

IN THE SEYCHELLES COURT OF APPEAL

NADIA KNOWLES

APPELLANT

versus

LEONNE PAYET

RESPONDENT

Civil Appeal No: 14 of 2001

[Before: *Silungwe, Pillay & De Silva, JJ.A*]

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Mrs. N. Tirant-Gherardi for the Appellant

Mr. K. Shah for the Respondent



JUDGMENT OF THE COURT

(Delivered by De Silva, JA)

This is an action in delict filed by the plaintiff (now the respondent) against the defendant (now the appellant) for damages on account of a tree on the appellant's land falling on the house of the respondent. The appeal is confined to the quantum of damages awarded to the respondent by the trial Court. The particulars of the damages pleaded in the plaint were (a) repairs to the house and outbuilding, including loss of rent of SR12,000 - SR30,000 (b) Moral damages, SR10,000.

On the issue of damages, the learned trial Judge stated, "*In essence the plaintiff claims SR12,000 for 3 months loss of rent, SR18,000 for additional expenses incurred in rebuilding the house and outbuilding and SR10,000 for moral damages.*"

On a consideration of the evidence the trial Court awarded a sum of SR7200 (3600 x 2) in respect of loss of rent and an award of a total sum of SR15,000 for the "*additional expenses*" which included the payment of SR13000 to witness Banane, the carpenter, SR574.74 on 2 receipts for purchase of materials and damages to the chicken coop and the outbuilding.

The first submission of learned Counsel for the appellant was that the trial Court erred in law in awarding an unspecified sum in damages in regard to the chicken coop and outbuildings as no evidence had been led in respect of this head of damages. On the other hand, learned Counsel for the respondent contended that the award of damages in respect of the chicken coop and the outbuildings is no more than SR1425.25c. This submission is correct having regard to the total sum awarded (SR15,000) and the amount paid to the carpenter (SR13,000) and the sum of SR574.74c proved by the two receipts. The appellant did not seriously contest the fact that the chicken coop, the store and the wall fence had in fact been damaged – witness Joseph Payet testified that he repaired the chicken coop, the store and it cost “*three to four thousand rupees.*” The photograph (exhibit P2) shows the damage to the chicken coop. In the circumstances, we are of the view that the award of SR1425.26c is not excessive and is fair.

The next submission on behalf of the appellant was that the trial Court failed to consider the extent of the damage caused to the house and to distinguish the cost of such repairs from the additional costs incurred in the renovation of the house. As pointed out by Mr. Shah for the respondent, there was sufficient evidence in regard to the actual damage to the house. The respondent testified that “*the ceiling, the roof, everything was damaged.*” She further stated, “*all the roofing had come off.*” Witness Banane, who was the carpenter who did the repairs deponed: “*We had to change everything because the roof was already damaged, ... part of the tree was on the house and all the branches were on the house ... I had to remove the whole roof.*” It is relevant to note that although the tree fell on part of the house, its impact would have affected the whole roof, particularly because it was a “*huge tree.*” Having regard to the evidence on record, we see no merit in this submission advanced on behalf of the appellant.

It was further urged on behalf of the appellant that the trial Judge erred in law in basing his award of damages on non-documentary evidence as the receipts produced failed to support the respondent's claim. But this submission overlooks the significant fact that there was ample oral evidence in regard to the extent and nature of the actual damage and this evidence was supported by the photographs (exhibits P2, P3 and P5) produced in evidence without objection. There is no requirement of law that a claim for damages must be supported by documentary evidence such as receipts. The weight to be given to the evidence adduced is left to the discretion of the trial Court. This submission is not, in our view, well-founded.

Furthermore, it was argued that the trial Court erred in law and in fact in granting damages for loss of rent and failed to consider the conflict in the evidence of the two witnesses. It was, however, not disputed that the house which was rented by witness Bastienne was not in a fit condition for occupation. The monthly rental was SR4000/-. It is true that at first Bastienne stated that he did not pay rent for four months during the period the house was under repairs but in cross-examination he said that he paid SR400 as rent. The respondent however stated that she was not paid rent for 3 months. The learned trial Judge carefully evaluated the evidence of the two witnesses and awarded a sum of SR7200 on the basis that the respondent was paid as rent only SR400 per month for a period of two months (3600 x 2). We are of the view that the award of damages under this head was fair and just.

It was also contended that the trial Judge erred in law in failing to explain how he had reached the figure of SR5000 for moral damages. It is to be noted that in the plaint, a sum of SR10,000 was claimed under this head. When questioned in regard to the claim for moral damages the respondent

stated: *"Yes, because it affected me, I was depressed as I am very old. Nadia (the appellant who was her daughter) did not even sympathise with me or even ask me what had happened."* Having regard to the evidence, we see no error in the award of SR5000 as moral damages.

Finally, it was submitted that the sum of SR7000 obtained by the respondent from the Disaster Relief Fund was quite sufficient to cover the actual cost of repairs. The evidence on record, however, is to the contrary. Moreover, the officer who was called by the appellant from the Disaster Fund testified that *"We don't always cover the full cost of any incident that is brought to our attention."*

On a review of the entirety of the evidence led on behalf of the respondent, we are of the view that the award of damages is not excessive ; it is reasonable. The proper approach of an appellate court to the issue of the quantum of damages awarded by a trial Court is cogently set out by Salmond on the Law of Torts page 777 (15th edition):-

"When the award is that of the Judge alone, the appeal is by way of rehearing on damages as on all other issues, but generally there is so much room for legitimate difference of opinion that the appellate court will be slow to interfere."

The learned author cites in support of this principle the case of **Nance v British Columbia Electric Ry** 1951 A.C. 601 at 613 per Viscount Simon:-

"It must be satisfied either that the Judge, in assessing the damages, applied a wrong principle of law (as by taking into account some irrelevant factor or leaving out of account some relevant one); or,

short of this, that the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damages."
(emphasis added)

For those reasons the judgement of the Supreme Court (Juddoo J) is affirmed and the appeal is dismissed with costs.



A. M. SILUNGWE
JUSTICE OF APPEAL



A. G. PILLAY
JUSTICE OF APPEAL



G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 19th day of **April** 2002.