

IN THE HIGH COURT OF FIJI  
AT LABASA  
CIVIL JURISDICTION  
CIVIL CASE NO. HBC 59 OF 2016

BETWEEN: AWADH NARAYAN PLAINTIFF

AND: RAKESH ROSHAN 1<sup>ST</sup> DEFENDANT

AND: PARMOD ENTERPRISE LTD 2<sup>ND</sup> DEFENDANT

Appearance: Plaintiff - Mr. A. Sen  
Defendants - Mr. A. Kohli

Date of Hearing : 12<sup>th</sup> March, 2018

Date of Judgment : 15<sup>th</sup> March, 2018

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**JUDGMENT**

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Introduction

- [1] This is an action filed by the father of a child who was killed due to an accident that happened at the Labasa bus stand on 31<sup>st</sup> August, 2015. The deceased was crushed to death due to collision of two buses while he was crossing between the said two buses.



The bus that was in the control of the 1<sup>st</sup> Defendant had moved back, while the other bus was stationary.

### Facts

[2] Following Facts are admitted.

- a. The Plaintiff is the father and administrator in the estate of late Vivek Narayan who died on 31.8.2015. Letters of Administration were granted to the Plaintiff on 7<sup>th</sup> June, 2016.
- b. The Plaintiff filed the action for the benefit of the deceased estate under Law Reform (Miscellaneous Provisions), Death and Interests Act for the benefit of the dependants of the deceased pursuant to Compensation to Relatives Act (At the trial the Plaintiff reserves his right to prove his claim only under Law Reform (Miscellaneous Provisions) Death and Interest Act.
- c. At all material times the 1<sup>st</sup> Defendant was driver of bus registration No PEL 111
- d. At all material times the 2<sup>nd</sup> Defendant was the owner of bus registration No PEL 111.
- e. That the liabilities of the 1<sup>st</sup> Defendant has been taken over by the 2<sup>nd</sup> Defendant who was at all material time employer of the 1<sup>st</sup> Defendant and such the 2<sup>nd</sup> Defendant is liable for this claim and or the 1<sup>st</sup> Defendant was in the course of his employment with the 2<sup>nd</sup> Defendant and was a servant/agent of the 2<sup>nd</sup> Defendant.
- f. On or about 31.8.2015 at Labasa Bus stand in the town the deceased was walking across the said bus stand when he was crushed between two buses.
- g. The deceased was 18 years of age at the time of accident and was a form 7 student of Khalsa College.
- h. The 1<sup>st</sup> Defendant was charged with occasioning death by dangerous driving, contrary to Section 97(2)(c) and 114 of Land Transport Act No 33 of 1998

[3] At the commencement of the trial a further admission was made that out of the two buses that collided only the bus PEL 111 moved and the other bus at all time material to this accident was stationary.



- [4] The Plaintiff and two eye witnesses gave evidence in support of the claim. One eye witness was inside the bus PEL 111 which moved back, when the accident happened and the other eye witness was at the bus stand. Both of them vividly explained what they have seen.
- [5] For the defence only Defendant gave evidence.
- [6] The first eye witness (PW1) called for the Plaintiff was a passenger of the bus PEL 111 driven by the Defendant. At no time during the time material to this action the said bus engine was not turned off, and 1<sup>st</sup> Defendant was seated on driver's seat.
- [7] According to the said witness the bus PEL 111 was scheduled to leave the main bus stand at Labasa town at 2pm and slightly before departure for journey the Defendant had given \$20 to the witness to get it changed to 20 cents. He had got down from the bus and had gone to a kiosk to obtain the change and change 20 cents were handed to 1<sup>st</sup> Defendant.
- [8] The witness explained when he left the bus how buses were lined up in one row one behind the other even obstructing the pedestrian crossing of the road where they are parked.
- [9] The witness had not used the pedestrian crossing as he was going to a place on the side of the bus to obtain 20c to the value of \$20.
- [10] He had got in to the bus with the changes of 20cent coins and given it to the driver and got seated while the driver was counting the coins. He had realized a movement of the background but had thought that the bus at the background was moving. He was seated beside the driver and knew that the Driver did not commence the journey as he was busy counting 20cents he had given. Then he had heard a large noise and people shouting.
- [11] The witness stated that there was fairly large gap between this bus and bus behind for about 7-8 meters before the accident, and the bus driven by the Plaintiff had collided with the bus behind and in between the two buses there was a person crushed. This was Plaintiff's son.



