

IN THE SEYCHELLES COURT OF APPEAL

1. BRIGITTE SERVINA
2. JUSTIN SERVINA } APPELLANTS

v

RITA JUPITER

RESPONDENT

CIVIL APPEAL NO. 18 OF 1994



Before Goburdhun, P., Silungwe & Ayoola, JJA.

Mr B. Georges for the appellants
Mr A. Derjacques for the respondent

JUDGEMENT OF SILUNGWE, J.A.

The first and second appellants are daughter and father respectively who, at the material time, were living in the first appellant's house. They were neighbours of the respondent who lived on the adjoining parcels of land.

Having been a victim of an assault at the hands of the appellants on June 25, 1993, the respondent sued them jointly to recover R50,000 damages (inclusive of moral damages) with costs and interest thereon, for the resulting loss and injury that she had suffered. The description of the said loss and injury was given as trauma to the cheeks and bruises to the calf, hips and chest.

In their joint answer, however, the appellants denied the assault and liability alleged against them and averred that it was the respondent who had looked for trouble.

It emerged from the evidence advanced by both sides that, although the respondent and the appellants had initially lived in harmony as neighbours, disharmony had subsequently developed, culminating in the incident that gave rise to this case. When the respondent and the first appellant alighted from a public bus near their homes at about 16:30 hours on the day in question, the first appellant allegedly blamed the respondent for having made a report to the police about her and threatened that she would stop and beat up the respondent. The first appellant then started to hit the respondent on the public road with her bag and fist blows causing her to slip and fall down. The respondent could not hit back as she was holding two bags. When the second appellant arrived at the scene, he allegedly grabbed the respondent and pinned her arms behind her thereby giving an opportunity to the first appellant to hit her with a stone on the face and thereafter with fist blows all over her body. As a result of the joint assault, the respondent suffered the injuries already referred to which resulted in her receiving medical attention later that evening. According to the medical report, she sustained abrasions and two swellings on the front of the skull; abrasions on the right cheek and bruises on the left calf. Consequently, the respondent suffered distress, humiliation, embarrassment, inconvenience anxiety and lived in fear. All this found expression in the trial court's findings.

It was not in dispute that the respondent had struck the second appellant in the face with a stone but the learned trial judge found that this had been done in self defence.

The learned trial judge found that the appellants had been the aggressors and so awarded the respondent a total sum of R10,000 as damages (made up of R7,250 for the injuries suffered and R2,500 for moral damages) against the first appellant; and a total sum of R7,500 as damages (R2,500 of which represented moral damages) against the second appellant. He ordered the appellants to pay interest on their respective sums and condemned them in costs.

This appeal is against the quantum of damages ordered against the appellants on the ground that the damages were manifestly excessive for what Mr Georges, learned counsel for the appellants, described as "superficial injuries" sustained by the respondent. When he was informed by the Court that this had been a joint tort for which a single sum had been claimed, Mr Georges submitted that damages in this case ought to have been in the region of between five and ten thousand Rupees, adding that had the upper limit namely, R10,000, been awarded, he would not have come to Court to argue that it was manifestly excessive.

In response, Mr Derjacques, the respondent's learned counsel, properly agreed that it had been a misdirection on the part of the trial court to have made two awards, instead of one, for a joint tort and accepted Mr Georges' offer of R10,000.

Since the appellants were joint tortfeasors in respect of a single joint tort, the trial Court's separate awards against them was clearly a misdirection and is common ground. As such,

the two awards against the appellants are hereby set aside. In their place, a single award of R10,000, is hereby made in favour of the respondent plus interest thereon. In the circumstances of this case, I will make no order as to costs.

Dated at this day of 1995



A.M. Silungwe
Justice of Appeal

Judgment delivered in open court
in the presence of counsel.

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In the Seychelles Court of Appeal

1. Brigitte Servina

Appellants

2. Justin Servina

v

Rita Jupiter

Respondent

Mr Georges for the Appellants
Mr Derjacques for the Respondent

Judgment of Goburdhun P

In a plaint entered before the Supreme Court respondent averred that appellants assaulted her causing injuries to her and she claimed SR 50,000 as damages from appellants. The learned trial judge found appellants liable and ordered 1st appellant to pay R7,500 as "compensation for pain and injuries" and a further sum of R2,500 for moral damages and second appellant R5,000 as compensation and R2,500 for moral damages, making a total of SR17,500. In the plaint the particulars of the damages read as follows:

- | | |
|---|----------|
| (1) Trauma to the cheeks, bruises to the calf , lips, chest | SR40,000 |
| (2) Moral damages | SR10,000 |

The question of liability having been given up by Mr Georges at the hearing of the appeal, the only issue left for us to decide is that of quantum.


