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**IN THE MAGISTRATES' COURT  
OF THE REPUBLIC OF VANUATU**  
(Civil Jurisdiction)

Case No. 22/2673 CIVL

**BETWEEN: PATTY PETER** represented by **WILLIAM  
FRANK BOE**  
Claimant

**AND: JEAN MARC TEILEMB**  
Defendant

*Date of Judgment: 21<sup>st</sup> June, 2024*

*Coram: Magistrate Fsam*

Appearances:

Mala\_Manen of Sakz Law for the Claimant.

Amos\_KS of the PSO for the Defendant.

**JUDGMENT**

**Background/Introduction**

1) The claimant, Mr. Patty Peter, is a resident in Luganville, Santo, and he has a Kia Rio taxi, registration number T20102, (hereinafter referred to as 'taxi'), which is providing service in Port Vila, and is driven by Mr. William Frank Boe, (hereinafter referred to as 'the driver' or 'William').

2) Following an alleged traffic incident on the 23<sup>rd</sup> February, 2021, which involved the said taxi driven by the driver, and another Grey Nissan Navara vehicle registration number 15768, (hereinafter referred to as 'Nissan Navara'), driven by the defendant in this case, damage was caused on the front left side of the taxi, from which the claimant represented by the driver, William, had filed an amended claim in this court seeking the following reliefs:

- loss of business income in the sum of VT 498,000,
- interest and costs, and further orders as seem fit by the court.

3) A defence was filed where the defendant is disputing liability towards the losses suffered by the claimant, and say that the claim be dismissed with costs.



**Agreed Facts:**

- 4) The agreed facts are that the claimant is the registered owner of the taxi in question.
- 5) That on the 23<sup>rd</sup> of February, 2021, the claimant's driver, William was driving the taxi down from Joint court area, to the rue de Quiros/Edmond Colardeau junction, where the defendant was also turning up the junction in his Nissan Navara.

**Disputed facts**

- 6) The claimant alleges that the defendant was driving his Nissan Navara recklessly and carelessly, colliding with the claimant's taxi. The defendant disputed this, saying the driver stopped over the white mark (indicating stop sign) on the road when he was turning and the left side of his Nissan Navara crashed onto the front left side of the claimant's taxi.
- 7) The claimant also alleged that after the incident, the defendant agreed to pay the full cost of damage and any loss of income for the days the taxi will be in for repair, however the defendant disputed this, saying he verbally agreed to pay for the damaged part to be replaced with new ones, but not for repair of the taxi. The new parts as he understood totaled to the amount of VT 390,000, and he made a deposit of VT 30,000 for the new part.
- 8) That with his insurance company stepping in to cover the repair cost of VT 390,000, he is now claiming for loss of business income for the 83 days in which the taxi business did not operate as it was undergoing repair services in Prestige Motors.
- 9) The defendant disputes the damage to the taxi would not take 83 days to be repaired as alleged,
- 10) He further alleges that he was forced to sign the agreement between himself and the driver.
- 11) That as to the loss of business income, the claimant has failed to particularise this loss and that he does not suffer such loss as alleged.

**Evidence for the claimant**

- 12) The claimant relies on his own evidence and two witnesses, namely his taxi driver, William, and his taxi business manager, George Johnson, (hereinafter referred to as 'George') to prove the defendant was careless and reckless in his driving, and therefore responsible for the damage caused to his taxi.



13) That with the extent of damage caused and the number of days in which the taxi was in the garage for repairs, it has resulted in the claimant's taxi business incurring financial loss, and therefore, the claimant is entitled to claim for loss of business income.

14) The evidence in support of the claimant's case is translated and summarized as follows:

**Patty Peter (the claimant)**

15) His evidence was that he was in Santo on the date of the traffic incident in question, and that he heard of the incident from George his brother-in-law, and to whom the claimant gave the responsibility to oversee the affairs of his taxi business in Port Vila. That he flew in to Vila a few months after the incident, after seeing the picture of the damaged part of his taxi, which was sent to him through messenger by George. This picture is attached as annexure "WFB4" in William's sworn statement (exhibit "C2").

