

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 31 of 2013**

**BETWEEN** : **HAZRA BEGUM** of Drasa Avenue, Lautoka as the intended Administratrix of the Estate of Mohammed Hassim aka Mohammed Hasim aka Mohammed Hasin (deceased).

**PLAINTIFF**

**A N D** : **RONWAL PRAVIN CHAND** of Lautoka, Driver.

**1<sup>ST</sup> DEFENDANT**

**A N D** : **MINISTRY OF AGRICULTURE**

**2<sup>ND</sup> DEFENDANT**

**A N D** : **ATTORNEY GENERAL OF FIJI**

**3<sup>RD</sup> DEFENDANT**

**Appearances** : Mr E. Sailo for the plaintiff

: Mrs M. Lee for the defendants

**Date of Hearing** : 17 May 2017

**Date of Submissions** : 27 December 2017 (plaintiff), 19 June 2017 (defendants)

**Date of Judgment** : 29 January 2018

**JUDGMENT**

**Introduction**

[01] The plaintiff initiated these proceedings against the defendants claiming damages among other things. The claim arises out of the death of her husband from a motor

vehicle accident on 2 March 2010. She alleges that the accident occurred as a result of negligent driving on the part of the first defendant who was driving the motor vehicle Registration No. GN 838, as a servant of the second defendant.

## **Background**

[02] The statement of the plaintiff in her amended statement of claim states as follows:

1. The Plaintiff is the intended Administratrix of the Estate of Mohammed Hassim (the deceased) who died on 3 April 2010 after involving in a motor vehicle accident on 2 March 2010 and is the widow of the deceased and brings this action for the benefit of the deceased's estate under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27 and Compensation to Relatives Act Cap 29. She has applied for a Letters of Administration from Probate Jurisdiction of the High Court of Fiji at Suva.
2. Ronwal Pravin Chand, the 1<sup>st</sup> defendant was the driver of the motor vehicle Registration No. GN 838.
3. The Ministry of Agriculture, the 2<sup>nd</sup> Defendant had the control and management and/or owned the motor vehicle registration No. GN 838.
4. On 23 [sic] March 2010 the deceased was standing on the footpath by the road at Drasa Avenue, Lautoka when the driver of the motor vehicle registration No. GN 838 drove the said vehicle so negligently by overtaking a taxi from the left hand side and bumped the deceased who was thrown 7 meters in front from the point of the impact.

5. The 1<sup>st</sup> Defendant was charged by the officers of the Lautoka Police station of the offence of driving the said vehicle on the said road for occasioning death by Dangerous Driving. Should the 1<sup>st</sup> Defendant be convicted then the said conviction is relevant to the issue of negligence and the plaintiff intends to rely thereon as evidence in this action. In the consequences of the matters aforesaid, the deceased died at the Lautoka Hospital on 3 April 2010 due to severe head injuries.

#### The defendants' case

[03] The defendants in their amended statement of defence denied negligence on their part and states that:

1. In the alternative, the said collision was wholly caused or contributed to by the negligence of the plaintiff. The particulars of negligence or contributory negligence include:
  - a. Failing to use the pedestrian crossing.
  - b. Failing to keep any or any proper lookout or to have any or any sufficient regard to traffic when crossing.
  - c. Failing to stop, to slow down, and to cross over to the other side and to avoid the collision.
  - d. Failing to take proper care when the 1<sup>st</sup> Defendant tooted his car horn.
  - e. Failing to exercise proper judgement by going back to where he crossed instead of crossing over to the other side of the road or standing still in the middle of the road.

2. The doctrine of *res ipsa loquitur* does not apply in this case.

### Agreed facts

[04] At the Pre-Trial conference held between counsel for the plaintiff and the defendant pursuant to Order 34 Rule 2 (4) the following facts were agreed:

1. At all material times, the 1<sup>st</sup> defendant was the driver of the motor vehicle Registration No. (sic) HN8383.
2. At all material times, the 2<sup>nd</sup> Defendant has the control and management and/or owned the motor vehicle registration NO. GN 838.
3. The 2<sup>nd</sup> Defendant is a Government Body and the 3<sup>rd</sup> Defendant is sued pursuant to the provisions of the Crown Proceedings Act Cap 24.
4. The Plaintiff is the intended Administratrix of the estate of Mohammed Hassim also known as Mohammed Hasim also known as Mohammed Hasin who died on the 3<sup>rd</sup> day of April, after involving in a motor vehicle accident on the 2<sup>nd</sup> day of March 2010 and is the widow of the deceased and brings this action for the benefit of the deceased's Estate under the Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27 and Compensation to Relatives Act Cap 29 who has applied for a Letters of Administration from probate Jurisdiction of the High Court of Fiji at Suva.
5. The 1<sup>st</sup> Defendant was the servant and/or agent and/or driver of the 2<sup>nd</sup> Defendant and was duly authorised to drive the said vehicle.
6. Further, the 1<sup>st</sup> Defendant was charged by the officers of the Lautoka Police Station of the offence of driving the said vehicle on the said road for occasioning death by dangerous driving.

