

IN THE SEYCHELLES COURT OF APPEAL

ANNA CAMILLE AND ORTHERS

Appellants

VERSUS

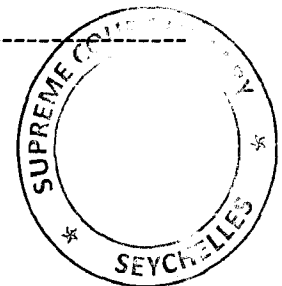
MARE DE SERGIO

Respondent

SCA No. 3 of 2003

[Before: Ayoola, P., Silungwe and De Silva JJ.A]

Mr. F. Bonte for the Appellant
Mr. B. Georges for the Respondent



JUDGMENT OF THE COURT
(Delivered by De Silva, J.A.)

The 1st appellant (the 1st plaintiff in the trial court) is the mother and the 2nd to 6th appellants are the brothers and sisters of one Michel Camille who met with an accident while employed by the respondent to work as a labourer on board the fishing vessel Mare De Sergio. As a result of the accident, he sustained fatal injuries and died on the spot on 7/10/1995. On a consideration of the evidence, the trial court reached inter-alia the following findings:

- (a) the accident occurred in the course of his employment under the respondent;
- (b) the accident was caused solely by the negligence of an employee of the respondent and the respondent was vicariously liable in damages;
- (c) the death of Michel Camille caused suffering and pain to the appellants and the respondent is liable in moral damages.

The learned trial Judge in the course of his judgment considered the amounts awarded as moral damages in several cases both in Mauritius and in Seychelles and made the following award:

- (1) Moral damages for the 1st appellant (the mother of the deceased) in the sum of R20,000/-.
- (2) Loss of material or financial support for the 1st appellant globally in the sum of R10,000/-.
- (3) Moral damages for the 2nd to the 6th appellants at R4,000/- each totalling in a sum of R.20,000/-. Judgment was accordingly entered for the appellants in the sum of R50,000/-.

The only ground of appeal is the insufficiency of the quantum of damages awarded. In the amended plaint the appellants claimed R200,000/- for the 1st appellant and R40,000/- for each of the other appellants.

We shall now briefly refer to some of the earlier cases referred to by the learned trial Judge in the course of his judgment.

Elizabeth and others v/s Morel and another (1979) SLR 25. The plaintiffs were the brothers and sisters of the deceased who died as a result of a motor accident on 30th November 1975. Each of the plaintiffs claimed moral damages in a sum of Rs.10,000/-. The claim was in their own right for the death of their sister. Sauzier J stated, "*I am satisfied that the deceased formed part of a very close household and that the brothers and sisters must have suffered much grief at her sudden death. The circumstances of the accident must also have rendered the experience*

horrifying. In the circumstances I award the sum of Rs.2,000/- to each of the plaintiffs as moral damages for the grief they suffered at the death of their sister." It is to be noted that this was a judgment delivered in January 1979.

Louise and others v/s Union Lighterage and Co. Ltd. (1988) SLR 98. This was a case where the widow and the children (the 1st plaintiff and 2nd to 8th plaintiffs) of one Philip Louise who died on 22/6/85 as a result of injuries sustained in an accident on board a cargo vessel, sued the defendant company (the employer) for damages. G.G.D. de Silva, Acting Judge of the Supreme Court, held that the plaintiffs *"did suffer mental anguish and grief due to the injuries, suffering and subsequent death of the deceased. I therefore hold that the plaintiffs are entitled to moral damages and in the circumstances of this case I award each of them a sum of Rs.1,500/- as moral damages."* This was a case decided in March 1988.

Dubois and others v/s Albert and another 1988 SLR 189 The plaintiffs were the mother, minor brother and sister of the deceased who was a boy of 16 years. He died as a result of an accident which occurred on New Year's Day 1987. Seaton C.J. considered the facts and concluded, *"...I accept that the plaintiffs suffered a great shock on learning of the death of a loved son and brother and they share a feeling of grief and loss. Counsel for the defendants submitted that R40,000/- for their pain, suffering and anxiety is grossly exaggerated. I accept that had he lived and worked the deceased would have cared for his mother in later years and contributed to her financial well being if necessary. I would assess moral damage under this head at R6,000/- for the first and R3,000/- each for the 2nd and 3rd plaintiffs and in addition, I would assess the 1st plaintiff's material damage at*

R10,000/- for a total of R22,000/-.” This case was decided in December 1988.

The trial court having considered the quantum of damages awarded in previous cases and *“taking into account the fact that the cost of living has considerably increased since those determinations”* made the award set out above.

At the hearing before us, learned counsel for the respondent conceded that the award made by the trial court was low and referred to the written submissions filed by him in the Supreme Court, where he had suggested a higher award.

Learned counsel for the appellant, in support of his contention that the award should be enhanced, relied on the Mauritian case of New Light Match Manufacturing Co. Ltd. v Ono, (1990) Mauritius Reports 164. This was a case where the respondents, the widow and children of the deceased, claimed from the appellants (employers) moral damages in the sum of Rs50,000/- for the widow, Rs.40,000/- for each of the minor children, and Rs.35,000/- for the child who was of age at the time. The deceased died in July 1981 from burns suffered while at work. On a consideration of French and Mauritian authorities the Supreme Court held that Rs.50,000/- for the widow and Rs.20,000 for each of the children was not excessive. On a consideration of the authorities Ahnee J stated:-

“We are conscious that it may not be easy to assess the amount which will compensate

somebody for his grief. Different courts may adopt different approaches and there will always be a certain degree of arbitrariness in the assessment of moral damages. The difficulty of the assessment must not, however, be an excuse for the award of nominal damages only. The grief of a person has a price, however difficult it may be to assess. Moral damages are meant to compensate and should not be confused with a punishment imposed on the author of the accident ... the damages allowed ... must, without being punitive, be all the same realistic. Above all, the moral damages must not depend on the social status of the parties. The grief of the poor is by no means less intense than that of princes. We feel unable to consider that moral damages of Rs.50,000 for the widow and Rs20,000 for the children of the late Mr. Ono may, in 1990, be said to be grossly exaggerated."

On a consideration of the awards made in previous cases, the age at which the deceased died (26 years) and the circumstances of his death, we are of the view that it would be fair and just to increase the award of moral damages for the 1st appellant (the mother) from Rs20,000/= to Rs30,000 and the award in favour of the appellants Nos. 2 to 6 from Rs4000 each to R15,000 each. The award of Rs10,000 for loss of material or financial support for the 1st appellant will remain.

The judgment is accordingly amended by awarding a total sum of Rs.115,000/- for the appellants with costs. The appeal is allowed with costs.

Dated at Victoria, Mahe, this ⁵.....day of December 2003