16) That he had obtained a loan to purchase the taxi at Credit Corporation Ltd ("Credit Corp"), and he depended entirely on the taxi to pay out the loan. That at the time of the incident, he was still making loan repayments to Credit Corp.

17) According to his sworn statement, tendered as evidence - exhibit "C1", paragraphs 10 - 11, he was informed of the agreement made between the defendant and his taxi driver William, where the defendant had agreed to pay the damages to his taxi, and he had informed George that the taxi insurance will cover the damages, but the driver must be accountable to pay a daily income payment of VT 8,000 for loss of business income, for the 83 days the taxi had been in the workshop, for repairs.

18) That as to question of his daily expenses, he deposed that he did discuss this with his counsel, Mrs. Mala, including his loan repayments with the Credit Corp.

19) That within the 83 days, he found it difficult to keep up with his loan repayment with the Credit Corp, because he depended entirely on the taxi to pay for the loan repayment. However, the claimant has settled full repayment of his loan with the Credit Corp later in June 2022, and was granted ownership of the taxi and he is seeking judgment for loss of business income.

20) That as to question of ownership at time of the incident, the claimant says Credit Corp was still the owner, however he relied on the contract he signed with the company, in respect of his loan repayment, and that he relied on the daily income of the taxi to make repayment to Credit Corp every end of the month.

**William Frank Boe**

21) Reference was made to his sworn statement filed on the 30<sup>th</sup> of November, 2023, and tendered in as exhibit "C2" and evidence for the claimant.



22) He deposed that he is the claimant's taxi driver, and that on the date of incident in question, he was driving down from joint court area, where he stopped within 2.5 meters from the stop indication mark at the junction between De Quiros street and Edmond Colardeau Street.

23) He said he saw the headlights of the defendant's Nissan Navara approaching him from Ecole Colardeau, driven by the defendant, and that the defendant swerved too early and was not in his lane, and that he could not do anything, until he realized that the Nissan Navara crashed into the front left side of the taxi he was in.

24) He further gave evidence that he questioned the defendant to get some details about the defendant, as well as his vehicle registration number, and that the defendant apologised for causing the accident and that he agreed to pay for the damage.

25) That he then informed the defendant to pay for any loss of business income that will also be suffered by the taxi whilst it is taken in for repair.

26) That he did not call the police to the scene of the incident because the defendant asked him not to do so, because his papers were not valid. He stated however, that he did call the police, an officer by the name of Andrew Tasso, ("officer Tasso") a few days after the incident who then prepared the police abstract report. The report is attached in his sworn statement as annexure "WFB3".

27) The witness said following what was exchanged verbally with the defendant, a written agreement (hereinafter referred to as "the agreement") attached as annexure "WFB6", was entered into between himself and the defendant, on the 2<sup>nd</sup> of March 2021, where the defendant agreed to pay the full cost of damage to the taxi. He then went and obtained a quote of VT 390,000 from the prestige motors, in respect to the cost of repair, (annexed to his sworn statement as "WFB5").

28) He said that he made several reminders and attempt to approach the defendant to fulfill his part of the agreement, until the defendant did make a deposit of VT 30,000 around the 5<sup>th</sup> of May, 2021, towards the repair cost, and it was proposed and agreed to that he makes installments of the said amount every 15<sup>th</sup> and 30<sup>th</sup> of each month until full repair cost is met.

29) He deposed that the defendant failed to fulfill his part of the agreement, hence this proceeding initiated by the claimant against the defendant.

30) His evidence further stated that the taxi spent 83 days in the Prestige Motors for repairs, and basing an average daily income of VT6000 per day, he said that the claimant had incurred loss of a total amount of VT 498, 000. He relies on the letter from the company manager dated June 2 2021, annexure "WFB9" of his sworn statement to confirm the number of days the taxi was in the workshop for repairs.