## Agreed issues

- [05] The following are issues, as agreed by the parties, to be determined by the court.
1. Whether the 1<sup>st</sup> Defendant was negligent in his driving which resulted in the collision and death of the deceased.
  2. Whether the collision was wholly caused or contributed to by the negligence of the deceased.
  3. Whether the Plaintiff can rely on the doctrine of *res ipsa loquitur*.
  4. Whether on or about 23<sup>rd</sup> March 2010 the deceased was standing on the footpath by the road at Drasa Avenue, Lautoka.
  5. Whether the driver of the motor vehicle registration No. GN 838 drove the said vehicle so negligently by overtaking a taxi from the left hand side and bumped the deceased who was thrown 7 meters in front from the point of the impact.
  6. Whether the deceased died at the Lautoka Hospital on 3<sup>rd</sup> April 2010 due to severe head injuries.
  7. Whether the deceased's life was shortened and his estate suffered loss and damages.
  8. Whether the Defendants can rely on Ruling in the traffic case No 750/2000 delivered on 24<sup>th</sup> July 2015 whereby the charge against the 1<sup>st</sup> Defendant was dismissed and the 1<sup>st</sup> Defendant was acquitted by the Lautoka Magistrate's Court.
  9. Whether the Plaintiff is entitled to special damages in the sum of \$8,500.00 as pleaded in the claim.
  10. Whether the Plaintiff is entitled to damages under the Law Reform (Miscellaneous Provisions) (Death and interest) Act Cap 27 and Compensation to Relatives Act Cap 29.

11. Whether the Plaintiff can claim interest or any award of damages made by the Court pursuant to Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27.

12. Whether either party is entitled to any cost of this action.

### **The evidence**

#### *Plaintiff*

[06] The plaintiff called three witnesses in support of her claim namely Hazra Begum, the plaintiff herself (PW1), Dr Arun Murari (PW2) and Netani Vuda Tubakibau (PW3).

[07] PW1 in her evidence states:

- a) She is 73 years old and is the wife of Mohammed Hassim.
- b) On 2 March 2010 – the day of the accident, she was at home. She was informed that there was an accident involving her husband. She was shocked at the news. She visited her husband that night. She did not communicate with her husband at hospital visits. Her husband was unconscious. He was admitted on 2 March 2010 and died on 3 April 2010. He was in the hospital for 3-4 weeks and she visited him every week almost 2-3 days a week.
- c) Her marriage with her husband lasted 20 years. He was retired at the time of the accident. He worked at Mohidin and Govind & Co and Carpenters.

- d) She has 3 sons and 2 daughters. She produced her children's birth certificates (all 5 together) as PE1.
- e) She made arrangement for her husband's burial. Her son paid \$3,000 for the funeral.
- f) She confirmed obtaining a probate.

[08] During cross-examination she stated that:

- a) She was married for almost 20 years. Her husband was retired and he had worked at Mohidin and Carpenters. They have 3 sons and 2 daughters. He was buried but cannot recall the date. She could not recall the funeral expenses as her youngest son paid for them. She cannot recall the probate but confirms the claim for special damages.
- b) The date of the accident was put to her. She was asked whether she was sure the accident occurred on 2 March 2010 to which she said, 'Yes.' It was put to her that the accident happened on 23 March 2010 to which also she replied – Yes.

[09] PW2 in his evidence states:

- a) He had known Mohammed Hassim as a patient.
- b) He has been practicing for 26 years and is a consultant surgeon at Lautoka Hospital. He was the consultant surgeon on-call at the time when he was admitted and he was called upon to treat him when he needed an operation.
- c) Mohammed Hassim had multiple injuries on his body at the time of operation, at the same night his condition worsened so he needed an operation for that. Mr Hassim also had chest injury and fracture of his ribs and right lower limb. He was treated in consultation with other specialists too. He did not survive his injuries. He advised of his passing.

