

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA
Civil JurisdictionAction No. 182 of 1977

BETWEEN:

SATENDRA KUMAR s/o Ram Narayan Plaintiff

-and-

GAYA SINGH s/o Jadbir Singh DefendantMr. C. Gordon, Counsel for the Plaintiff
Mr. G.P. Lala, Counsel for the Defendant.JUDGMENT

The plaintiff is a haulage contractor and owns a Ford 8 ton truck which was involved in an accident with the defendant's truck on 1/4/77. It was extensively damaged and details thereof appear in the statement of claim which shows the total cost of repairs as amounting to \$1,546.61.

There is also a claim of \$3000.00 for loss of business. The plaintiff alleges that his truck was out of order and undergoing repairs for 2 months. Para 5 of the statement of claim says that the particular truck was used for haulage between Lautoka and Suva earning \$50.00 per day profit. His loss of earnings for the truck is claimed at 60 days at \$50.00 per day.

Negligence on the part of the defendant was admitted but the quantum of damages is in dispute.

Garage bills and a quotation from Millers Ltd. (Garage) Lautoka were put in by consent as Exs. P2, P3 and P4. P.W.1, Millers Ltd.'s garage foreman explained that he quoted a price for repairs but later when work commenced he increased the quotation because other damage was discovered. He explained the repairs in the course of evidence-in-chief. In cross-examination it became apparent that the plaintiff had not exaggerated his claim and that the repairs done related to the damage arising from the accident.

P.W.1 explained that there was some difficulty in

obtaining spares for the repairs because there are only about a dozen such trucks in Fiji. Therefore it was off the road for 2 months whilst deliveries were awaited.

I am satisfied that the cost of the repairs has been made out.

The plaintiff in relation to his claim of \$3000.00 for loss of business during April and May 1977 said that he used the truck in question for carrying goods for Timber & Building Supplies from Lautoka to Suva at \$79.00 per trip. At times the earnings could be over \$80.00 per trip. He claims that he always had a return load at similar rates. The cost of fuel was \$24.00 for a return journey and the driver earns \$135.00 per month. At that rate the truck would earn \$68.00 per day less the cost of tyres, wear and tear, insurance, road traffic licence fees, servicing, general repairs and driver's wages. No evidence whatever was given of those overheads, which must amount to quite a substantial item and without which one cannot calculate the nett profit per month.

There was no evidence as to the number of days per week which the plaintiff's drivers work. Therefore I assume that like many other people they are on a 5 days per week basis and not 7 days per week as suggested by para 5 of the statement of claim. That gives a working calendar month of about 22 days. The plaintiff stated that his damaged truck earned \$1200-1400 per month.

If the truck operated on long distance haulage every day at \$68.00 per day after paying fuel this would give monthly earnings of $(\$68 \times 22) = \1496 and after deducting \$135.00 wages it leaves \$1361.00. On that basis allowing \$150.00 per month for insurance, car tax, tyres, maintenance, general repairs, etc. one could be left with \$1200.00. However, apart from the plaintiff's oral statement of a total sum there was no explanation as to how the figure is arrived at.

The plaintiff tendered two account books which were not explained by the plaintiff but which I have checked and tried to analyse in an effort to find something therein which supports the claim. One of them Ex P6 appears to contain statements of account which have been rendered to customers. It contains

duplicates of the statements. It sets out the dates of invoices relating to haulage jobs, the invoice number and the charges. No copies of the invoices are supplied and so it is not possible by examining Ex. P6 to ascertain whether the lorry in question was used on any jobs so as to estimate its monthly earnings from records. The plaintiff's evidence indicates that a trip to Suva would cost Timber & Building Supplies at least \$79.00. Therefore I examined Ex. P.6 under the name of Timber Building Supplies for items of \$75.00 and over to find out the number of possible Lautoka-Suva and Suva-Lautoka trips in a month. During June 1977 when the lorry was back on the road it appears from Ex. P.6 that the number of invoices made out for Timber and Building Supplies for over \$75.00 was 10; in July it was 4; in August it was 14, in September it was 8, in October it was 12, in November it was 14, in December it was 8. An average of 10 per month.

During April and May 1977 when the truck was out of order the invoices made out to Timber & Building Supplies exceeding \$75.00 numbered 5 & 10 respectively. An average of 7½ per month.

The foregoing figures suggest that journeys from Lautoka to Suva for Timber Building Supplies during April and May were 2 to 3 trips less per month than normal. They suggest that there was a drop of about 25% in the number of such trips which would, I suppose, roughly correspond to a drop of 25% in earnings.

Ex. P5 reveals that the total income per month from Timber Building Supplies for all types of haulage work in 1977 was:-
 June \$2090; July \$767; August \$1607; September \$1956;
 October \$3129; November \$2820; December \$1951 which averages at \$2,045 per month. The figure for April and May is \$2,982 which averages \$1500 per month showing a reduction of about 25% in earnings during those two months.

The conclusion I arrive at from those figures is that the plaintiff's loss of earnings from Timber Building Supplies Ltd. in hauling from Lautoka to Suva was at the rate of 25% of the normal earnings. A similar picture would apply for the return trips i.e. Suva to Lautoka.

I would point out at this stage that the plaintiff had 5 trucks at the time and it is possible that he could avoid too much loss of trade by reason of one truck being out of action. The remaining four trucks would probably share the burden of hauling the loads which would have been allocated to the disabled truck.

It is always for claimants to prove their losses. It is not sufficient simply to say that one has lost a certain amount and that one claims that sum. In the instant case the copy invoices supplied to Timber Building Supplies during the whole of 1977 should have been available and a summary therefrom showing the trucks engaged in working for that company during the whole of 1977.

The plaintiff says his damaged truck earned \$1200-\$1400 per month, say \$1300, 25% thereof represents a loss of \$325 per month which is \$650.00 for the two months of April and May.

There will be judgment for the plaintiff for \$ (1,547 = 650) = \$2,197 with costs which I fix at \$85.00.

LAUTOKA,
12th December, 1978.

(Sgd.) J.T. Williams
JUDGE

Messrs Gordon & Co., for the plaintiff

Messrs G.P. Lala & Co., for the Defendant

Date of Hearing: 12th October, 1978.