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IN THE SEYCHELLES COURT OF APPEAL

STATE ASSURANCE CORPORATION **APPELLANT**

Versus

GUSTAVE FONTAINE **RESPONDENT**

Civil Appeal No:41 of 1997

[Before: Goburdhun, P., Silungwe & Adam, JJ.A]

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Mr. K. Shah for the Appellant
Mr. P. Boulle for the Respondent

REASONS OF THE COURT
(Delivered by Adam J. A.)

These are our reasons for the judgment given on the 28th November 1997. The appellant sought an order from this court seeking to set aside the judgment of Bwana J alternatively that the award of damages be reduced. In the Appellant's Memorandum of Appeal the grounds against the award of damages were that the total award of SR307,000 was manifestly excessive and in particular the sum of SR228,000 under the heading of loss of future earnings; that the trial judge was in error in awarding that amount of SR228,000 by computing SR500 per month for 38 years in that (a) he did not take into account the uncertainties of life; (b) such a capital sum when invested at the present rate of investment of 10 to 12% per annum would yield between SR1900 to SR2280 per month and (c) an award of say SR60,000 would yield SR500 to SR600 per month.

The Respondent's claim was that on the 23rd May 1995 while walking along the road at Point Larue, Mahe he was hit by a motor vehicle registration number S9214 driven by Robert Renaud who after hitting him drove away. As a result of this the Respondent was injureed and suffered loss and damages so he claimed SR307,000 as follows:-

(1)	pain, suffering, anxiety, distress and discomfort	SR60,000
(2)	loss of potential earnings at SR100 per day for 6 months from 23rd May 1995 to 23rd December 1995	SR18,000
(3)	loss of further earnings at SR500 per month for	

	38 years	SR228,000
(4)	cost of medical report	SR1,000

The Respondent averred that Robert Renaud by reason of the operation of the motor vehicle caused him the loss and damages and therefore was liable to the Respondent.

Robert Renaud, the owner of the vehicle, after being served did not appear and so the Respondent's legal practitioner proceeded ex parte before Bwana J.

The Appellant sought leave to appeal as an interested party and to file a Notice of Appeal out of time which was granted by this Court in Civil Appeal No. 19 of 1996 on 28th October 1996.

In the written submissions for the Appellant Mr. Shah argued that the medical evidence in the report of the 18th August 1995 presented to Bwana J showed that temporary disability was about 10%, that it was too early to decide the residual disability and that the Respondent had not pleaded permanent disability. He argued that even assuming there was permanent disability of 10% and the Respondent's earnings were SR100 per day on a 5 day week (or monthly wages of SR2000), the loss would amount to SR200 per month. He asserted that an amount of SR25000 invested in an interest bearing account would yield SR2400 per year. Mr. Shah submitted that the award of SR307,000 was manifestly excessive.

Mr. Boulle in the written submissions for the Respondent argued that the method of computation accepted by Bwana J consisted of multiplying the estimated loss per month by the number of months left until the Respondent reached retirement age and that the challenge to the trial judge's award defied commercial logic in view of the fact that the accepted formula used by Bwana J granted all future loss in one lump sum to cover present loss of revenue so as to avoid the impossible task of pegging the same to an inflation index to maintain the value over the years. He cited *Chang Yune v Costain Civil Engineering Co. Ltd 1973 SLR 259; Alcindor v Marcel & SPTC Civil Side No. 238 of 1993 and United Concrete Products (Sey) Ltd v Albert Civil Appeal No. 19 of 1994.*

As pointed out by Mr. Shah in Costain Civil Engineering Co. Ltd v Chang Yune 1973 MR 312 the Court of Appeal in Mauritius sitting as the appellate court from the Supreme Court of Seychelles observed at 313 about the method of computing damages for prospective loss of earnings adopted by Sir Louis Souyave, Chief Justice of Seychelles:

> *"This method of assessing prospective loss of earnings is open to serious objection. In fact, it gives the respondent more than what he has lost. His weekly loss of earnings has been assessed by the Chief Justice at Rs80. The sum awarded, i.e, Rs.72,000, if invested to yield a yearly income at the conservative rate of 8 per cent per annum, would yield Rs.5,760 every year or Rs. 110 weekly. And the capital would remain intact during the whole of the respondent's life time and, after his death, would form part of his estate. We consider that Rs. 40,000 would, in the circumstances of this case, be a more realistic figure. It would also be more in accord with the line of reasoning adopted by the Chief Justice."*

Mr. Boulle also argued that Mr. Shah's suggestion that the Respondent should receive a capital amount that would in 10 years time still give him a monthly revenue which would by that time be only worth 10 % in terms of purchasing power of the same currency according to Mr. Boulle would be irrational.