- d) In his opinion, he passed away because of severe injuries he sustained, especially head injury.
- e) He recalled preparing a medical report on 6 April 2010 (PE3). He confirmed stating in his medical report that the injuries are consistent with a motor vehicle accident.
- f) He was not aware whether a port-mortem was done in this matter.
- g) He confirmed on the certificate of death (PE4), the date of death is 3 April 2010 and the place of death was Lautoka Hospital, ICU.

[10] During cross examination PW2 stated that:

- a) He said the cause of death is determined clinically by the doctors in charge, treating the patient, looking into the patient's clinical condition, the nature of the injury and subsequent cause in hospital.
- b) He was not aware whether post mortem was done. He further said that by convention all accident and trauma cases should have a post mortem. Lavenia had filled in the certificate of death most probably because she was on duty at the time.
- c) It was asked whether a medical report will look at the visible injuries on the body. To which, he replied that: Not necessarily, we rely on a lot of other parameters including the investigations, including x-rays and scans and including operative findings to arrive at the medical report, not only the surface we do look at things inside too.

[11] PW3 in his evidence states that:

- a) He lives at Link Road, Lautoka, 32 years old, a taxi driver. He started driving when he was 17 years old.



- b) In March 2010, he was driving down a roundabout towards the old police station. Before the police station, there is a crossing, the Central School crossing. Before he went past the crossing, he saw an old man coming down from old hospital road, beside the police station, trying to cross the road. He slowed down as he was trying to cross the road. He slowed down so that the old man can cross right across. His vehicle was stationary. Before he reached the middle of the road, he saw a Government vehicle coming towards him (witness) from Ba. The driver of vehicle toot the horn and old man turned back from where he was coming from. He toot when Mr Hassim was near the middle of the road, he (Hassim) turned back and was hit by the Government vehicle. He could not recall about the brakes because it happened very fast. The government vehicle came really fast. The old man flew a few meters. He parked the taxi at the side of the road and crossed the street to try and help the old man. Blood was coming out of his ears, nose and back of the head. There was no life. He stopped where the old man was lying. The driver of the government vehicle took him to the hospital.
- c) The speed limit around town areas is 50 km/hr. The driver of the government vehicle had not attempted to avoid the collision. I can just tell he was driving too fast and how quickly he was coming towards me but if he was driving slowly then he can take time to avoid that.
- d) It was a clear day. The old man was not crossing on the foot crossing. The foot crossing was too far where he was coming down from. There was no vehicle in front of him (victim). The accident happened in the morning.

[12] During cross examination he stated that:

- a) He agreed that there were two crossing before the police station, one is for Central High School and the other is for Natabua. Mr Hazim was crossing in between these two crossings.
- b) He said there was no other vehicle in front of the government vehicle which was coming from Ba.
- c) He said 'No' (I never recall that blue taxi) when suggested that a blue taxi was turning right into Yawini Street before the government vehicle.

- d) He admitted making a statement to the police and giving evidence in the Magistrate's Court but denied as his own signature in the police statement shown to him by the defendant.
- e) He confirmed that the driver of the government vehicle tooting his horn. He described the tooting as a long rough tooting when you are frustrated.
- f) He was surprised when the man who was crossing the road went back to the other direction. He expected the old man to cross the other side hence he stopped his taxi. He did not expect him to turn back.

*Defendant*

[13] The defendants called one witness, i.e. Ronwal Pravin Chand, the first defendant (DW1). He in his evidence states that:

- a) He is 42 years old, a store man with the Ministry of Agriculture at Legalega, Nadi. On 23 March 2010, he was travelling from Ba to Lautoka Hospital taking the wife and daughter of one of the deceased staff for post mortem, Losalini and Mari. He came from Ba through Anupam (town end), then to FDB bank, where the wife was working then passed the Muslim school then to Yawini Street. At Yawini Street, he stopped to check if the road is clear. He stopped for about 1 min at the main road. He was going towards the hospital. As he passed the police station, he saw an old man crossing the road. The road was wide to drive 2 cars. He drove his vehicle to the left and kept on going. The old man kept coming and was hit. He stopped the car and took the man to the hospital, came back and reported the matter to police. He stated that he was in third gear and driving GN 838.

