. This is a case in point because although the Plaintiffs have proven that the 1<sup>st</sup> Defendant was driving a motor vehicle registered under the 2<sup>nd</sup> Defendant, it has not been deposited in any of the Affidavits of Evidence in Chief that there was an employer and employee relationship in existence between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant.
  13. Particular interest is given to the information contained in the insurance claim form, specifically question 1 under paragraph G which states that the owner is Hazel Khan and not the 2<sup>nd</sup> Defendant.
  14. Therefore in the absence of any evidence to prove the relationship between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and there being information in the claim form that there is another owner (which has not been debunked by the Plaintiffs), this court cannot accept that the 2<sup>nd</sup> Defendant is vicariously liable for the actions of the 1<sup>st</sup> Defendant.
  15. As such given the law and the unchallenged evidence the court finds that that the Plaintiff has proved its claim against the 1<sup>st</sup> Defendant only however its claim against the 2<sup>nd</sup> Defendant on the basis of vicarious liability fails based on the above-mentioned discussions.

16. The court therefore orders as follows against the 1<sup>st</sup> Defendant only:

- i. Judgment in the sum of \$16,278.79;
- ii. Pre-judgment interest of 13.5% per annum from the date of the Writ of Summons to the date of this decision;
- iii. Post Judgment interest of 5% per annum from the date of this decision to the date of full payment pursuant to Order 32 Rule 8 of the Magistrate's Court Rules;
- iv. Orders [i], [ii] and [iii] not to exceed the jurisdiction of the Magistrates Court;
- v. Parties to bear their own costs.

17. Any aggrieved party is at liberty to appeal to the High Court wherein the statutory appeal period (7 days) shall apply.

  
JEREMAI N.L SAVOU  
Resident Magistrate  
8/10/21

