

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

Civil
Case No. 20/932 SC/CIVL

BETWEEN: Toara Harrison Luen
Claimant

AND: Lamai Harry
First Defendant

AND: Willie Seru
Second Defendant

Date of Trial: 4 June 2021
Before: Justice V.M. Trief
In Attendance: Claimant – Mr D. Yawha
First Defendant – no appearance (in person)
Second Defendant – Mrs M.G. Nari
Date of Decision: 2 July 2021

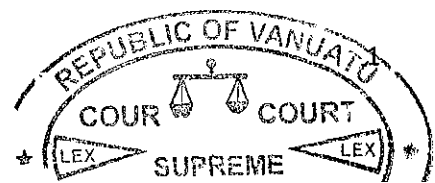
JUDGMENT

A. Introduction

1. This was a Claim for reimbursement of monies spent to repair the Claimant Toara Harrison Luen's truck damaged in an accident negligently caused by the First Defendant Lamai Harry driving the Second Defendant Willie Seru's white Toyota Hiace bus. Mr Harry did not appear at trial despite being served the Claim, Mr Luen's sworn statement and summons to attend trial. This matter proceeded by way of formal proof of the Claim. Judgment is sought against Mr Harry.
2. The Claim was discontinued against Mr Seru; I excused Mrs Nari.

B. Background

3. Mr Luen is the owner of Toyota Turbo Diesel 4WD double cabin truck registration number 302 which was hit at around 8.30pm on 21 November 2018 by Mr Harry driving a white Toyota Hiace bus registration number B17126. The accident occurred near the VMF Camp in Port Vila. Evidence establishing this, and the following matters, comes from Mr Luen's sworn statement [**"Exhibit C1"**].



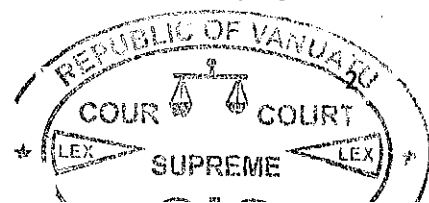
4. Mr Luen and his wife were driving home in his truck. Mr Harry drove towards them on the wrong side of the road. Noting the danger and in the short time that he had to react, Mr Luen drove onto the footpath attempting to avoid a collision. The retaining wall next to the road stopped his truck with the bus charging directly towards them. Mr Luen put the hand brake on and shouted to his wife for them both to pull their legs in towards their bodies. They did so just before the impact from the bus crashing head on into the front of the truck.
5. Mr Luen and his wife checked each other that they were okay and then squeezed out through the passenger door as the truck was too damaged on the driver's side.
6. Mr Harry was drunk. The traffic officer Cpl William Seru who attended arrested Mr Harry and took him to the Police station.
7. The next day, Mr Luen had a round table meeting with Mr Harry, the bus owner Mr Seru, Cpl William Seru and Mr Kalontas, the head of Police Traffic Section. Mr Harry was remorseful and stated that he would find ways to meet the cost of Mr Luen's truck repairs. Mr Seru wanted to await the outcome of the criminal case against Mr Harry.
8. On 26 November 2019, Mr Harry pleaded guilty in the Efate Island Court to one charge of careless driving. He was convicted and fined VT2,000 and VT1,000 Prosecution costs. He paid these on 10 December 2019.
9. Mr Luen paid Asco Motors VT2,863,445 to repair his truck [receipt dated 16 December 2019 in annexure "THL5, **"Exhibit C1"**]. Necessary parts were ordered. He also sourced locally used body parts from friends and negotiated a cheaper rate from Asco Motors as he is a long time customer. Despite subsequent follow-ups with Mr Harry and Mr Seru, neither has reimbursed Mr Luen for the truck repairs.

C. Claim

10. The Claim alleges that Mr Harry negligently caused the accident by speeding, failing to keep to his side of the road, and failing to brake or deviate to avoid a collision. Mr Luen seeks judgment for reimbursement of the monies he spent on repairing his truck.

D. Discussion

11. There is clear evidence that Mr Harry caused the accident on 21 November 2018 through his careless driving. He was convicted for that careless driving. Mr Harry breached his duty of care to his fellow driver Mr Luen by speeding, failing to keep to his side of the road and crashing head on into the front of Mr Luen's truck.
12. There is also clear evidence that Mr Luen's truck was damaged and required extensive repairs by Asco Motors costing Mr Luen VT2,863,445.
13. Mr Luen has proved his Claim on the balance of probabilities. He is entitled to judgment.



E. Result

14. The damages awarded to the Claimant are:
- a. Past economic loss VT2,863,445; and
 - b. Interest on that loss from the date that the cause of action arose (16 December 2019, being the date repairs were paid) to the date of judgment at 5% per annum VT221,034
15. Accordingly I enter judgment for the Claimant against the First Defendant in the sum of VT3,084,479 (the 'judgment sum').
16. The First Defendant is to pay the Claimant interest on the judgment sum until fully paid, at the Supreme Court rate of 5% per annum.
17. Costs should follow the event. The First Defendant is to pay the Claimant's costs as agreed, or taxed by the Master. Once set, the costs are to be paid within 21 days.

F. Enforcement

18. Pursuant to rule 14.3(1) of the *Civil Procedure Rules*, I now schedule a Conference at **7.50am on 29 July 2021** to ensure the judgment has been executed or for the judgment debtor to explain how it is intended to pay the judgment debt.
19. For that purpose, this judgment must be served on the First Defendant.

**DATED at Port Vila this 2nd day of July 2021
BY THE COURT**

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VM Trier
Viran Molisa Trier
Judge

