

**IN THE SUPREME COURT OF FIJI**  
**[CIVIL APPELLATE JURISDICTION]**

**CIVIL PETITION No: CBV 0012.2017**  
**(On Appeal From Court of Appeal No: ABU 0019.2011)**

**BETWEEN** : RAJENDRA MANI NAIDU

**Petitioner**

**AND** : FIJI FOREST INDUSTRIES LIMITED

**Respondent**

**Coram** : Hon. Mr. Justice Suresh Chandra,  
Judge of the Supreme Court  
  
Hon. Mr. Justice Priyantha Jayawardena,  
Judge of the Supreme Court  
  
Hon. Mr. Justice Quentin Loh,  
Judge of the Supreme Court

**Counsel** : Mr. A. Sen and Mr. A. Chand for the Petitioner  
Mr. A. Ram for the Respondent

**Date of Hearing** : 20 August, 2018

**Date of Judgment** : 24 August, 2018

## **JUDGMENT**

**Chandra, J**

- [1] I have read in draft the judgment of Jayawardena, J and agree with the reasons given and the orders proposed.

**Priyantha Jayawardena, J**

- [2] This is an appeal seeking special leave to appeal from the judgment of the Court of Appeal dated 14<sup>th</sup> September, 2017 in respect of the rate of interest awarded by the Court of Appeal on general damages and special damages, the effective date of the interest, alleged non-granting of post-judgment interest and adequate costs.

### **Factual Matrix**

- [3] The Petitioner (Workman) had commenced working with the respondent in October, 2009 as a casual labourer at its factory in Malau, Labasa. When he reported for the night shift on the 11<sup>th</sup> November 2009, he was asked to work on a sanding machine.
- [4] The Petitioner submitted that whilst working on the said sanding machine he had an accident and sustained occupational injuries due to the negligence of the Respondent. Particularly, his little finger was amputated and his index, third and ring fingers were injured as a result of the said accident.
- [5] The Petitioner further submitted that he suffered the aforesaid injuries due to the failure of the Respondent to provide a safe and proper working environment, provide adequate supervision and take precautions for the occupational safety of the Petitioner.
- [6] Hence, the Petitioner claimed general and special damages, loss of FNPF, interest and costs.

- [7] The Respondent (Employer) submitted that the factory was regularly inspected by the factory inspectors. They had not reported any defects or non-compliance. Further, the Petitioner had been instructed on how to use the said machine and if the Petitioner had used the proper procedure, the accident could have been avoided. In any event, the accident had occurred due to the contributory negligence of the Petitioner.

### **Judgment of the High Court**

- [8] After an inter-parte trial, the High Court delivered the judgment on 18<sup>th</sup> February, 2014 and held inter-alia that;

- (i) it was clear that the danger was foreseeable and avoidable,
- (ii) the Petitioner could have been forewarned,
- (iii) the Respondent was negligent, and breached the duty of care,
- (iv) section 36 of the Factories Act has been breached by the Respondent. i.e. the requirement that the machinery must be *“effectively guarded at all times when that part is moving and at all times when the part might be likely to endanger ..... any employed person.”* [Emphasis added],
- (v) the Petitioner was not aware that he was being exposed to a situation which could be dangerous,
- (vi) the Petitioner had not contributed to the accident that resulted his injuries,
- (vii) the Petitioner had lost his pre-accident earning capacity to work as a mechanic or as a labourer, and
- (vii) the Petitioner had suffered general and special damages.

Further, it was held that the interest on general damages is awarded to compensate a plaintiff for being kept out of the capital sum. In exercising the court’s discretion, interest at 6% per annum was awarded on the general damages from the date of service of the writ (10<sup>th</sup> January, 2012) to the date of trial, and 3% per annum on special damages from date of accident to the date of the hearing.



[9] Accordingly, the High Court awarded the following reliefs to the Petitioner;

- (i) General damages \$ 60,000
- (ii) Interest on general damages \$4,800
- (iii) Special damages \$ 532.50
- (iv) Interest on special damages \$56
- (v) Loss of future earnings \$ 49,450
- (vi) Loss of future FNPF \$ 4,300

Further, a judgment was entered in favour of the Petitioner against the Respondent in a sum of \$119,138.50 together with a sum of \$5,000 as costs (summarily assessed).

