IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

000022

Civil Jurisdiction

Action No. 321 of 1978

BETWEEN: MOHAMMED HAROON KHAN s/o Mohammed Jabbar Khan — Plaintiff

A N D :

1. PACIFIC TRANSPORT LIMITED — 1st Defendant
2. RAM SINGH s/o Ram Phal — 2nd Defendant

Mr. R. Krishna — Counsel for the Plaintiff
Mr. G. P. Shankar — Counsel for the 1st Defendant
Miss A. Prasad — Counsel for the 2nd Defendant

J U D G M E N T

This action arises out of a motor accident which occurred on 27/11/76 at Nadroga, Korolevu, on a bridge in Queens Road.

There was no personal injury and no apparent reason for delay but the plaintiff did not file his writ until 8/11/78, almost 2 years later.

Although the pleadings were closed by 5/12/79 no effort was made to list the action for hearing until 19 and 20th September, 1979. It was then adjourned by Dyke, J. for a fresh hearing date to be fixed. It was not until June, 1980 that the Deputy Regitrar was moved to fix a hearing for 1st and 2nd October. Thus four years have elapsed since the accident. Delays of this kind may result in loss of evidence be it documents or witness and a consequent denial of justice.

The plaintiff was proceeding to Suva with a load of frozen fish in his Datson 1500 c.c. pick-up.

The 2nd Defendant was driving the first defendant's bus from Suva to Lautoka, that is in the opposite direction to the plaintiff.

At Nadroga the road is of gravel and crosses a bridge which is 23' long. The plaintiff's pick-up had crossed the bridge except for the rear wheels when the vehicles collided head-on. Each driver claims to have been stationary at the moment of impact and alleges that the other vehicle ran into him.

The bridge is 11'6" wide; the pick-up 4'10" wide and the 'bus 8' wide according to the notes, Ex. P.8, made by P.W. 2, the police corporal, who inspected the scene. Clearly they could not pass each other on the bridge and one motor vehicle must give way if a collision was to be avoided.

It depends on the commonsense, good manners and curtesy of drivers who find themselves in such a situation. If visibility is reduced at one or both ends of the bridge by reason of some obstruction neither driver is justified in assuming that his way will be clear.

A driver who is 20 yards from the far side of the bridge 10 yards long and whose speed is 15 m.p.h. will cross over it in the same time as a driver who is 60 yards from the other side of the bridge and travelling at 45 m.p.h. If neither gives way they would collide somewhere on the bridge. In my view the driver who was 60 yards away would be largely responsible because he should have seen that the other motor vehicle was much nearer. A driver should approach a single track bridge at a speed which would enable him to stop far enough from the bridge to allow a vehicle to emerge safely from it. A driver cannot claim precedence because he is going faster than the approaching motor vehicle and is just the same distance from it. If the drivers are in doubt they should both stop and assume that the other has precedence. If they fail to do take that course and a collision ensues then their respective liabilities must be estimated from the surrounding circumstances.

The 'bus driver says he first saw the bridge on coming round a bend about 22 yards from the bridge and that his speed was then 10-15 m.p.h. If that version is correct and if he saw any danger at that time then he would have had ample time in which to stop according to the stopping distance tables in Binhams Motor Claims 7th Edn. pp. 106, 107. At 15 m.p.h. the thinking distance for applying brakes would be 15 feet; the bfaking distance on ashphalt for a car at 20 m.p.h. is 17' and would be less than 17' for a speed of 15 m.p.h. say 14'. Since this is a gravel surface the stopping distance would be greater say 19'. Thus the total distance needed for a car would be about (15 + 19) = 34'. A bus would need 15' thinking time and say 30' for braking.

Thus the bus driver (defendant 2) could have stopped in say 45' which would put him 21' from the entrance to the bridge. He says he saw the plaintiff's pick-up just as he (defendant 2) rounded the bend and that it was zig-zagging and that he stopped because of this but the plaintiff ran into him. If the defendant 2 reacted at once he should have stopped his 'bus about 21' from the bridge. However, the record of the police corporal, P.W.2, shows that the bus stopped about 4' from the bridge. On defendant 2's own evidence he was negligent in not applying his brakes as soon as he saw the van. He should have assumed that the plaintiff's motor van was not going to stop.

The plaintiff says that he was already on the bridge as the 'bus rounded the bend about 25 yards away at a fast speed. What he meant by fast was not indicated; he also used the expression terrific speed. If the bus rounded

the bend at 30 m. p.h. the defendant 2's thinking distance for applying his brakes would be 30 feet. His stopping distance on gravel would be somewhat higher than the distance required on an ashphalt surface, say 70'. If the plaintiff's evidence as to the defendant 2's driving is correct the 'bus would have travelled about 100' from the bend before stopping, a distance which would put the 'bus at the end of the bridge on the plaintiff's side even if the 2nd defendant applied his brakes as he rounded the bend. I do not accept the plaintiff's evidence of the second defendant's speed.

