

IN THE SEYCHELLES COURT OF APPEAL

SUZETTE HERMITTE

APPELLANT

versus

PHILIPPE DACAMBRA

1ST RESPONDENT

AND

SEYCHELLES GOVERNMENT

2ND RESPONDENT

Civil Appeal No: 4 of 2000

[Before: Ayoola, P., Silungwe & De Silva, JJA]

Mr. P. Boulle for the Appellant

Ms. L. Pool for the Respondent

JUDGMENT OF THE COURT

(Delivered by De Silva, JA.)



In this action the appellant (the plaintiff in the trial court) claimed a sum of R900,000 as damages on account of personal injuries suffered by her. In the plaint she averred that the 1st respondent (1st defendant at the trial) while acting in the course of his employment shot her in the leg causing severe injuries to her. In the plaint it was further pleaded that the 2nd respondent (the 2nd defendant at the trial) was "vicariously liable jointly and severally with the 1st defendant in respect of the loss and damages" claimed. The 1st respondent is a police officer and the 2nd respondent is the Government of Seychelles. Having carefully considered the evidence and the applicable law on the issue of liability, the learned trial judge held with the appellant. The trial court awarded to the appellant a sum of SR60,000 as moral damages, a sum of SR15,000 for loss of amenities of life, infirmity and permanent disability, a sum of SR10,800 for medical and other expenses and a further sum of R1000 for the medical report. The total amount awarded was SR86,800.

The sole ground of appeal urged before us by Mr. Boulle, learned counsel for the appellant, is the failure of the learned trial judge to award damages under the head of "loss of earnings." In her plaint the appellant claimed a sum of SR540,000 at the rate of SR1500 per month for 30 years. It is in evidence that the appellant was 30 years of age at the time of the incident. It was the contention of Mr. Boulle that the learned trial judge was in error in his finding that, "As regards loss of earnings no proof was adduced that the plaintiff received SR2,500 per month as testified or SR1,500 as claimed in the plaint." Reliance was placed on the following evidence given by the appellant:-

“Q: Do you work?

A: I used to work in the shop with my husband but I can no longer do it..

Q: Whose shop is it?

A: Jeffrey and my mother's ...

Q: What did you do in the shop?

A: I used to sell goods in the shop. I used to go and buy goods for the shop, driving the pickup by myself.

Q: Can you drive nowadays?

A: No.

Q: What revenue did you get from the shop?

A: I received SR2,500 per month.

Q: Are you now able at all to go and do the work which you used to do in the shop?

A: No. I would only go there to the shop but I would not help.

Q: Why can't you help;...?

A: I cannot stand for long.

Q: Have you helped at all since then?

A: No.

In cross examination the appellant was questioned as follows:-

Q: You said you were working in the shop with your husband. How much were you earning?

A: SR2,500.

Q: You could no longer work in the shop with your husband?

A: I cannot stand.

.....
Q: You still have your two hands?

A: Yes.

Q: You can't do other work that you used to do in the shop but can't you do some other work sitting down?

A: My leg becomes swollen.

Q: You don't work in the shop any more?

A: No.

Q: You think you will not be able to do any kind of work in the future?

A: I cannot do anything ...

.....
Q: In your plaint I see that you have claimed SR540,000 for loss of earnings and you calculated this at SR1500 per month for 30 years. Don't you think this is a bit unreasonable to predict that you would have worked for another 30 years?

A: Had I not received this injury I would have worked all my life.

Q: You think you are not able to do any job in the future?

A: No.

In re-examination the appellant further stated that she was a driver and went out to purchase goods for the shop.

In cross-examination of the appellant's husband he stated as follows:-

“Q: You said that before the incident your wife was working in the shop?

A: Yes.

Q: Did you pay her a salary?

A: Yes, SR2500.

Q: She cannot work in the shop any more?


A: Yes.


On a consideration of the evidence set out above, it appears to us there was no cross-examination on the point that the appellant was paid a sum of SR2500 per month for the work she did in the shop. Nor was any evidence led to the contrary. Thus we are of the view that the evidence remained unchallenged and uncontradicted. This was a crucial fact which tilted the balance of evidence in favour of the appellant. Having regard to the evidence on record the court was entitled to make an award under the head of “loss of earnings”. However, we agree with learned Senior State Counsel that the amount claimed in the plaint (SR540,000) was grossly excessive and unjustified.

The case of **Chang-Yune v/s Costain Civil Engineering Company Ltd** (1973) SLR295 strongly relied on by Mr. Boulle for the assessment of the damages is of little assistance for the reason that the nature of the employment in that case is significantly different from the facts in the appeal before us. In that case “the plaintiff, who is 34 years old, has been a driver of heavy vehicles. The evidence clearly shows that as a result of the accident ... his disability ... is such that he is unfit not only to drive a heavy vehicle but also a taxi-car... On the assumption that he could find some kind of light work it is obvious that it would carry a considerable lower remuneration... On the facts, I find that as a result of the accident the plaintiff's earning capacity has diminished considerably and that this prejudice is certain and permanent.” But in the present case the appellant was merely assisting her husband in a shop that was a family concern. In the circumstances, there is no certainty in regard to the duration of the employment and, what is more, there are inherent “imponderable contingencies,” considering the nature of the employment.

On a consideration of the proved facts, we award a sum of SR50,000/- (fifty thousand rupees) in respect of loss of earnings. We accordingly amend the judgment of the trial court by adding a further sum of SR50,000 to the sum of SR86,800 already awarded to the appellant. The appellant would be entitled to the costs of appeal payable by the 1st and 2nd respondents jointly and severally.


E. O AYoola
PRESIDENT


A. M. SILUNGWE
JUSTICE OF APPEAL


G. P. S. DE SILVA
JUSTICE OF APPEAL

Dated at Victoria, Mahe this 3rd day of November 2000.