#### **Appeal before the Court of Appeal**

[10] Being aggrieved by the said judgment of the High Court, the Respondent appealed to the Court of Appeal.

[11] In its appeal the Respondent pleaded inter-alia the following grounds;

That the learned trial judge erred in holding that:

- (i) the Respondent failed to provide a safe and proper system of occupational safety,
- (ii) the Respondent failed to supervise and take precaution,
- (iii) the Respondent exposed the Petitioner to the risk of damage or injury,
- (iv) the Respondent was negligent, and
- (v) there was no contributory negligence on the part of the Petitioner.

Moreover, the learned trial judge failed to properly and/or adequately evaluate all the evidence in respect of the liability. In any event, the damages awarded were excessive.

[12] In response the Petitioner filed a Cross Appeal dated 3<sup>rd</sup> April, 2014 and sought an order from the Court of Appeal in respect of the matters set out below;

- (i) that the trial judge erred in law and in fact in not awarding the appropriate damages under various heads as claimed,
- (ii) that the learned trial judge erred in law in not allowing the Petitioner's claim for care giver assistance, disfigurement of hand, future nursing care and supplementary income when there was sufficient evidence adduced by the Petitioner of his losses, and
- (iii) the trial judge erred in law in failing to take into consideration the change in socio-economic living conditions.

Hence, the Court of Appeal considered both the Appeal filed by the Respondent and the said Cross Appeal filed by the Petitioner and delivered the judgment on the 14<sup>th</sup> of September, 2017.

#### **Judgment of the Court of Appeal**

[13] After hearing the appeal, the Court of Appeal held inter-alia that;

- (i) the trial judge had carefully analyzed the evidence and arrived at the correct finding that the Respondent failed to provide a safe and proper occupational safety,
- (ii) the finding of the trial judge that the Respondent had failed to provide instructions and training, and therefore guilty of negligence, was correct in law,
- (iii) the Petitioner had not disobeyed instructions,
- (iv) there was no effective maintenance, and the finding of the High Court that the Respondent was negligent, was correct in law,
- (v) the injuries suffered by the Petitioner were a direct result of the negligence of the Respondent in maintaining and ensuring occupational safety. Thus, the finding of the High Court that the Respondent was negligent and breached the duty of care that it



owed to the Petitioner, and that the finding of Petitioner was not guilty of contributory negligence, was correct.

[14] Further, the Court of Appeal held that;

- (i) the Petitioner has a permanent disability of more than 50% of the use of his dominant right hand,
- (ii) the predicted future loss of income is based on the prediction of the sum the Petitioner would have earned, if not for the injury suffered,
- (iii) the Petitioner conceded that the special damages for transportation and for medicine awarded by the High Court was correct and, therefore it is not necessary to interfere with the said award. Further, interest on special damages will apply from 9<sup>th</sup> November, 2009 (date the cause of action arose) to 16<sup>th</sup> May, 2013 (date of service of the writ),
- (iv) the High Court has not considered the future pain and suffering, loss of amenities and loss of future earnings of the Petitioner. Therefore, the sum awarded by the High Court for those were inadequate and the sum of \$60,000 awarded as general damages is substituted with the sum of \$90,000,
- (v) the Petitioner could have worked for another 21 years, if not for the injuries he suffered. Accordingly, the sum of \$49,450 awarded for future earnings was substituted with a sum of \$ 67,970 as loss of future earnings.
- (vi) the Law Reform (Miscellaneous Provisions) (Death and Interest) Act (Cap 27) as amended by Decree No. 46 of 2011 recognises two types of interest; namely: pre-judgment and post-judgment interest. The court is not precluded from awarding interest on damages from the date of the service of writ to the date of judgment.
- (vii) Accordingly, the following orders were made;
  - (a) the Respondent was ordered to pay the Petitioner a sum of \$ 90,000 as general damages, and the sum of \$ 4050 being interest thereon at the rate of 2%

(being half of the rate specified by section 4 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act (Cap 27) as amended by Decree No. 46 of 2011) in respect of post-judgment interest payable from 28<sup>th</sup> November, 2011 (date of the service of the writ) to 18<sup>th</sup> February, 2014 (date of the judgment), and

- (b) the Respondent was ordered to pay the Petitioner a sum of \$ 532.50 as special damages, and a sum of \$43 being interest at the rate of 2% on special damages (being half of the rate specified by section 4 of the Act in respect of post-judgment interest) payable from 9 November, 2009 (date of the cause of action) to 18<sup>th</sup> February, 2014 (date of the judgment).

