

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 571 of 2007

BETWEEN : **ARUN PRASAD SHARMA** of Lot 3 Suki Feeder Road, Vuci
South, Nausori

PLAINTIFF

AND : **CARPENTERS (FIJI) LIMITED** trading as **CARPENTERS FLEET SERVICES** and/or **CARPENTERS MOTORS**, which operates various Service Station(s) in Fiji under franchise agreement with Mobil Oil (Australia) Pty Limited, having its registered office at Carpenters Building, 34 Rodwell Road, Suva.

DEFENDANT

Counsel : **Plaintiff appearing in person**
Mr. S. Sharma and K. Naidu for Defendant
Date of Judgment : **13th June, 2018**

JUDGMENT

INTRODUCTION

1. The Plaintiff filed this action for damages for the Defendant's employee wrongfully pumping a different type of fuel to the fuel tank. According to the Plaintiff, this type of wrongful content being pumped, happened thrice to vehicles driven by the Plaintiff, but the Plaintiff is suing only for the damage from the third instance which was 9th July, 2006. All the three instances when wrongful content pumped were at Defendant's service stations. In previous two instances he was satisfied the manner he was compensated and there were no further claims on those acts by the Defendant's employees. The Plaintiff had sought relief for this alleged negligence that happened in Small Claims Tribunal (SCT) and he was awarded \$850 and it was also paid to the Plaintiff by the Defendant. The Defendant's position was that payment was on 'without prejudice' basis. The Plaintiff's position is that he accepted the said payment on 13.2.2007 as for the replacement of his vehicle engine and he had suffered damages due to loss of income from using the said

vehicle as a Taxi from 9.4.2006 to 22.11.2007. According to the statement of claim he had stated that he would particularize the losses and damages prior to the trial. At the trial Plaintiff gave evidence and he marked an affidavit of the mechanic who repaired previous incident of wrongful content being pumped to a vehicle CI 583, belonged to the Plaintiff. This witness was not called as a witness. For the Defendant National Operations Manager gave evidence. Both parties submitted written submissions.

ANALYSIS

2. There is no dispute as to the legal status of the Plaintiff or the fact that Plaintiff had claimed against the Defendant in SCT and payment of \$850 for settlement of the said claim.
3. The Plaintiff's contention was that the payment was only for the price of the engine.
4. He had claimed for loss of income and replacement of a new engine in the SCT
3. Section 12 of the SCT Act 1991 state as follows

'A cause of action shall not be divided into 2 or more claims for the purpose of bringing it within the jurisdiction of a tribunal'
5. So the Plaintiff is precluded from bringing another claim in court for the loss of revenue or income arising from the same incident of wrongful pumping a content to the fuel tank. The Plaintiff said that due to the existed limit of the value in SCT he filed this claim in court.
6. Section 14 of the SCT Act 1991 grants SCT exclusive jurisdiction to deal with a claim and no other court can deal with that except the exceptions stated in the said provision, which does not apply to this action.
7. This position is not stated in the written submissions or in the statement of defence, but considering the importance of the issue and the clear public policy behind SCT Act 1991, it is a matter that needs determination. Prohibition of partitioning of claims and granting

exclusive jurisdiction to the SCT to deal with a matter conclusively precludes the court from revisiting the Plaintiff's claim for damages, when he had accepted an award in SCT.

8. The Plaintiff's writ of summons and statement of claim is struck off as he is precluded from dividing his claim, thus precluded from claiming in court for part of alleged damage from Defendant.
9. Without prejudice to above position the plaintiff's evidence was that since the wrongful filing of the content to his taxi he had loss income till 22.11.2007. Only he gave evidence, but failed to provide any evidence of his income from the said vehicle. According to the evidence (affidavit of the mechanic at page 214 contained in the bundle of documents of the Plaintiff which was marked) the wrongful pumping in April, 2006 was to a vehicle registration CI 583 and not LT 4596 (see the particulars of the claim in the SCT). So the said affidavit relate to an earlier incident.
10. The Plaintiff had not produced evidence of replacement of the engine of the vehicle even though he was paid \$850 for that purpose. The payment was prompt and the Plaintiff was required to mitigate any loss too. He cannot claim for damages for loss far in excess of the amount that was needed to remedy the situation, considering circumstances.
11. There is no evidence of cost of labour for replacement of an engine and the time taken for such a task. In any event instead of cleaning and repairing the Plaintiff was awarded cost of replacement of an engine.
12. So there cannot be income loss other than the time for replacement and time for discovery of the fault. According to Plaintiff he knew the reason for fault so there was no time wasted for diagnostics to ascertain the fault. So the repair cost and time to repair was the only cost that he could recover. There was no evidence produced on these issues. These are special damages and Plaintiff can easily produce the details of replacement cost and time for replacement and also particulars of his income from this Taxi. None were produced. So the Plaintiff's claim for damages is not proved on the balance of probability.

13. The writ of summons and statement of claim is struck off and considering the circumstances I would not grant any costs.

FINAL ORDERS

- a. The writ of summons and statement of claim is struck off.
b. No costs.

Dated at Suva this 13th day of June, 2018



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Justice Deepthi Amaratunga
High Court, Suva