The plaintiff said that he was on the bridge when he first saw the 'bus. If that were true he would clearly have right of way. But in cross-examination he said he was not sure if he was on the bridge when he first saw the 'bus. The parties may find it difficult to remember some details but I think that if the plaintiff was on the bridge when the 'bus approached and if it showed no sign of stopping the plaintiff would be unlikely to forget it. I do not accept his evidence that he was already on the bridge as the 'bus came round the bend.

It was stated by the plaintiff that his speed was 5 mph on the bridge i.e. he would travel 7⅓ feet per second so it would take him 4 seconds to cross the bridge. Before he entered the bridge the plaintiff was aware of the approach of the 'bus. He must have realised that there was some risk of a collision and in the circumstances he should have stopped instead of continuing over the bridge.

The evidence shows that both drivers are familiar with the route. The plaintiff on approaching the bridge should have realised that another motor vehicle on the other side of the bridge could be concealed by the bend. Likewise the 'bus driver must have been aware that the entrance to the bridge on his side was a mere 22-25 yards round a bend ahead of him. His duty was to assume that a vehicle approaching the other side of the bridge would be visible when he rounded the bend and may be dangerously close. Accordingly he should have slowed to a speed which would enable him to stop far enough away to enable the other vehicle - if there was one - to emerge safely from the 'bus' side of the bridge. The plaintiff should have approached with similar caution.

In my view there was a lack of necessary caution on the part of each driver and that each one contributed to the accident. I estimate the contributions to be 70% on the part of the 'bus driver (defendant 2) and 30% on the part of the plaintiff.

There was some needless discussion about photographs of the scene which were put in by the plaintiff. The defence submitted that the photographer should have tendered them. The plaintiff stated that they indicated the

positions of the vehicles although he did not see the photographs being taken. It is well established that photographs of buildings, streets, outside scenes, accident sites and so forth can be received in evidence. They help to illustrate oral evidence about what was visible. In Phipson, Evidence, 12th Edn., para. 1807 the learned author states "the accuracy of a photograph must like that of a map or plan be established on oath, to the satisfaction of the judge, either by the photographer or by someone who can speak to its correctness." In the instant case the photographs were obviously taken of the scene after the accident and they show the plaintiff's front bumper just under the front of the 'bus.

Both sides claim damages. However, they were not well prepared to proof damage.

The plaintiff claimed $1718.20 for repairs and $60.00 for towing but he did not instruct Suva Motors to do the repairs nor did he pay for them; his insurance company paid. He was unable to tender any receipts or statements; they are presumably in the possession of the insurance company. No doubt the insurance company may make a claim at some time. That portion of his claim fails.

The plaintiff was carrying a load of fish packed in ice and the impact of the collision damaged the container. Because the motor vehicles remained in the hot sun for more than 2 hours the ice melted and the fish softened. By the time the plaintiff could cart it to the nearest ice store the fish was contaminated according to the plaintiff. He was supported in that allegation by P.W.3 the ice-store man and P.W.4 a fisheries officer. I accept that evidence. I also find on the evidence of the plaintiff and P.W.3 that the fish weighed 1657 lbs. and that it was 'walu'.

The plaintiff says he had purchased it that morning for $995.00. Although there was no supporting evidence of the purchases of fish it must have some value and I have no hesitation in accepting that portion of his evidence relating to the value of the fish. The true damage, i.e. the retail value when the plaintiff resold it was not claimed.

His Statement of Claim also alleges loss of use of the pick-up by the plaintiff which caused him expense amounting to $1825.00. Annexed to it is an alleged account showing hire charges debited to the plaintiff over a period of time from 27.11.76 to 10.12.77 during which he hired a vehicle on about 100 occasions. It is most surprising that the pick-up should have been out of action for a year - awaiting repairs. The plaintiff called the supervisor from Suva Motors Limited - P.W.5, but the latter could not produce any record of the repairs done. The originals are now in Suva because Suva Motors (Lautoka)

have been absorbed into the Carpenter Limited firm; Carpenters Headquarters in Suva now have Suva Motors records. Carpenters of Suva were not approached to produce the original records. Evidence of the time taken to complete repairs to the plaintiff's pick-up was therefore not available.

Likewise the person from whom the plaintiff allegedly hired transport was not on hand to give evidence. It seems that that person was the plaintiff's father and that although he had promised to be available as a witness he did not appear. Consequently that portion of the plaintiff's claim for damages also fails.

The only portion which succeeds is for the value of fish which were a write off.

The 1st defendant counter claimed for damage to the bus and damages for loss of profit due to it being off the road for 2 days. No serious attempt was made by the defence to adduce evidence of that damage and it would be a waste of time to allude to it further.

Thus the total damage proved is $995.00 and the 1st defendants are liable for it to the extent of 70%. It is damage suffered by the plaintiff.

The defendants' contribution is $696.50.

The plaintiff has succeeded fairly substantially on his claim and is entitled to 70% of his costs. The defendant No. 1 has failed entirely on the counter claim and will pay the plaintiff's costs thereof.

Judgment for the plaintiff as against both defendants for $696.50 and 70% of his costs; the counter claim of defendant 1 is dismissed and he will pay the plaintiff's costs thereof.

(sgd.)
J. T. Williams
JUDGE

LAUTOKA,
17th November, 1980