

In the High Court of Fiji  
At Suva  
Civil Jurisdiction

Civil Action No. HBC 215 of 2019

In the matter of an application for leave to commence proceeding in which the limitation period has lapsed.

And in the matter of section 16(3) & 17 (1) of Limitation Act 1971.

Rajendra Ram  
Applicant/Plaintiff

v

Kolinio Komai  
Respondent/Defendant

Counsel: Ms S. Hazelman with Mr K. Skiba for the applicant/plaintiff  
The respondent/defendant absent and unrepresented

Date of hearing: 14<sup>th</sup> July,2020

Date of Judgment 16<sup>th</sup> September,2022

**Judgment**

1. By ex parte notice of motion filed with a supporting affidavit, the applicant seeks leave to file an action outside the limitation period for injuries he suffered when the defendant's motor vehicle number collided with him. The defendant was charged, pleaded guilty and sentenced for the offences of dangerous driving, driving a motor vehicle without a driving license, in contravention of third party policy risk and without the owner's permission.

2. The plaintiff's supporting affidavit states that March, 2018, he applied for assistance to the Legal Aid Commission to institute action against the defendant. His application was approved on 11<sup>th</sup> June, 2018. His file was in the carriage of Mr. S Kumar from 18<sup>th</sup> June to 17<sup>th</sup> December, 2018. He was informed by Ms. N. Pratap that no work was done on his file. He came to know that his counsel had changed in December, 2018. Thereafter, he was informed that the matter was being attended to by another counsel Ms. Nikita Pratap. He reserves the right to take legal action against his counsel for negligence.
3. The plaintiff states that he suffered injuries on 18 March, 2016. The time period for filing an action ended on 18<sup>th</sup> March, 2019.
4. Section 16 et seq of the Limitation Act provides that the time limit for filing actions in respect of personal injuries may be extended.
5. Section 16 (3) states :

*The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which-*

  - a) *either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period; and*
  - b) *in either case, was a date not earlier than twelve months before the date on which the action was brought. (emphasis added)*
6. Section 19 defines "material facts relating to a cause of action" as a reference to any one or more of the following:
  - a) *the fact that personal injuries resulted from the negligence, nuisance or breach of duty constituting that cause of action;*
  - b) *the nature or extent of the personal injuries resulting from that negligence, nuisance or breach of duty;*
  - c) *the fact that the personal injuries so resulting were attributable to that negligence, nuisance or breach of duty, or the extent to which any of those personal injuries were so attributable.*

7. Section 20 titled “ *Meaning of "facts of a decisive character"*” reads:

*For the purposes of sections 16 and 18, any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice within the meaning of section 22 with respect to them, would have **regarded at that time as determining, in relation to that cause of action, that, apart from any defence under subsection (1) of section 4, an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.***(emphasis added)

8. Section 20 states that “*.facts will be taken as outside the knowledge of a person for the purposes of sections 16 to 18 a fact shall, at any time, be taken to have been outside the knowledge, actual or constructive, of a person if, but only if-*

- a) *he did not then know that fact;*
- b) *in so far as that fact was capable of being ascertained by him, he had taken all such action, if any, as it was reasonable for him to have taken before that time for the purpose of ascertaining it; and*
- c) *in so far as there existed, and were known to him, circumstances from which with **appropriate advice within the meaning of section 22** that fact might have been ascertained or inferred, he had taken all such action, if any, as it was reasonable for him to have taken before that time for the purpose of obtaining appropriate advice as aforesaid with respect to those circumstances.*(emphasis added)

9. Section 22 provides that “*“appropriate advice”, in relation to any fact or circumstances, means the advice of competent persons qualified, in their respective spheres, to advise on the medical, legal or other aspects of that fact or those circumstances, as the case may be.*”

10. In my view, the above sections contemplate situations where the material facts in respect of the cause of action are of a decisive character and were not within the actual or constructive knowledge of the plaintiff. It does not extend to the negligence of a lawyer as Amaratunga J held in *Kasaimatuku v Vakaloloma* [2018] FJHC 392; HBC107.2015 (18 May 2018)

11. *Orders*

- a. The plaintiff's notice of motion is declined.
- b. I make no order as to costs.



*A.L.B. Brito-Mutunayagam*

**A.L.B. Brito-Mutunayagam  
JUDGE**

**16<sup>th</sup> September, 2022**