**George Johnson**

- 31) He gave evidence under oath and relies on his sworn statement filed and tendered in evidence as exhibit “C3”.
- 32) He says he is related to the claimant as his tawian (brother-in-law), and that he was given the responsibility by the claimant to look after the affairs of the taxi in question, in Port Vila.
- 33) That between the hours of 8:45 pm and 9pm, on the 23<sup>rd</sup> of February, 2021, he received a phone call from William, that he was involved in an accident at the junction of de Quiros Street and Edmond Colardeau Street.
- 34) That he went to meet with William, the next day, and was informed by him that he had entered into an arrangement with the defendant.
- 35) That sometime in May, 2021, he accompanied William to go meet with the defendant outside the Ministry of Internal Affairs, to discuss on their verbal arrangement, and where the defendant paid a deposit of VT 30,000 for the repair, and although the defendant agreed to make further payments, he failed to do so.

**Evidence for the Defendant**

- 36) The defendant gives evidence on his own behalf. He did not provide any supporting document to his defence, and relies on his pleading as filed and his deposition in court.
- 37) I translate and summarise his deposition below.
- 38) He confirms his involvement in the traffic incident that occurred on the date and place in question, with the claimant’s taxi.
- 39) His evidence was that he was coming up from Ecole Colardeau towards the turn to Joint court, and as he was making the turn, the left side of his vehicle bumper came into contact with the taxi.
- 40) He deposed that the claimant came too close to the stop indication line, and he did not realise anything until he drove past the taxi and came to stop at a footpath. He said at that point, he saw that the driver (William) reversed the taxi at about 1.5 meters. That afterwards, they had a discussion and William said for him to pay for the damages caused and he agreed to do so, if the taxi went through a local garage.
- 41) He said that the police did not attend the scene of the incident that night, and the police did not approach him for questioning over the incident.



42) He further deposed that he signed the agreement because he was forced into signing it in front of about 4 men, where he identified as including William and George, and 2 other men. He identified George who was seated in the court room, that he thought he was a debt collector, at the time when he signed the agreement.

43) He said when he signed the agreement, he was to pay out the full cost of repair from the quotation of VT 390,000, and he agreed to it because he was afraid because they intimidated him (“tok strong long mi”) and that was when he gave the amount of VT 30,000 as first deposit.

44) He confirmed his evidence under cross, that he was not given time to read and to understand the agreement, but that he relied on the verbal agreement he had made earlier with William, when he signed the written agreement. That after the signing, he realized the amount was too much for him, that he stopped with further payments, and accepted if the claimant pursued court proceeding against him.

45) In his evidence under re-examination, he deposed that he did not know or had any knowledge of the owner of the taxi, or heard of the name ‘Patty Peter’ (the claimant) and that he thought William (the driver) was the owner of the taxi when they approached him to sign the agreement.

### **Legal Issues**

46) There being no dispute that a crash happened, which resulted in damage to the claimant’s taxi, the 3 main issues for the claimant to prove on the balance of probabilities are:

- a) Whether the defendant was reckless and careless in his driving?
- b) And if the answer to a) is yes, whether he is responsible for the crash leading to damage caused to the taxi?
- c) And if the answer to b) is ‘yes’, Whether the defendant is liable to pay for loss of business income suffered by the claimant’s taxi business?

### **Factual analysis and application**

47) I consider the facts and issues before me, and the relevant case authorities cited by both counsels to give the following reasonings.

48) There is inconsistencies in evidence as to whether the vehicles in question collided or crashed into each other, however, it is not disputed by the claimant that he stopped his vehicle in the stop indication lane, and as confirmed by the defendant when he was turning up the junction, and he saw that the claimant had stopped with the taxi his facing towards its front left side, and as described by the claimant in his deposition, because he was making his way towards Stade area.



49) Therefore, I accept that the defendant did crash into the claimant's vehicle, as opposed to colliding with it.

50) The police report was adduced as evidence for the claimant where it states that the defendant was at fault. However, how the report came to identify the defendant's fault is unclear, given officer Tasso did not attend the scene of the incident on the 23<sup>rd</sup> of February, 2021, to acquire the vital information he needed between both drivers and their vehicles. And the report produced by the officer was made solely on the taxi driver's version of the incident and not the defendant's.