- [12] The witness had realized that the vehicle driven by the Defendant had moved backward and, had collided with the bus that was behind and stationary.
- [13] The witness had rushed to the driver and had asked him to move the bus forward, and till then the Driver was not aware of the accident and when he told that there was an accident and a person was crushed the driver was shocked.
- [14] The witness said that as soon as he told the driver to move the vehicle forward he could not do so due to his shock that resulted late reaction time and after about 1 minute he had moved the vehicle forward.
- [15] The witness said he had got in to the bus and the bus left the bus stand about 2.15pm and neither police nor any other person came for investigation of the accident.
- [16] The second eye witness (PW2) is a person who is a sort of porter at the bus stand. He said that he had been earning a living as a porter of the same bus stand for years and was aware of the buses and their respective trips. He also said he was looking at the buses as he was expecting some passengers to provide his porter services.
- [17] He said that he could clearly see the bus driven by the Defendant and also the distance between the bus behind but could not see clearly the distance between the bus behind the Defendant's bus and the third bus in row. He said all the buses were awaiting their turns to move forward and the crossing line on the road was also obstructed.
- [18] According to the PW2 the distance between the PEL 111 and bus behind that was about 8 m and this gap was the largest gap at that time between the buses that were line on the side of bus Registration No PEL 111.
- [19] He said that he saw the bus PEL 111 moving backwards slowly and shouted at the driver without any heed. He also said at the start the bus started moving very slowly and then it gathered momentum and moved fast before collision with the other vehicle behind.
- [20] The Defendant said he was unaware of the bus moving backwards, though he was on the driving seat and looking at the passengers that were getting in to the bus. He



admitted that he had not applied hand brakes and only applied foot brakes. He also said that the movement of the bus backwards was unintentional and it was due to inclination on the surface. He also he was aware of the inclination on the surface where he parked as he parked in the same place on the same day before this incident.

### Analysis

- [21] The Defendant is a bus driver and at the time of the accident he had about one year experience as a bus driver.
- [22] He was also fully aware of the environment around the scene of the accident as it was the main bus stand and for a day he drives buses to the stand several times during a day. Even on the day of the incident the Defendant had parked his bus in the same place before this incident so he was aware of the inclinations on the surface and should take precautions to avoid any accident.
- [23] The Defendant in his evidence said he did not know that his vehicle had moved backwards even after the accident. This itself indicate the negligent manner he was driving a large vehicle containing passengers.
- [24] The Defendant in his evidence said he did not apply hand breaks, though he was aware of the inclination on the road. This again a negligent act, by the 1<sup>st</sup> Defendant.
- [25] The Defendant said that he could not realize the bus had moved back even after notification of the accident and had thought that the vehicle at the back had moved forward and that was the cause of accident. The subsequent behaviour of the Defendant indicate that he was aware of his fault and was even afraid to get down from the bus to see the accident when a person was severely crushed between his bus and bus behind. The defendant even without reporting the accident to the Police had driven the bus for his usual journey, and left the scene of the accident.
- [26] Such a behaviour is possible only from a guilty or a person with guilt conscience. So no investigation was done at the scene of the accident where a person was severely injured and also died at the hospital shortly after the incident.



- [27] From the analysis of the evidence it is proved on the balance of probability that the 1<sup>st</sup> Defendant had not exercised due care for the users of the road by not safely securing brakes to the bus. There was no issue with the brakes and if so he would not have continued the journey about 15 minutes after the incident.
- [28] PW2 said he had shouted at the driver when the bus started moving backwards. He said when a bus is moving freely backwards there is a difference from reversing and he knew that it was rolling backwards at that time before the accident. He also said he did not see the deceased crossing the road and entering the narrowing gap between the two buses. He also said that from the start of the moving of the bus to the collision 30 seconds would have taken.
- [29] At the beginning there was about an 8 meter gap between the PLE 111 and the bus behind. It had taken about 30 seconds to collide and from the evidence it had moved slowly at the beginning and gathered momentum just before the collision.
- [30] The deceased was a 18 year old school boy who had come to the town for a hair-cut and also some other work related to his education. He had crossed the road from the opposite side and there was a crossing nearby, which was obstructed by buses lined in to take their turn.
- [31] The sketch produced at the trial was prepared after the scene was changed as both buses as well as other buses had gone for their respective trips. So there was not even a sketch drawn shortly after the incident, and the sketch produce at the trial was prepared by the Police later in the day when the scene of the accident and location of the buses had completely changed.
- [32] There is no evidence on what evidence was considered in the drawing of the sketch.
- [33] It is an important thing to record any scene of accident before it is disturbed or with minimum disturbance. In this instance the Defendant had not even reported such a severe accident before driving the vehicle for his scheduled journey. This again indicate the lack of knowledge of the driver regarding how to act after an accident where a person was severely injured.