[14] During cross-examination he stated that he left Ba at 9.30am and reached Lautoka around 10.15am – 10.30am. He was travelling from Ba to Lautoka hospital. A colleague had died in hospital and he was coming for post mortem. He was driving manual and stopped at gear 1. He was at 3<sup>rd</sup> gear at the point of impact. Third gear should be below 50km/hr and there are 5 gears altogether. He did not toot the horn and he bumped at the front. He had stopped the vehicle and together with Netani had put the old man into the government vehicle and transported him to hospital. He then went and reported the matter to the police.

## Discussion

- [15] The plaintiff's claim arises out of a road accident in which the plaintiff's husband died following admission to the hospital. It is not in dispute that the accident occurred on 2 March 2010 and that the deceased died at the hospital on 3 April 2010.
- [16] Subsequently, the 1<sup>st</sup> defendant who caused the accident was charged with dangerous driving occasioning death and was acquitted as a result of no case to answer submission. The learned Magistrate found that there is doubt as to the cause of death and that there is no conclusive evidence against the accused to safely convict him of the charges he faces (See D1, a copy of the Magistrate's ruling on no case to answer).
- [17] The primary issue, in this case, is whether the 1<sup>st</sup> defendant was negligent in his driving, which resulted in the collision and death of the deceased.
- [18] There is evidence before me that the deceased was flown a few metres-7metres after the impact. This evidence was not challenged by the defendant.
- [19] At the time of the accident, the 1<sup>st</sup> defendant was transporting the wife of the deceased accountant who worked with the second defendant from Ba to the Lautoka hospital. The 1<sup>st</sup> defendant said that he left Ba around 9.30am and reached Lautoka around 10.15am. He further said:
- 'On his way to the hospital past the police station, he saw an old man crossing from the hospital side. I saw the old man cross the road, saw the road is wider and can drive on one side and went towards the left and kept on going on the left side, the old man was at centre lane and started coming back towards the footpath then that is where he was hit. He stopped the car and went to check on the old man. The taxi driver came and we took him to the hospital. After we dropped him at the hospital, he lodged a report with the police who charged (me) with dangerous driving occasioning death wherein he was acquitted. He was on 3<sup>rd</sup> gear. He is still working with the Ministry of Agriculture and is not driving anymore. There is no 3<sup>rd</sup> party insurance as the vehicle is leased from Asco Motors. He has been driving the same vehicle for one year.'

- [20] PW3 was an eye witness. He gave direct evidence on behalf of the plaintiff. He in his evidence states that: on the day of the accident, he was driving his taxi from the roundabout towards the old Lautoka Police Station. Before the police station, there is a school zebra crossing. Before coming to the crossing, he saw an old Indian man. He also saw a Government vehicle travelling from the Ba end of the same road and the driver of the government tooted his horn which caused the old man to go back the direction he came from and the government vehicle bumped him and the old man flew meters from where he was hit. He parked his vehicle and went to help the old man. He saw blood coming from his nose, his head, his ears and did not notice any sign of life. They used the same government vehicle to transport the deceased to the hospital.
- [21] The 1<sup>st</sup> defendant denied tooting horn at the time of the accident, but PW3 was adamant and said the driver of the government vehicle (1<sup>st</sup> defendant) was driving too fast in 50km/hr speed limit zone and tooted when the elderly man (the deceased) was in the middle of the road in his attempt to cross the road from hospital side. According to PW3, he stopped his taxi in order to allow the elderly man cross the road and there was no vehicle in front. The defendant who was driving very fast, without stopping, tooted his horn when the elderly man returned back to the side from where he was crossing and the 1<sup>st</sup> defendant hit the deceased and he flew a few metres away from the impact. The 1<sup>st</sup> defendant stopped where the deceased landed.
- [22] With the instructions of his administrator, one Mr Narayan, the 1<sup>st</sup> defendant was transporting his deceased colleague's wife and daughter from Ba to Lautoka hospital. He was rushing to the hospital driving too fast in a 50km/hr speed limit zone and tooted his horn while the deceased was in the middle of the road which caused the deceased go back to the place from where he was crossing. The first defendant could have stopped his vehicle when he saw the deceased in the middle of the road crossing it when another vehicle being stopped and waited for the deceased crossing the road. The first defendant failed to stop and avoid the accident as he was over speeding. The 1<sup>st</sup> defendant's evidence that he was in third gear at the time of the accident is not credible. The fact that the deceased was flown to some 7 metres away from the impact proves that the 1<sup>st</sup> defendant was driving too fast and over speeding.