In United Concrete Products (Sey) Ltd v Albert, supra, Ayoola JA dealt with both the trial judge's reassessment of the fall in the value of money and the method of computing damages for prospective loss of earnings. He said at p4-5 and p.10:-

> *"In the absence of expert evidence of the fact and extent of depreciation in the value of the Seychelles Rupee, it is not right to assume that the Rupee has depreciated at all or by 100%, in*

eight years. In Naylor's case (Yorkshire Electricity Board v Naylor (1968) AC 529, 552) the trial judge had before him the evidence of "an expert in economics, statistics and mathematical economics." No such evidence was available to Perera J. It is not safe to assume that because the value of the English pound had depreciated over a period of time, the Seychelles rupee must necessarily have suffered the same fate ... It does appear to me that in using the yardstick of an assumed depreciation of the rupee, the learned judge had made a wholly erroneous estimate.

The multiplier method of assessing future loss of earnings is as widely used as it is widely criticised. It involves (i) finding the net average annual income lost by the plaintiff (the multiplicand and the number of years during which the loss will last (the multiplier) and (ii) multiplying the multiplicand by the multiplier. In determining what the plaintiff would have earned but for the injury and what he is likely to earn, and also in determining the multiplier a host of factors which may appear speculative make the taks of quantifying the plaintiff's loss one which cannot produce a mathematically accurate result."

It is clear from the foregoing that this Court has shown in the past that the multiplicand and multiplier method of computing loss of future earnings should be avoided.

We turn to the award for pain, suffering, anxiety, distress and discomfort, not forgetting that the plaint was dated 10th November 1995 and the medical report indicated that the x-ray showed a fracture in the right 1/3 lower part of the humerous, that the details of the injuries sustained were a deformed right upper arm, punctured wound with mild

bleeding at 1/3 distal area of the posterior side of the upper arm – 1cm x 3cm and peripheral pulses of the right arm were intact and that he was kept in hospital from the 23rd May 1995 to 26th May 1995 with further reviews done at the surgical outpatient department on 26th June 1995 and 18th July 1995.

In United Concrete Products (Sey) Ltd v Albert (supra) there were lacerations on many parts of the face with the most serious injury to the right eye which was surgically removed and replaced with an artificial eye resulting in 40% incapacity from occular injuries. In July 1994 Perera J awarded SR10,000 which was not interferred with by this Court on appeal in May 1995. In Ruiz v Borremans Civil Appeal No. 22 of 1994 there was a fracture of the left metatarsal bone which required a plaster to be applied that subsequently revealed a tumefaction of the size of a cherry on the dorsal side of the first metatarsal where there still existed sequelae and cuneo-metatarsal synostosis. There was permanent physical invalidity of 5%. The award of July 1994 of SR80,000 by Bwana J for moral damages for pain, suffering, permanent disability, disfigurement and loss of enjoyment of life was reduced in June 1995 by this Court to SR40,000.

In Mousbe and SPTC v Elizabeth Civil Appeal No. 14 of 1993 and in Ruiz v Borremans (supra) this Court referred to Singh v Toong Fong Omnibus Co. Ltd [1964] 3 ALL ER 925 (PC) at 927 where Lord Morris observed:-

> *"If, however, it is shown that the cases bear a reasonable measure of similarity, then it may be possible to find a reflection in them of a general consensus of judicial opinion. This is not to say that damages should be standardised, or that there should be any attempt to rigid classification. It is but to recognise that, since in a court of law compensation for physical injury can only be assessed and fixed in monetary terms, the best the courts can do is to hope to achieve some measure of uniformity by paying heed to any current trend of considered opinion. As far as*

possible it is desirable that two litigants should receive similar treatment, just as it is desirable that they both receive fair treatment."

Even allowing for updating awards to take into account for the fall in the value of money, the award of SR60,000 cannot be justified. We find that the award by Bwana J, is seriously wrong when compared with other awards.

Accordingly, the award for pain and suffering, anxiety, distress and discomfort must be altered to SR15,000 and for loss of future earnings must be altered to SR25,000.

Dated at Victoria, Mahe this 9th day of ***April*** 1998.

H. GOBURDHUN	**A. SILUNGWE**	**M.A. ADAM**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**