

IN THE SEYCHELLES COURT OF APPEAL

WILLS PHILOE & ORS

APPELLANTS

Versus

NORMAN AGRICOLE & ORS

RESPONDENT

Civil Appeal No: 3 of 1998

[Before: Goburdhun, P., Silungwe & Venchard, J.J.A]

Mr. K. Shah for the Appellant
Mr. J. Renaud for the Respondent



JUDGMENT OF THE COURT

(Delivered by Venchard, J.A)

The Respondent, a 12 year old school boy, is represented by his guardian ad litem in respect of a claim personal injuries which he sustained in a road accident caused by the rear wheel of a bus driven by the first Appellant and owned by the second Appellant.

The tortious liability of the Appellants was admitted. The trial judge found that the nature of the injuries suffered by the Respondent could be assessed from the medical report of the Consultant Surgeon, Dr. Ken Barrand. The relevant part of the medical report which has been challenged reads thus:-

"..... His forefoot was totally disrupted and in Theatre under General Anaesthesia on 16/6/95 I was obliged to remove the forefoot keeping what soft tissues I could. I further dressings under Anaesthesia were performed on 22/6/95, 27/6/95 and 6/7/95. On this last occasion a Major Skin Graft was performed.

Assuming no further surgery is required he will be able to go home with crutches in about 2 weeks and return to school in about 1 month.

Clearly he has a permanent incapacity which will prevent him from enjoying or being successful in sports. He will require special shoe ware all his life and is at risk for ulcers and infections in the main grafted skin. Working as

a labourer in the future would be more difficult for him than a person with normal feet. He has suffered with pain, emotional distress and loss of schooling.

Sgd. Ken Barrand FRCS
Consultant Surgeon

The plaint sets out the various items of damages and included the item: "Loss of Education and Future Prospects – Rs90,000."

The trial judge awarded the sum of Rs50,000 under that item. The Appellants are aggrieved by this award which they find excessive and the memorandum of appeal reads as follows:-

"Memorandum of Appeal

Wills Philoe and Seychelles Public Transport Corporation the above named Appellants appeal to the Seychelles Court of Appeal against the award only for loss of education and future prospects on the following grounds:

(1) The learned Judge misdirected himself in assessing this head of damages by considering the Plaintiffs loss of amenities of life under this head and failed to take into account that there was no evidence before the court that the plaintiff's future proprietary rights will be affected.

(2) The award of damages under this head is manifestly excessive if regard is had to paragraph 1 above and the fact that the Plaintiff was absence from school for one month only.

WHEREFORE the Appellants pray this Honourable Court to reverse the award of the Supreme Court, or alternatively to reduce it."

Mr. Scott who appeared for the Appellants submitted that the award was excessive as the Respondent's absence from school was only for one month. He did not comment on the loss of amenities but strenuously argued that there was uncertainty as regards the future prospects of the Respondent. He indicated that the Respondent could well become a doctor, lawyer or a successful entrepreneur in which his

physical disability may not have a bearing on his future prospects.

Mr. Renaud, in reply, submitted that the claim in respect of loss of education should not be limited to the absence of one month from school. The physical impediment may have an adverse effect on the Respondent's schooling in future. He agreed that there was uncertainty as regards the future prospects of the Respondent but the award made by the trial judge was not wrong in principle.

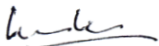
We agree with Mr. Renaud that in assessing the damages for loss of education, account must be taken not only on the one month's absence from school but also the possible effect which the Respondent's disability may have on his schooling in future.

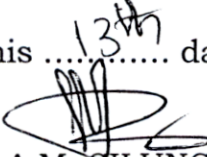
Mr. Scott submitted that the Respondent may well become a successful professional and his physical disability might not have any inhibitive effect on him. We would like such a prophecy to become true but we cannot be blind to the employment pattern in Seychelles. The Consultant Surgeon who examined the Respondent opined that "working as a labourer in the future would be more difficult for him than a person with normal feet."

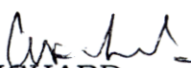
Although there is uncertainty as regards Respondent's future employment, we can take judicial notice that employment in Seychelles may be relatively easy to obtain in the fishing, building or tourist industry. It is obvious that the Respondent may not, because of his disability, obtain employment in an area where, in normal circumstances, he would be able to secure employment. On the other hand, it is almost certain that in the event he obtains employment his career or promotion prospects may be seriously prejudiced because of his disability.

We find that the trial judge was fully justified to make an award under this item of claim. It however appears to us that the quantum of the award is inadequate but, as there has been no cross appeal, we dismiss the present appeal with costs.

Dated at Victoria, Mahe this ^{13th}..... day of August 1998.


H. GOBURDHUN
PRESIDENT


A.M. SILUNGWE
JUSTICE OF APPEAL


L.E. VENCHARD
JUSTICE OF APPEAL