[15] Hence, the Court of Appeal varied the judgment of the High Court as follows;

- (i) General damages \$ 90,000
- (ii) Interest on general damages (@ 2% p.a. ) \$4050.00  
From 28.11.2011 to 18.02.2014.
- (iii) Special damages \$ 532.50.
- (iv) Interest on special damages (@ 2% p.a.) \$43  
From 09.11.2009 to 18.02.2014.
- (v) Loss of future earnings \$ 67,970.00 – No interest due
- (vi) Loss of future FNPF \$ 5,903 – No interest due

The total sum awarded by the High Court is \$ 168,498.50.

[16] Accordingly, the Court of Appeal;

- (i) dismissed the appeal of Fiji Forest Industries (the Respondent),
- (ii) the Petitioner was awarded damages in a sum of \$ 168,498.50 together with interest in terms of section 4 of the Law Reform (Miscellaneous Provisions) (Death and Interest) Act (Cap 27) as



amended by Decree No. 46 of 2011, from the date of judgment until payment in full.

- (iii) The Respondent was ordered to pay the Petitioner \$3,000.00 as costs (summarily assessed).

### **Petition to the Supreme Court**

#### ***Grounds of Appeal***

[17] Being aggrieved by said judgment of the Court of Appeal, the Petitioner filed a petition in the Supreme Court and inter-alia pleaded that the Court of Appeal erred in law;

- (i) by not granting at least the interest rate of 6% per annum in respect of the general damages from the date of filing of the writ of summons on 29<sup>th</sup> November, 2011 until the judgment of the Court of Appeal was delivered,
- (ii) by not granting at least the interest rate of 4% per annum in respect of the special damages from the date of filing of the writ of summons on 29<sup>th</sup> November, 2011 until the judgment of the Court of Appeal was delivered,
- (iii) alternatively, by failing to award the interest of 4% from the date of the judgment of the High Court to the date of payment, and
- (iv) by failing to award appropriate costs to the Petitioner (however, during the course of the hearing, the Counsel for the Petitioner informed court that he was not pursuing this ground of appeal).

### **Consideration of Granting Leave to Appeal**

#### ***Submissions of the Petitioner***

[18] The Petitioner submitted that the instant appeal fulfils the criteria set out in section 7(3) of the Supreme Court Act 1998 to obtain special leave to appeal from the Supreme Court.



- [19] In support of the aforementioned position it was submitted that the instant appeal consists of far reaching questions of law to be determined in respect of interest rates applicable to general damages and special damages.
- [20] Further, the decision in the instant appeal will have an impact on the public and is of great general importance to the rights and entitlements of claimants and their rights pertaining to the entitlement for interest.
- [21] It was also submitted that the Petitioner by reason of the foregoing has also suffered substantial and grave injustice and the issues raised in the appeal contains far reaching questions of law.
- [22] The Petitioner further submitted that the correct interest rate;
- (i) for general damages is 6% per annum from the date of filing of the writ of summons on 29<sup>th</sup> November, 2011 until judgment of the Court of Appeal,
  - (ii) for special damages is at least 4% from the date of filing of the writ of summons on 29<sup>th</sup> November, 2011 until judgment of the Court of Appeal, and
  - (iii) Alternatively, 4% interest from the date of the judgment of the High Court to the date of payment.
- [23] The Petitioner cited the Ruling given in the case of *Shell Fiji Ltd. v. Chand* (2012) FJSC 16 CBV0003.2011 (7<sup>th</sup> August, 2012) in support of his contention.
- [24] However, during the hearing of this appeal, the Counsel for the Petitioner conceded that his client did not address on the question of interest either in the High Court or in the Court of Appeal.
- [25] Further, he conceded that the Respondent paid a sum of \$ 153,498.50 on 4<sup>th</sup> October, 2017.i.e. after the impugned judgment was pronounced by the Court of Appeal. The said

amount includes the capital sum and the interest awarded by the Court of Appeal and there is nothing due on the said judgment.