Mr Georges finds the total sum of R17,500 awarded to respondent manifestly excessive.

The medical certificate described the injuries suffered by respondent as follows: abrasions and two swellings on the front of the skull, abrasion on the left cheek and bruises on the left calf.

I agree with Mr Georges that the injuries suffered were of a superficial nature.

The learned judge made awards separately under both items (1) and (2) of the plaint.


In my view only one should have been made for moral damages. I would also observe that there was one tort and two tortfeasors, in the circumstances a single award should have been made against both. I agree that the total sum awarded is manifestly excessive. I would reduce it to SR10,000. Respondent to pay the costs of this appeal. I would amend the judgment accordingly.



H Goburdhun
President

Dated

*Judgment delivered in open court
in the presence of counsel.*



A. A. Perera
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IN THE SEYCHELLES COURT OF APPEAL

1. BRIGITTE SERVINA
2. JUSTIN SERVINA

v

RITA JUPITER

Civil Appeal No 18/94

(Before: H. Goburdhun, P, A. M. Silungwe
E. O. Ayoola, JJ. A)

Mr. B. Georges for the Appellant

Mr. D. Derjacques for the Respondent.

Judgment of Ayoola J. A:

The respondent, Rita Jupiter, sued the appellants, Brigitte Servina and Justin Servina, to recover a sum of R50,000 from the appellants jointly and severally as damages for the assault jointly committed on her by the two respondents on 25th June 1993, whereby she suffered loss and injury. The circumstances of the assault were that the 2nd appellant had come to the house of the respondent to demand that she returned the bag of the 1st appellant with whom she had travelled and had some altercation. Upon denying that she took the bag, the second appellant had grabbed the respondent's arms and dragged her a short distance when the 1st appellant hit her with her fist all over the body and pushed her, thereby making her to fall against a stone wall and, later, on the ground face upwards. The 1st appellant sat on her in ~~that~~ position and once again attacked her with her fist.

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As a result of the assault the respondent suffered injuries which consisted of abrasions to the head, cheek and lip and bruises on the calf. As a result of these injuries, Amerasinghe, J. awarded damages to the respondent against the first appellant in the sum of R10,000 and against the second appellant in the sum of R7,500. He explained his award in the following terms after adverting to the level of awards in similar cases:

"However exercising the discretion available based on aforesaid judgments I award the plaintiff a sum of Rs 7,500.00 as compensation for pain and injuries suffered and a further sum of Rs 2,500.00 as moral damages against the 1st defendant and I also award a sum of Rs 5,000.00 as compensation as above along with moral damages in a sum of Rs 2,500.00 against the 2nd defendant"

In the event, for the assault he awarded a total of R17,500 as damages.

This is an appeal against the award of damages made by the learned judge on 30th September 1994 on the ground that the damages awarded "are manifestly excessive in all the circumstances of this matter and in particular (i) in view of the totality of the sums awarded; (ii) in view of the minor injuries suffered; (iii) in view of the injury suffered by the second Defendant." What makes the damages appear excessive is that in the same action in respect of the same loss the learned judge awarded two sums whereas the

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respondent had rightly claimed a single sum. I think the law is now well settled that where damages are to be awarded against more than one defendant in the same action in respect of the same loss only one sum can be awarded. (See Greenlands Ltd. v. Wilmshurst (1913) 3 KB 507). Mr. Derjacques rightly conceded that two awards should not have been made and readily accepted an offer of R10,000 made by counsel on behalf of the appellant. In the circumstances, the respondent would be entitled to judgment against the appellants jointly and severally in the sum of R10,000 only.

For these reasons, I would allow the appeal and set aside the judgment entered for the respondent against the appellants severally in two sums and substitute therefor judgment for the plaintiff (respondent) against the defendants (appellants) jointly and severally in the sum of R10,000 with interest and with costs occasioned by the trial to be assessed in favour of the respondent and cost occasioned by this appeal in favour of the appellants to be assessed.

E. O. Ayoola

E. O. AYoola
Justice Appeal Court.

*Judgment delivered in open court
in the presence of counsel*

A. A. Pereira
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8/6/95