- [23] PW3 gave clear and direct evidence on behalf of the plaintiff. His evidence was not shaken in the cross examination. He answered all cross examination question promptly and without any hesitation. For these reasons, I accept his evidence as plausible. I reject the first defendant's evidence as implausible.
- [24] Although there was no post mortem report available, the medical report tendered on behalf of the plaintiff (PE3) confirms that Mr Mohammed Hassim died of his injuries as detailed above (severe head injury, facial injuries, chest injury with multiple rib fractures, fracture proximal tibia and blunt abdominal trauma) and that these injuries are consistent with a motor vehicle accident. Dr Murari (PW2), in cross examination, further confirmed that the cause of death is determined clinically by the doctors-in-charge treating the patient, looking into the patients' clinical conditions, the nature of the injury and subsequent cause in hospital.
- [25] Having considered the evidence that was placed before me, on the balance of probability, I find that the first defendant was negligent in causing the accident that claimed the life of the deceased. I also find the first defendant is liable to the death of the deceased. The second defendant is the owner of the vehicle involved in the accident and has the control and management of the vehicle and the first defendant as a servant of the second defendant was driving the same in the course of his employment. These facts are not in issue. I, therefore, further find that the second defendant is vicariously liable for the act of the first defendant. The doctrine of *res ipsa loquitur* does not arise here as there was direct evidence concerning the accident.
- [26] The deceased chose to not crossing along the pedestrian crossing. There was a pedestrian crossing a few metres away from where he was crossing. He crossed and came up to the middle of the road and went back to the side from where he was crossing when the first defendant tooted. It appears to me the deceased had failed to take care and contributed to the accident that claimed his life. I assess his contribution to the accident at 30%.
- [27] The plaintiff claims against the defendants as follows:
- i) Special damages for the sum of \$8,500.00;

- ii) Damages pursuant to Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27 and Compensation to Relatives Act Cap 29.
- iii) Interests on the said damages pursuant to Law Reform (Miscellaneous Provisions) (Death and Interest) Act Cap 27 at such rate and for such period as the Court shall think just.
- iv) Costs of this action in Solicitor/client indemnity basis.
- v) Any further or other relief that this Court shall think just.

[28] The plaintiff in her statement of claim had, pursuant to the Compensation to Relative Act 1920, Cap 29 (CR), given names of persons for whose benefit this action is brought. This includes herself and her four children (See para 9 of the Statement of Claim). The children stated in the Statement of Claim are over 21 years of age, married and were not dependents of the deceased at the time of the death of the deceased. Therefore, the children are not entitled to compensation under Compensation to Relatives Act.

[29] The plaintiff has brought this action as the wife of the deceased and she is entitled to bring and maintain this action under CR as the deceased's death is caused by the neglect of the first defendant. CR 4 provides:

*"4 Every action shall be for the benefit of the wife, husband, parent and child of the person whose death has been so caused."*

### **Conclusion**

[30] For the foregoing reasons, I come to a conclusion that the death of the deceased, Mohammed Hassim occurred as a result of the accident caused by the neglect of the first defendant on 2 March 2010 and the defendants are jointly and severally liable for the death of the deceased. The defendants are liable to pay damages as claimed by the plaintiff in her statement of claim and I direct the Master of the High Court to assess the damages and the costs in default of agreement.

[31] The defendant is ordered to pay money that is sufficient as compensation to the plaintiff under CR for his negligence. Therefore, CR 7 becomes applicable. CR 7 states:

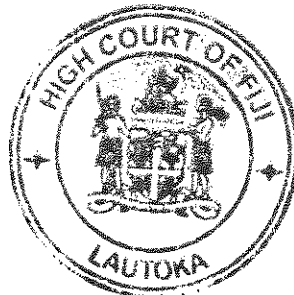
*"7 If the defendant is advised to pay money into court it shall be sufficient that he or she pays it one sum to all persons entitled under this Act as a compensation for his or her wrongful act, neglect or default without specifying the shares into which it is to be divided by the court and if the said sum is not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the court find the same sufficient, the defendant shall be entitled to judgment on that issue."*

### The result

- i. The defendants are liable to pay compensation to the plaintiff for the death of the deceased, her husband.
- ii. The compensation and the cost of this action are to be assessed before the Master of the High Court in default of agreement.

*M H Mohamed Ajmeer*  
*29/1/2018*

M H Mohamed Ajmeer  
JUDGE



At Lautoka

29 January 2018

Solicitors:

For the plaintiff; Messrs K Law Chambers & Partners, Barristers & Solicitors

For the defendants; Office of the Attorney General