- [26] On a perusal of the court record, it transpired that the Solicitors for the Petitioner by their letter of 28<sup>th</sup> September, 2017 had requested the Registry to obtain a clarification of the Court of Appeal judgment from court with regard to the post-judgment interest rate.

***Submissions of the Respondent***

- [28] At the hearing the Respondent raised the following preliminary objection;

**The Petitioner's Solicitors have accepted full payment of the judgment delivered by the Court of Appeal and therefore, the instant appeal cannot be maintained.**

- [29] It was submitted that by letter of 18<sup>th</sup> September 2017, the Solicitors for the Petitioner complained about the non-payment of the post-judgment interest. The Respondent replied by its letter of 28<sup>th</sup> September, 2018 and sent a breakdown of the total amount that needed to be paid under the said judgment. Further, it was informed by the said letter that arrangement for the payment of the judgment sum was being made by the insurance company and requested the costs of \$3,000.00 to be recovered from the monies deposited in the Registry.
- [30] Thereafter, the Solicitors of the Respondent, by letter dated 4<sup>th</sup> of October 2017, wrote to the Solicitors of the Petitioner and sent a cheque for a sum of \$ 153,767.62 as full and final payment of the judgment delivered by the Court of Appeal.
- [31] The said payment was accepted by the Solicitors of the Petitioner and a trust account receipt dated 5<sup>th</sup> October, 2017 was issued.



- [32] The Petitioner's Solicitors had written to the Registry on 25<sup>th</sup> October, 2017 with the consent of Solicitors of the Respondent and requested for the costs awarded by the Court of Appeal.
- [33] Therefore, it was submitted that the matter was finalized between the parties and the Petitioner is not entitled to proceed with the instant appeal. Accordingly, the Respondent moved for a dismissal of the Appeal.
- [34] The Respondent further raised the following objection:

**The appeal does not meet the criteria set out in section 7(3) of the Supreme Court Act No. 14 of 1998**

- [35] The Respondent submitted that the instant appeal does not involve a far reaching question of law or a matter of great general or public importance or substantial general interest to the administration of civil justice. Therefore, the grounds of appeal do not satisfy the criteria set out in section 7(3) of the Supreme Court Act No. 14 of 1998 to obtain special leave to appeal.
- [36] Without prejudice to the aforementioned objections, the Respondent submitted that the grounds urged in this appeal relates to the interests applicable to general damages, special damages, and post-judgment interest. However, the courts have considered the "interest" that should be paid under the Law Reform (Miscellaneous Provision) (Death and Interest) Act (Cap 27) in several other cases. Thus, there is no necessity to re-consider the same matter in the instant appeal and therefore, the instant appeal does not contain any ground of public interest or an important question of law.
- [37] It was further submitted that in terms of section 3 of the Law Reform (Miscellaneous Provision) (Death and Interest) Decree (Cap 27) the granting of interest is discretionary.
- [38] Further, according to section 4 of the said Decree the statutory post-judgment interest rate is 4% per annum.

[39] The Petitioner has taken steps to recover the costs from the Registry, the payment of costs the instant appeal cannot be maintained.

[40] However, the instant appeal has been filed notwithstanding the fact that there was nothing due under the judgment delivered by the Court of Appeal and therefore, the Petitioner is estopped from pursuing this appeal. In the circumstances, the Respondent moved for a dismissal of the appeal.

#### **Hearing before the Supreme Court**

[41] At the hearing before the Supreme Court, the Counsel for the Petitioner conceded;

- (i) that a cheque for a sum of \$ 153,767.62 was received on 5<sup>th</sup> October, 2017 as a final settlement and a receipt was issued on the same day,
- (ii) a sum of \$ 3,000 ordered as Costs by the Court of Appeal was collected from Registry,
- (iii) exchange of letters dated 18<sup>th</sup> September, 2017, 28<sup>th</sup> September, 2017 and 4<sup>th</sup> October, 2017,
- (iv) the receipt dated 5<sup>th</sup> October, 2017,
- (v) the two letters written to the Registry of the Court of Appeal on 25<sup>th</sup> October, 2017, and
- (vi) the Petitioner did not address on the question of interest either in the High Court or in the Court of Appeal.