51) It is even unfortunate that the claimant did not call officer, Tasso as a witness on his behalf.

52) I therefore find the police report irrelevant for consideration.

53) In respect of evidence relating to the traffic incident of the 23<sup>rd</sup> February, 2021, the claimant does not give corroborating evidence to his claim that he had stopped within the required distance of the stop line, or that the defendant was reckless and careless in his driving, when he swerved at the junction and crashed into his taxi.

54) I find that a proper police report made on the day of the incident, would better corroborate the claimant's claim for reckless and careless driving by the defendant.

55) Therefore, without sufficient evidence, I find that the claimant failed to discharge the burden of proofing on the balance of probabilities, that the defendant was reckless and careless in his driving. And I answer issue (a) in the negative.

56) I accept the defendant admitting crashing into the claimant's taxi, however neither he nor the claimant has put forward sufficient evidence before me to show who was responsible for causing the crash.

57) Evidence shows the defendant apologized for the damage caused by the front left bumper of his Nissan Navara, to the front left side of the taxi.

58) He was uncertain when asked if he saw the claimant on or over the stop line, and he answers he was not sure because it was dark. He was not cross examined on this fact, however his evidence places doubt as to his knowledge of the events leading up to the incident in question.

59) As to the claimant's deposition, that he stopped within the 2.5 M from the stop line, it contradicts what he stated in his sworn statement, in paragraph 5, that he stopped at a distance of 1-1.5 M away from the stop line. This evidence was also not discredited by the opposing counsel, where I am of the view, that had the evidence been so tested, it would shed some light on some potential facts that would assist the claimant's case.



60) The defendant's evidence stated however, that he noticed the claimant reversing about a distance of 1.5M, and as important as this fact is towards deciding on liability, it was unfortunately not further pursued by defence counsel. The defendant was also not cross examined on this fact.

61) And in so considering, I am not satisfied on the balance of probabilities as to who was responsible for the crash in this case. In other words, there is no evidence to make me think it more probable than not, that the defendant is responsible for the crash.

62) In so saying, I find the claimant lacks sufficient evidence to prove the second issue b), and I also answer this in the negative.

63) With respect to the agreement, the driver and George seem to suggest that given the defendant's acceptance of the terms, he was supposed to pay out the full repair cost of VT 390,000. However, the claimant informed George and the driver that his taxi insurance will cover the repairs and for the defendant to only pay for loss of business income.

64) Evidence shows the quote of VT 390,000 does not reflect the actual repair work made, nor was there receipt of same produced as evidence of works carried out on the taxi, creating more uncertainty and doubt over the claimant's evidence.

65) The defendant said he was forced into signing the agreement, and he confirmed this under cross examination, and therefore I accept that he was pressured by the driver and Mr. Johnson to sign the agreement, where he made the first deposit of VT 30,000 out of fear or intimidation by them.

66) That given the contradicting evidence between the driver, William, George and the defendant, I find that the terms of the agreement do not reflect a true discussion between the parties signing it, that is, William and the defendant, nor does it reflect the both parties agreeing to the terms, as is evident by the defendant's testimony. And because it was signed under duress, I consider the agreement void and cannot be enforced by either party.

67) And as to how much loss of business income is suffered, both the claimant and William gave contradictory figures, giving rise to more uncertainty as to the daily income made by the taxi business.

68) Without supporting evidence to show the claimant's net income from the taxi business, and necessary expenses, the claimant has failed to discharge the burden of proofing on the balance of probabilities that he suffered such loss of business income.

69) Therefore, given issue c) follows on from issues a) and b) respectfully, I also answer this issue in the negative. In that the claimant is not entitled to any relief for loss of business income.





**Result**

- 70) The claimant's claim is dismissed.
- 71) Given the result, costs should lie where they fall.

**Dated at Port Vila this 21<sup>st</sup> June, 2024.**

**BY THE COURT**