- [34] The failure to report an accident promptly can also arise from intentional destruction of evidence that are material for the proof of negligence. E.g. a drunken driver may delay reporting the incident in order to avoid being tested for alcohol content.
- [35] Whatever the reason behind the delay in the reporting of the accident it is not sufficiently explained by the Defendant.
- [36] On the balance of the probability it is proved that the Defendant was not attentive at the time of the accident. He was driving a vehicle with passengers and it is a large bus. So extra care should be taken, and he had not done so. As PW1 explained he was counting the 20 cents coins while the bus was involuntarily moving back. He said that since he was seated close to the driver he knew that bus was not driven by the driver, but thought that other bus in the background was moving.
- [37] The 1<sup>st</sup> Defendant had acted in reckless and rash manner. Knowing that there is an inclination on the surface he had not taken any precautions like applying hand break or properly application of foot breaks thus failed to keep his vehicle stationary at the bus stop while it awaited for the passengers to get in. This is a very dangerous act on the part of the Driver for passengers who are alighting and also getting in and also for other users of the road.
- [38] The evidence of the 1<sup>st</sup> Defendant that he was unaware of his vehicle moving a considerable distance of about 7-8 meters, backwards proves that he was totally unaware of the movement, thus was not in full control of the vehicle with proper application of the devices at his disposal.
- [39] The deceased who was 18 years had opted to cross the road from the place where there was the largest gap between the buses. The contention that accident happened as he did not cross the road from the pedestrian crossing does not absolve the high degree of negligence on the part of the 1<sup>st</sup> Defendant.
- [40] When the pedestrian crossing is obstructed by buses it is logical and quite normal to cross the road where there is largest gap of vehicles as the intension of the deceased was to get to the other side of the road where the bus stand is located.



- [41] The deceased had not used the pedestrian crossing as it was obstructed by other vehicles. Though there was no evidence that pedestrian crossing was fully obstructed, the evidence was that the largest gap between the vehicles at that moment before the accident was between PEL 111 and the vehicle behind it which was about 8 meters.
- [42] The witness who was on the ground explained that he had observed the accident and it had taken about 30 seconds to collide. So a person who is walking in normal speed would not take more than few seconds to walk the width of a bus.
- [43] If the deceased was careful he would have observed the bus PEL 111 moving backwards even before he start to cross the road , and would have certainly observed before he approached the bus. This indicate negligence on the part of the deceased as well. This negligence has to be considered with the age of the plaintiff and distractions and or the mind of a person at that busy hour crossing the road. So considering the circumstances I consider that contributory negligence was 30%.

#### **Damages**

- [44] Funeral Expenses and other expenses relating to death like travel etc Rs 5,0000.
- [45] Obtaining Letters of Administration to institute this action \$1,250.

#### **Compensation to Relatives Act**

- [46] Section 4 of the above mentioned state as follows:

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

- [47] So the Plaintiff being the father of the deceased child is entitled to claim under this Act.
- [48] The child was schooling and his educational results were not encouraging and his position in class was below 30 in a class of 38 though he aspired to become an agricultural officer.



- [49] Considering the awards granted in recent cases submitted by counsel for both parties, I propose a sum of \$60,000, under compensation to Relate Act.

**The Damages under Law Reform (Miscellaneous) (Death and Interest)**

- [50] *Pal v Hussain* [2011] FJHC 588; Civil Action 73.2007 (23 September 2011) Master Tuilevuka (as his lordship then was) followed an English authority and stated that when the deceased died on the same day no award for pain and suffering is provided.

- [51] In the present case the deceased died without gaining conscience few hours later. So no damage for pain and suffering is granted.

- [52] The loss of expectation of life I ward \$3,000.

- [53] It was held in *Pal* (supra) that:

“An award under the **Law Reform (Miscellaneous Provision) (Death and Interests) Act** is made for the benefit of the deceased’s estate based on **lost years**. It is well settled that even if a plaintiff finds difficulty in establishing a claim based on dependency under the **Compensation to Relatives Act**, the Court may still award damages under the **Law Reform (Miscellaneous Provision) (Death and Interests) Act**[12]. And even if an award had been made under the **Compensation to Relatives Act**, that award is usually merged with any award made under the Law Reform Act [13].”

- [54] Considering the circumstances of the case it would be difficult to assess benefit for the deceased’s lost years. So no damage is grated under this.

- [55] No punitive damage is granted.

- a. Special Damages – Funeral Expenses + cost for obtaining Letters of Administration \$6250.



- b. Damages under Law Reform (Miscellaneous Provisions) (Death and interest) \$3,000.
- c. (b) should be deducted from \$60,000 awarded under compensation to Relatives (i.e. \$57,000).

[56] The special damage accrues an interest of 3% from the date of the incident to the date of judgment. Other damages to accrue 6% interest from the date of the writ to the date of judgment. Total damages with interest is to be deducted 30% for contributory negligence. The cost of this action is summarily assessed at \$2,500.

#### Final Orders

- [57] a. The damages granted in favour of the Plaintiff as stated above.
- b. The cost of the action is summarily assessed at \$2,500.



  
Deepthi Amaratunga  
Judge