[42] However, Counsel for the Petitioner submitted that his client is not estopped from prosecuting the instant appeal notwithstanding the aforementioned admissions.

[43] Counsel for the Respondent submitted that as the Petitioner accepted the total sum stated in the Court of Appeal, the Petitioner is not entitled in law to maintain the instant appeal. He cited **Nand v. Mohan** 1990.3 FJCA in support of his contention.



- [44] In reply the Counsel for the Petitioner drew the attention of the court to the cases of Lissenden v. C. A. V. Bosch, Ltd. (1940) 1 AER 425 and Ambika Nand v. Mohammed Samsudin Sahu Khan and Mohammed Sadru-Din Sahu Khan [1997] FJCA 26;ABU0066 of 1995S where it was held that a party can maintain an appeal notwithstanding the fact that he has accepted the money ordered by a court below.
- [45] He further submitted that the Court of Appeal did not follow the case of Nand v. Mohan in deciding the case of Ambika Nand v. Mohammed Samsudin Sahu Khan and Mohammed Sadru-Din Sahu Khan on the basis that the case of Nand v. Mohan had been decided per-incuriam.
- [46] Both parties conceded that they did not submit any material either to the High Court or the Court of Appeal with regard to interest.

#### *Criteria for Granting Special Leave*

- [47] The Petitioner is seeking for Special Leave in terms and under section 98(4) of the Constitution of the Republic of Fiji read with Section 7(3) of the Supreme Court Act of 1998. Section 7(3) of the Supreme Court Act states:

*“In relation to a civil matter (including a matter involving a constitutional question) the Supreme Court must not grant special leave to appeal unless the case raises –*

- a. A far reaching question of law;*
- b. A matter of great general or public importance;*
- c. A matter that is otherwise of substantial general interest to the administration of civil justice.”*

#### *Consideration of the Granting of Special Leave*

- [48] Section 7(3) of the Supreme Court Act 1998 provides that special leave to appeal must not be granted unless an appeal relates to any of the grounds set out above.

- [49] The aforementioned section has been considered by the Supreme Court in several previous decisions such as Bulu v Housing Authority [2005] FJSC 1 and Chand v Fiji Times Ltd [2011] FJSC 2. These cases applied the principle espoused by the Privy Council in Daily Telegraph Newspaper Company Limited v McLaughlin [1904] AC 776, where it was held that appeals should not be admitted:

*“Save where the case is of gravity involving a matter of public interest, or some important question of law, or affecting property of considerable amount, or where the case is otherwise of some public importance or of a very substantial character”.*

- [50] The Petitioner in seeking to satisfy the threshold for granting of leave has taken up the position that the grounds of appeal that have been raised in the instant appeal contains far-reaching questions of law relating to interest pertaining to general and special damages and the grounds of appeal have substantial interest to the administration of civil justice.
- [51] The Respondent has submitted that the issues raised in the appeal are matters between the parties in the instant appeal and therefore, the grounds urged by the Petitioner do not satisfy the criteria for granting of leave.
- [52] In the circumstances, it is necessary to consider whether the issues involved in the instant appeal meet the threshold set out in the aforementioned section 7(3) of the Supreme Court Act.
- [53] In this regard the court has a twofold function. Firstly, to consider the nature of the issues involved between the parties. Secondly, to consider the questions of law involved and the importance of such questions of law.
- [54] In order to obtain special leave to appeal from this court, the Petitioner submitted that the instant appeal involves awarding interest for general and special damages. Further, the



grounds of appeal in this appeal contains far reaching questions of law and matters of substantial general interest to the administration of civil justice as the judgment in the instant appeal is relevant to all cases of damages.

