

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Civil Jurisdiction

Action No. 278 of 1976

BETWEEN:

DIP NARAYAN s/o Ram Prasad Plaintiff

- and -

TUI BOGIDRAU 1st Defendant

- and -

COPE ALLMAN (SOUTH PACIFIC) LTD. 2nd Defendant

Mr. B.C. Patel, Counsel for the Plaintiff
Mr. S. Prasad, Counsel for the 1st & 2nd Defendants

JUDGMENT

This is a claim for damages arising out of a motor accident which occurred at the end of a bridge on the main Lautoka/Nadi road.

On 1/1/75 the plaintiff was a passenger in a saloon car travelling towards Lautoka and the defendant was driving a van towards Nadi. It was a little before mid-day and the weather was bright and sunny.

The statement of claim alleges that the accident occurred owing to the defendant's negligent driving and the defendant was convicted in the magistrate's court for careless driving.

The plaintiff's driver was emerging from the bridge when the collision occurred. P.W.5, the driver, said his speed was about 35-40 m.p.h. on the bridge when he saw the defendant's van approaching on the wrong side of the road and a collision seemed imminent. He could not swerve left because of the railings and tried to swerve to his off side to avoid the defendant's car but failed and a collision occurred. The van continued across the bridge and stopped in a cane field.

P.W.8, Kuni Deo, was driving a bus at 35-40 m.p.h. in the direction of Nadi at the material time

when the defendant's van overtook him. It was zig-zagging. This was about $\frac{1}{2}$ a mile from the scene of the accident and he followed behind the van. He says he was $1\frac{1}{2}$ chains away when he saw the van on its wrong side of the road collide with the approaching car.

The defendant explains "the zig-zag" by saying that he applied his brakes as he approached the bridge and his van suddenly pulled over to the right. His speed, he says, was 30-40 m.p.h. and he not only applied his brakes but dropped a gear. The defendant said he slowed down in this manner as he approached a bend 3 chains from the bridge. There is no evidence that the bend is so sharp as to require such a reduction in speed when one is proceeding at a modest 30-40 m.p.h. and I have some doubt as to whether it would be necessary to slow down on that bend in the manner described by the defendant. I also, note from the defendant that this was 3 chains from the bridge. Presumably he swerved to his right about 3 chains from the bridge when he applied his brakes but the accident occurred as he entered the bridge. One wonders why he swerved as he entered the bridge. Defendant says that as he reached the bridge he had applied his brakes a second time and this again caused him to swerve and hit the car. Since he had slowed down whilst rounding the bend I wonder why he regarded it as necessary to further reduce his speed as he was about to enter the bridge. I am not impressed by the defendant's explanation as to how he came to be on his wrong side. Having applied his brakes once and swung violently to the right as a consequence he should have avoided applying them again and I cannot see why there was any need for him to brake yet again. In any event being forewarned of this sudden dangerous trait in the car's braking behaviour he should have been fully prepared to counteract it and at his reduced speed should not have found it beyond his capacity.

The defendant was admittedly on his wrong side and I prefer the evidence of the bus driver P.W.8 who says that the defendant was driving in a zig-zag manner.

I am satisfied that the accident occurred as a result of the defendant's negligence.

As a result of the accident the plaintiff was rendered unconscious. He was taken to hospital and found to have 5 fractured ribs and a broken arm. He required a blood transfusion. Pieces of glass were removed from both eyes and he had lacerations on his face and chest. He was in hospital for 5 weeks.

As an out-patient he attended the hospital 14 times which cost him \$7.00 per trip amounting to \$98.00 and he spent \$3.00 on a medical report. This claim of \$101.00 for special damages is not disputed.

The plaintiff is a cane farmer and his claim for special damages also includes losses due to reduced output on his farm during 1975 and 1976 amounting to \$1100.00 and \$550.00 respectively. The loss of production each year is alleged to have been 50 tons, but the price of cane in 1975 was \$32.50 and in 1976 was \$24.00, and the net profit per ton according to his statement of claim was \$20.00 in 1975 and \$15.00 in 1976. If one examines those figures they suggest that the cost of production in 1975 was $\$(32.50 - 20.00) = \12.50 per ton but in 1976 in an era of inflation the cost had dropped to $\$(24 - 15) = \9.00 . The statement of claim contains an obvious mathematical error for 1976 because on the figures alleged the total loss is $\$(15 \times 50) = \750 whereas the statement of claim gives this figure as \$550.

In support of that claim evidence was given by P.W.2, an F.S.C. Field Officer who revealed that the plaintiff's cane production in 1975 and 1976 was 176 tons and 111 tons. His production for the 3 preceding years was 274, 192 and 219 tons, which averages 228 tons per year. I am satisfied that there was a drop in the plaintiff's cane production of at least 50 tons per year for those two years.

The plaintiff states that his loss of production was due to the fracture of his left arm which has

seriously weakened it and he cannot do heavy farming work. That allegation is supported by the evidence of Dr. Welbi Korowa (P.W.7) which I accept. He is also somewhat incapacitated by his rib injuries.

P.W.2, states that the total cost of a farmer's cane production is roughly $\frac{1}{2}$ of its gross value. That must be a very rough estimate indeed because it would give a cost of \$11.00 in 1975 and a much lower cost of \$8.00 in 1976 i.e. per ton when costs could be expected to have increased and it also suggests that if there is a fall in the price of cane there is an automatic drop in production costs. The figures given by P.W.2 in cross-examination for production, harvesting and transport indicate an overall cost of about \$12.00 per ton. I accept the figure of \$12.00 per ton as the total production cost for 1975 and 1976. This gives a nett value of \$20.50 for 1975 and \$12.00 for 1976.

Accordingly I estimate the plaintiff's loss of cane income for 1975 as $\$(50 \times 20.50) = \1025 and for 1976 as $\$(50 \times 12) = \600 . That is a total of \$1625.00.

There is no general claim for loss of future earnings and no evidence was adduced which could be directed to such a claim.

There is a claim for general damages which would cover pain and suffering and his now restricted left arm movement. He cannot raise his left arm above his shoulder and finds it difficult to drive a truck. In addition he had had one attack of pneumonia which is attributable to the loss of resistance in the lungs to microbes which causes such infection. He is now 42 years of age and he may have a further attack or attacks of pneumonia. For his pain, suffering and loss of amenities I make an award of \$1500.

The total award of $\$(101 + 1625 + 1500) = \$3,226.00$ as against defendant No. 1.

Costs fixed at \$80.00 including disbursements.

The claim against 2nd defendant is dismissed with costs which I fix at \$30.00.

LAUTOKA,
7th December, 1978

(sgl.) J.T. Williams,
JUDGE

Messrs. Stuart, Reddy & Co., Counsel for the Plaintiff
Messrs. S. Prasad & Co., Counsel for the 1st & 2nd
Defendants.

Date of Hearing: 27 & 28th September, 1978.