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**IN THE SEYCHELLES COURT OF APPEAL**

**GUY KHAN**

**APPELLANT**

versus

**SONNY LABROSSE**

**RESPONDENT**

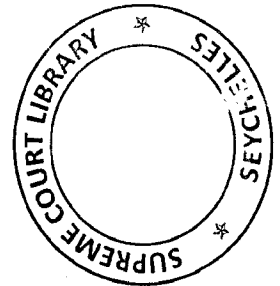
Civil Appeal No: 6 of 2000

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

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Mr. J. Renaud for the Appellant

Mr. D. Lucas for the Respondent



**JUDGMENT OF THE COURT**

*(Delivered by De Silva JA)*

This is an action for defamation (the tort of slander). The respondent (then the plaintiff) in his plaint averred inter alia that:-

- (a) at the material time he was a pick-up driver engaged in commercial trips for the Indian Ocean Tuna Company Ltd and the appellant (the defendant at the trial) was the Manager of the same company;
- (b) there was a dispute in regard to the loss of some sheets of plywood and the appellant falsely accused the respondent of the theft of the plywood sheets, threatened to report him to the police, and directed the security officers of the company not to allow the respondent to enter the premises;
- (c) the defamatory words were published to several persons, including W. Bastienne and F. Payet, two employees of the Company;

(d) the publication of the defamatory words caused injury to his character and reputation and loss of business with the Company. He claimed a total sum of SR92150 as damages.

After trial, the learned Judge entered judgment for the respondent in a sum of SR20,000 with costs. At the hearing before us, the only submission made by learned Counsel for the appellant was that the damages awarded were excessive and suggested that a sum of SR10,000 would be more appropriate and that too without costs in the trial court. Learned Counsel pointed out that the publication of the defamatory words was confined to only two persons, both of whom, were working in the same company as the respondent. It was further submitted that these two persons also left the company at or about the time the respondent ceased to work for the company.

On the other hand, learned Counsel for the respondent referred us to the following item of evidence given by witness F. Payet.

“Q: Personally do you know if these words were said to other I.O.T employees?”

A: Maybe because a lot of people were talking about the plaintiff.”

The refusal of the appellant to tender an apology was also stressed by learned Counsel for the respondent. In answer to Court, the respondent stated in his evidence that his income from the work he did at the I.O.T. was SR9500 (gross) per month and the net profit was about SR4000.

Ayoola J.A. (as he then was) in the case of **Seychelles Broadcasting Corporation v Bernadette Barrado** (Civil Appeal No. 9/94) and **Ogilvy Berlouis v Bernardette Barrado** (Civil Appeal No. 10/94) considered the question of the basis upon which an appellate court

should interfere with the award of damages in a defamation suit by the trial Judge. Said the learned Judge:-


“The guiding principle laid down by Greer L.J. in *Flint v Lovell*, (1935 1KB 354 at 360) has been accepted by courts in this jurisdiction in several cases. In the well known passage Greer L.J. stated the principle thus ‘... this court will be disinclined to reverse the finding of a trial Judge as to the amount of damages merely because they think that if they had tried the case in the first instance they would have given a lesser sum. In order to justify reversing the trial Judge on the question of the amount of damages it will generally be necessary that this court should be convinced either that the Judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this court, an entirely erroneous estimate of the damage to which the plaintiff is entitled.”


In our view, in the appeal before us the learned trial Judge (Karunakaran J) has neither acted upon a wrong principle of law nor was his award of damages extremely high. The trial Court has relevantly stated in its judgment:-

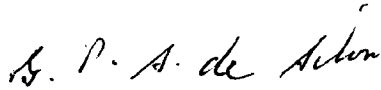
“...I note that in any action for defamation if the defendant had made or offered an apology to the plaintiff for such defamation before the commencement of the action, or soon afterwards as he had an opportunity of doing so, then such apology would be considered in mitigation of damages. However, in this particular case it appears that the defendant refused to offer an apology despite demand by the plaintiff before the commencement of the action.”

Moreover, the standing and good repute of the respondent and the gravity of the imputation are also relevant factors in the assessment of damages. It is in evidence that the respondent is a man who does not have a criminal record.

For these reasons, we are of the view that there is no valid basis upon which we could reduce the quantum of damages awarded to the respondent. The judgment is accordingly affirmed and the appeal is dismissed with costs.

  
**E. O. AYoola**  
**PRESIDENT**

  
**A. G. PILLAY**  
**JUSTICE OF APPEAL**

  
**G. P. S. DE SILVA**  
**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 12<sup>th</sup> day of **April** 2001.