- [55] The Respondent submitted that the grounds of appeal set out in the petition do not satisfy the stringent criteria set out in section 7(3) of the Supreme Court Act 1998. It was further submitted that the questions of law involved in this appeal does not affect the public or even a part of the public and the questions of law raised in the instant appeal are specific to the parties to this appeal.
- [56] In this context, it is essential to consider the said submissions in the first instance, as it is imperative to meet the threshold set out in section 7(3) of the Supreme Court Act to entertain the present appeal.
- [57] The criteria laid down in section 7(3) of the Supreme Court Act 1998 in order to obtain special leave shows that special leave to appeal to the Supreme Court cannot be obtained as a matter of course but after fulfilling the criteria set out by the Act.
- [58] The instant appeal relates to applicable interest rates for general and special damages, the date of the effective date of the interest and the adequacy of the costs awarded by court.

### ***Awarding Interest***

- [59] Section 3 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act (Cap 27) was amended by Act No. 46 of 2011. However, the said section has not specified a rate of interest. A careful consideration of the said section shows the word “may” confers a discretion on the court to determine the rate of interest that should be awarded for damages and it is not mandatory. The Legislature has, in its own wisdom, left it to the courts to decide the rate of interest for damages. Hence, the rate of interest could vary based on the circumstances of each case. In the instant appeal both parties conceded that

they did not submit any material either to the High Court or the Court of Appeal with regard to interest.

- [60] In the case of Yorkshire West Riding Council v. Holmfirth Urban Sanitary Authority (1894) 2 Q.B. it was held:

*"It is quite obvious to my mind that the word 'may' there means 'may,' not 'shall'....."*

- [61] Moreover, the aforementioned section empowers the court to determine the period for which the interest should be awarded. Thus, one cannot argue that it is mandatory to award interest from the date of the cause of action to the date of the judgment.
- [62] I am also of the opinion that the words "the date of the judgment" used in in the said section refers to the date of the judgment delivered by the High Court. Since the Court of Appeal and the Supreme Court function as appellate courts, the phrase "date of the judgment" cannot be interpreted as the date of the judgment delivered either by the Court of Appeal or the Supreme Court.
- [63] Having expressed the aforementioned views on sections 3 and 4 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act (Cap 27) as amended by Act No. 46 of 2011, I wish to state that it is better if the courts can set out the reasons as to how the court exercised their discretion in determining the rate of interest and the applicable period.

#### ***Post-Judgment Interest***

- [64] The Court of Appeal held as follows:

*"The Respondent is awarded damages in a sum of \$ 168,498.50 together with interest in terms of section 4 of the Law Reform (Miscellaneous Provision) (Death and Interest) Act (Cap 27) as*



*amended by Decree No. 46 of 2011, from the date of judgment until payment in full."*

[65] Section 4(1) of the of the said Decree states;

*"Every judgment debt shall carry interest at the rate of 4% per annum from the time of entering up the judgment until the same shall be satisfied, and such interest may be levied under a Writ of Execution on such judgment."*

[66] Therefore, in terms of the judgment of the Court of Appeal, the Petitioner is entitled to 4% interest per annum from the date of judgment of the High Court until payment is made in full.

[67] The Solicitors for the Petitioner had written to the Officer in charge of the Court of Appeal by his letter of 28<sup>th</sup> September, 2017 and had informed that the rate of 4% per annum on the judgment sum from 18<sup>th</sup> February, 2018 was not disturbed by the Court of Appeal. Further, the said Solicitors sought a clarification from court on the question of whether the normal interest rate of 4% would apply from the date of the judgment of the High Court until payment.

[68] The aforementioned letter demonstrates that the Solicitors for the Petitioner knew that the said rate of interest was not altered by the Court of Appeal. However, they have sought a clarification from the court of the said matter. In this context I am of the opinion that the issue in respect of post-judgment interest rate cannot be a subject matter of the instant appeal.

[69] As I have discussed earlier, the said interest rate will apply from the date of the judgment of the High Court delivered on 18<sup>th</sup> February, 2014 until payment in full.

