

**IN THE SEYCHELLES COURT OF APPEAL**

**MONICA KILINDO**

APPELLANT

versus

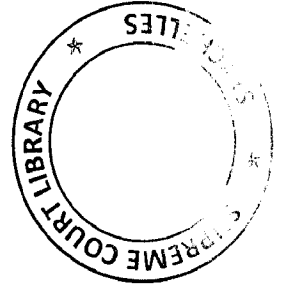
**SIDNEY MOREL  
S.P.T.C**

1<sup>ST</sup> RESPONDENT  
2<sup>ND</sup> RESPONDENT

Civil Appeal No: 12 of 2000

*[Before: Ayoola, P., Silungwe & Pillay JJ.-A]*

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



**JUDGMENT OF THE COURT**

*(Delivered by Silungwe JA)*

The appellant, now aged 46 years, appeals against an award by the Supreme Court of SR162,200-00 as damages in respect of personal injuries she sustained in a motor traffic accident caused by the negligence of the first respondent, an employee of the second respondent.

It is common cause that on August 10, 1997, the first respondent was driving the second respondent's motor vehicle when he collided with the appellant's motor vehicle and thereby occasioned her serious personal injuries which necessitated initial surgery in Seychelles and twice in Singapore where a total left knee replacement was carried out. Those injuries have resulted in a permanent disability of 40% to her left leg.

The appellant claimed SR3,115,200-00 in damages but the trial Court found the claim to be "unreasonably exorbitant and disproportionate to the actualities". What was meant by the term "actualities" is not easy to appreciate. The Court then proceeded to make the following award:-

1.	Transport to attend hospital and treatment including air-ticket and accommodation	R15,000-00
2.	Medial Reports	R 200-00
3.	Cost of Medicine	R 2,000-00
4.	Loss of earnings	R 5,000-00
5.	Globally for the injuries sustained and for the resultant pain and suffering	R110,000-00
6.	Loss of amenities of life	R 20,000-00
7.	Inconvenience, anxiety and distress	<u>R10,000-00</u>
	Total	<u>R162,200-00</u>

Before us, items 1, 2, 3 and 4 of the award are not in contention but items 5, 6, and 7 are. In both his written skeleton and oral argument, Mr. Renaud contends, on behalf of the appellant, to the effect that the learned trial Judge failed to give adequate consideration to the appellant's injuries, pain and suffering, permanent disability and discomfort; and to consequential damages, particularly in view of the fact that the knee replacement is a relatively new technology, and, as such, the appellant might once again need to have recourse to a further knee replacement.

Mr. Shah's response to Mr. Renaud's argument is that the learned Trial Judge did not have to take into account any consequential damages of a further knee replacement as such damages were speculative. A total knee replacement, continues Mr. Shah, is an operation that was fashioned some 15 years ago and it will take "*about 15 to 20 years*" to know whether a further knee replacement will be required in the instant case. He supports the award of the learned trial Judge on the ground that he properly took into account the appellant's three surgical operations, considerable pain and suffering, discomfort, inconvenience and distress.

Having examined the record of appeal and having listened to both learned counsel, we are inclined to accept Mr. Renaud's argument but only to the extent that the trial Court's award in regard to items 5, 6 and 7 above, taken together, was too inadequate for the reasons given hereunder. In the meantime, however, it is pertinent to observe that, in so far as consequential or prospective damages are concerned, it is trite law

that only reasonably ascertainable, as opposed to uncertain, damages are permissible. Whilst it is possible that new technology might falter, as Mr. Renaud claims, it is equally possible that such technology may stand the test of time. Hence, the contention concerning the appellant's possible knee replacement appears not only to be uncertain but also speculative, and it is, therefore, too remote.

We now return to our reasons vis-à-vis the inadequacy of the award aforesaid. It is common cause that the learned Trial Judge found the appellant "*to be a credible witness*" and so believed her testimony. The appellant had testified, inter alia, as follows:-

"I cannot stand long because of my knee. I can still feel pain. I cannot wear high heel shoes as I wished to wear. Nowadays I would rather stay at home instead of going out for activities because I am afraid that I may make a false step and affect my knee more. For sexual activities (sic) they have been decreased."

The Supreme Court, having found that the appellant had spoken frankly and truthfully about her injuries, three operations, pain and suffering and so forth, came to the conclusion, and properly so in our view, that the claim under the heads of injuries, pain and suffering, loss of amenities, inconvenience, and distress, all of which, taken together, exceeded SR2,000,000.00, had been grossly exaggerated.

The trial Court thereafter catalogued certain comparable awards such as –


- (i) **Leon Malcouzanne v Peter Simeon** C.S. No. 41 of 1993 – 20% permanent knee disability; SR30,000.00 and SR45,000.00 for pain and suffering and permanent disability, respectively;


- (ii) **Didas Louis v SPTC** C.S. No. 6 of 1996 – plaintiff aged 46 years, 15% permanent knee disability – SR55,000.00 for pain and suffering and loss of amenities;
- (iii) **Simon Maillet v Louis** – C.S. 117 of 1999 – fracture of left tibia and fibula, pain in ankle and a limp - SR30,000.00 for pain and suffering and SR10,000.00 for loss of amenities of life;
- (iv) **Antonio Ruiz v Borremans** C.S. No. 200 of 1991 – foot fracture, 5% permanent fracture – SR80,000.00 global award;
- (v) **Suzette Hermitte v Phillippe Dacambra & Ors** – C.S. No. 261 of 1998 – 15% left leg permanent disability – SR60,000.0 and SR15,000.00 for pain and suffering and loss of amenities, respectively; and
- (vi) **Tirant v Banane** – 1977 SLR 219 – 53 years old male plaintiff, compound fracture of right knee, damaged urethra, right leg amputation and impotence – SR100,000.00.


It is noted that besides listing the foregoing cases, the trial Court neither made any comments on any of them nor was any account taken of inflationary trends. It will further be observed that none of the cases referred to relates to a knee replacement.

In the present case, the appellant was about 43 years old at the time that she suffered the injuries and she was employed as a principal air traffic officer in the Directorate of Civil Aviation, a position she still holds.

For the reasons given, the appeal succeeds to the extent that the award in items 5, 6 and 7, totalling SR140,000-00, is set aside. These items will now be combined as a single global item under which we consider that the sum of SR180,000-00 will be appropriate. When this figure is added to the uncontested awards, the grand total comes to SR202,200-00. The appellant is entitled to the costs of the appeal.

  
**E. O. AYOOLA**  
**PRESIDENT**

  
**A. M. SILUNGWE**  
**JUSTICE OF APPEAL**

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

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