*Is the Petitioner Estopped from Pursuing the Instant Appeal?*

- [70] It is common ground that consequent to a request made by the Solicitors of the Petitioner, the Solicitors for the Respondent sent a cheque for a sum of \$ 153,767.62 on 4<sup>th</sup> October, 2017 as the total sum awarded by the Court of Appeal.
- [71] The said payment was accepted by the Solicitors for the Petitioner and a trust account receipt dated 5<sup>th</sup> October, 2017 was issued. There is no material before court that the Petitioner accepted the money with the intention of giving up his right of appeal.
- [72] As stated above, the Solicitors for the Petitioner collected the sum of \$ 3,000.00 from the Registry on 20<sup>th</sup> November, 2017 as costs.
- [73] I am of the view that one cannot impose restrictions on the rights conferred by law and to curtail powers of the courts by paying a sum for which the judgment has found him liable. Particularly, when there is a dispute with regard to a part of the judgment. In the instant appeal the parties were at variance with regard to the rate of interest awarded by the Court of Appeal.
- [74] Article 15(2) of Constitution of the Republic of Fiji too has secured the rights of the parties to a civil dispute. It states as follows;

*“Every party to a civil dispute has the right to have the matter determined by a court of law or if appropriate, by an independent and impartial tribunal.”*



- [75] This demonstrates the importance given by the Constitution to protect the rights of the parties in civil disputes. Hence, the merits of each case should be considered in the light of the aforementioned constitutional safeguards.
- [76] Further, the Petitioner was not faced with alternative remedies. The Petitioner only had the option between appealing and not appealing. He has exercised his right of appeal to obtain the alleged claim to have a higher rate of interest. Hence, the doctrine of election has no relevance to the instant appeal.
- [77] However, there may be cases in which a litigant may lose his right of appeal by reason of his conduct after the judgment. This is based on the premise that one cannot adopt inconsistent positions. e.g. if the appellant has taken steps to enforce the judgment or by taking the benefit of the judgment without disputing it.
- [78] Therefore, I am of the opinion that though the Petitioner has accepted the sum awarded by the Court of Appeal and collected the Costs from the Registry of the Court, he is not estopped from prosecuting this appeal. Further, making a payment by one party to other cannot prevent a party from exercising a legal right conferred by law. In this context it is important to note the disparity and the bargaining power between the parties. Therefore, I overrule the said objection raised by the Respondent.
- [79] This position was held in the case of Lissenden v. C. A. V. Bosch, Ltd. (1940) 1 AER 425.
- [80] Moreover, in the case of Ambika Nand v. Mohammed Samsudin Sahu Khan and Mohammed Sadru-Din Sahu Khan [1997] FJCA 26; ABU0066 of 1995S it was held:

*“... .. we are bound to find that the payment of the cheque by respondents into their trust account did not deprive the appellant of his right to appeal against Cullinan J.’s judgment.”*

- [81] A careful consideration of the facts set out above and the law involved in this appeal shows that the issues involved in this appeal are private matters relating to two parties and thus, the grounds of appeal set out in the instant appeal would not affect the general public. Further, the grounds of appeal set out in the instant appeal do not contain law and facts that are worthy of consideration by this court.
- [82] I am also of the view that the said questions of law that are required to be determined in this appeal are not far reaching questions of law, matters of great general and public importance and have substantial general interest to the administration of civil justice.
- [83] Thus, I up hold the objection raised by the Respondent that the Petitioner has not satisfied the threshold contemplated in section 7(3) of the Supreme Court Act 1998 to obtain special leave in respect of the questions of law set out in the instant appeal and therefore, the application for Special Leave is refused.

### **Conclusion**

- [84] For the reasons stated above, I hold that the Court of Appeal did not err in law and fact when it exercised its discretion in awarding interest, post-judgment interest and determining costs. Particularly, the parties have not submitted any material to court to decide on the interest rate.
- [85] For the reasons set out above, the judgment of the Court of Appeal is affirmed and the appeal of the Petitioner is dismissed.



Loh, J

[86] I have read the judgment of Jayawardena, J in draft and I agree with the reasons, the conclusion and the orders made.

**The Orders of the Court are:**

1. Application for Special leave to appeal is refused.
2. Taking into consideration the facts and circumstances of this appeal I order each party to bear their own costs.



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Hon. Mr. Justice Suresh Chandra  
**JUDGE OF THE SUPREME COURT**

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Hon. Mr. Justice Priyantha Jayawardena  
**JUDGE OF THE SUPREME COURT**

A handwritten signature in blue ink, appearing to read "Quentin Loh", written over a horizontal line.

Hon. Mr. Justice Quentin Loh  
**JUDGE OF THE SUPREME COURT**