

GOVERNMENT OF SEYCHELLES v ROSE

(2012) SLR 364

Alexandra Madeline for appellant
Anthony Derjacques for respondents

Judgment delivered on 7 December 2012

Before MacGregor P, Domah, Msoffe JJ

MSOFFE J:

This appeal arises from the decision of the Supreme Court (Renaud J) which condemned the appellant to pay the respondents damages of a total sum of R940, 000 with interest and costs in an action based on fault.

At the trial the appellant admitted liability and only contested the action on the issue of quantum of damages.

The respondents' case was that on 25 July 2009 at 1900 hours the Seychelles Police force through its officers arrested Mr Mervin Pierre (the deceased), detained him at Beau Vallon Police station and eventually killed him while acting in the course of their duties. The plaint particularized fault as follows:

PARTICULARS OF FAUTE

- (i) Arresting the deceased, Mervin Pierre, unlawfully and without cause.
- (ii) Falsely and unlawfully detaining and imprisoning the deceased Mervin Pierre, without cause, at the Beau Vallon Police Station.
- (iii) Killing Mervin Pierre.
- (iv) Causing the death of Mervin Pierre.
- (v) Negligently and unlawfully causing the death of Mervin Pierre.
- (vi) Assaulting Mervin Pierre.
- (vii) Failing to follow proper and or lawful police procedures for arrest, detention and imprisonment.
- (viii) Being drunk and disorderly in a police station.
- (ix) Failing to conduct themselves and exercise powers in a humane, civilized and proper manner.
- (x) Acting brutally and inappropriately.

The plaint also set out the particulars of loss and damages as follows:

PARTICULARS OF LOSS AND DAMAGES

- | | | |
|-----|--|---------|
| i. | 1 st Plaintiff (Administer to the estate), false arrest | 50,000 |
| ii. | 1 st Plaintiff (Administer to the estate), | 100,000 |

	unlawful detention and imprisonment from 1900 hours on the 25 th of July to 1100 hours on the 26 th July 2009	
iii.	1 st Plaintiff for assault to Mervin Pierre	50,000
iv.	1 st Plaintiff distress, anxiety, shock, pain and knowledge of impending death	300,00
v.	2 nd Plaintiff, distress, shock, pain, psychological pain, humiliation for death	1,000,000
vi.	3 rd Plaintiff, distress, shock, pain, psychological pain, humiliation, emotional trauma for death	1,000,000
vii.	3 rd Plaintiff for economic loss and maintenance For 10 years at R3,000/- monthly	360,000
viii.	2 nd Plaintiff economic loss and maintenance for life as common law, at R2,000/- monthly	600,000
ix.	Special damages reflecting culpability of Defendant in these special circumstances	2,000,000
	TOTAL	5,460,000

The judge carefully analysed the particulars of loss and damages under the respective items. In the process, he also cited a number of authorities in support of his assessment of the matter. In the end, he did not sustain the total figure of R5,460,000 claimed by the respondents but reduced it and assessed the quantum of damages in respect of the parties to the suit as under:

1st Plaintiff Mervyn Pierre – Deceased

a)	Damages for false arrest	40,000
b)	Damages for unlawful detention and imprisonment from 1900 hours on 25 July to 1100 hours on 26 July 2009,	50,000
c)	Damages for assault to Mervin Pierre,	50,000
d)	Damages for distress, anxiety, shock, pain and knowledge of impending death,	<u>90,000</u>
		230,000

2nd Plaintiff Marie Michel Solana Rose

a)	Damages for distress, shock, pain, psychological pain, humiliation for the death,	70,000
b)	Damages for economic loss and maintenance for 5 years as common law wife, at R1,500 monthly	<u>90,000</u>
		160,000

3rd Plaintiff Master Romio Michel France Pierre

a)	Damages for distress, shock, pain, psychological pain, humiliation, emotional trauma for the death of his father	100,000
b)	Damages for economic loss and maintenance For 10 years at R2,500 monthly	<u>300,000</u>
		400,000

Special Damages

Special damages reflecting culpability of Defendant in these special circumstances	150,000
<u>Total</u>	940,000

The appellant has raised seven grounds of appeal. They are as follows:

- 1) The award of damages to the 1st plaintiff for false arrest, unlawful detention and imprisonment from 1900 hours on 25 July 2009 to 1100 hours on 26 July 2009 and the assault of the deceased was wrong in principle given that
 - i. The 1st plaintiff was not the victim of the said acts and
 - ii. The causal link between false arrest, unlawful detention and imprisonment of the deceased and the death of the same deceased has not been established and at any rate manifestly excessive in all circumstances of the case and having regards to comparable awards made by the Courts for false arrest, unlawful detention and imprisonment and assault.
- 2) The award of damages in the sum of R90,000 to the 1st plaintiff for distress, anxiety, shock, pain and knowledge of impending death is manifestly excessive in all circumstances of the case given that time of death was not established.
- 3) The award of damages in the sum of R70,000 to the 2nd plaintiff for distress shock, pain psychological pain, humiliation for the death is arbitrary and is manifestly excessive in all circumstances of the case and having regard to comparable awards of damages made by the Courts.
- 4) The award of damages in the sum of R90,000.00 to the 2nd plaintiff for economic loss and maintenance for 5 years as common law spouse is manifestly excessive in all circumstances of the case given that the amount that the deceased normally extended on the said 2nd plaintiff was not established.
- 5) The award of damages in the sum of R100,000 to the 3rd plaintiff for distress, shock, pain psychological pain, humiliation for the death is arbitrary and manifestly excessive in all circumstances of the case and having regard to comparable awards of the damages made by the Courts.
- 6) The award for damages in the sum of R300,000 to the 3rd plaintiff for economic loss and maintenance for 10 years at R2,500 monthly is manifestly excessive in all circumstances of the case given that the monthly contribution made by the deceased and 2nd plaintiff towards the maintenance of the 3rd plaintiff was not established and further the award does not take into account the different levels of maintenance required for children of different age groups.
- 7) The award for special damages in the sum of R150,000 reflecting culpability of defendant in these special circumstances was wrong in principle as special damages were not proved.

It is important to note here that in this appeal the appellant is essentially advancing the same points that were canvassed at the trial in which the bottom line here is that in the circumstances of the case the awarded sums of money are wrong in principle and

manifestly excessive. Indeed, the above grounds of appeal lay out the reasons why the appellant thinks the awarded sums of money are on the high side.

Article 15 of the Constitution of the Republic of Seychelles recognizes the right to life and that no one should be deprived of life intentionally. Under clause (3) thereto the right is not infringed if there is a loss of life:

- a) by an act or omission which is made not punishable by any law reasonably justifiable in a democratic society; or
- b) as a result of a lawful act of war.

In similar vein, article 16 thereof recognizes the right of every person to be treated with dignity worthy of a human being and not to be subjected to torture, inhuman or degrading treatment or punishment. Actually, articles 15 and 16 should be read together with the Preamble which recognizes the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation for freedom, justice, welfare, fraternity, peace and unity.

In effect, this means therefore that the Constitution of Seychelles recognizes not only the right to life but also its dignity and sanctity so much that it can only be lost under circumstances which are enumerated under clause (3) of the above article. In this sense, the foremost and fundamental constitutional right is life. Henceforth, life is so precious that it should not be lost under circumstances which are inappropriate. So, in a case involving damages for loss of life the amount to be awarded as compensation should reflect this reality. In the end, a reasonable person looking at the awarded sum should be in a position to look at the sum in question and sigh with a sense of relief, content and satisfaction that justice has not only been done but has manifestly been seen to be done.

It should not be forgotten also that in this case the deceased was arrested, assaulted and killed in a police station. In this regard, the judge was correct in asserting that the authority entrusted with the responsibility to oversee the security of a citizen itself turned against him and caused a *faute* on the said citizen leading to death. It is on record that the killing caused revulsion throughout the nation and necessitated a public enquiry upon the Order of His Excellency the President. It is also on record that this was the first time ever in the history of this country that a killing of the above nature took place in police custody. In view of the foregoing, the judge was therefore correct in saying that a different consideration has to be given to this particular case when determining the quantum of damages in view of its special nature.

In *Marie-Andre Jouanneau and Others v Government of Seychelles and Others* SCA No 4 of 2007 the deceased was shot by police officers and left suffering and bleeding on the ground for more than one hour. The shooting was at around 8:30 am and the deceased was guarded by policemen who would not let the relatives go near or assist the deceased. All this time the relatives and the deceased's relatives watched the deceased suffer and die. After considering all the relevant factors in the case this Court overruled the sums awarded to the appellant by the Supreme Court totalling R77,000,

replaced them and accordingly entered judgment in the total sum of R152,500 with interest and costs. This court, in the process, also ruled that the deceased's concubine of a long and stable relationship was entitled to claim compensation for moral damages and for the loss of maintenance and support. In the present case, the concubine and the relatives did not suffer the same trauma of seeing the deceased suffering and dying and being prevented from assisting him but at stake here is, as stated above, the undenied fact there was a loss of human life under circumstances which were inappropriate.

In *Charles Ventigadoo v Government of Seychelles* SCA No 20(a) of 2006 the appellant had been taken to Victoria Hospital on 2 June 1998 with an oblique gaping deep laceration of the upper limb of his right arm. Four days later the arm was amputated following the occurrence of gangrene in the wound. He sued the Government of Seychelles for vicarious liability claiming a total sum of R918,000. The Supreme Court dismissed the suit. On appeal this court entered a judgment in his favour and ordered the trial court to assess damages and costs. In its judgment, the Supreme Court (Karunakaran J) assessed the damages at R500,000 with interest on the said sum at 4% per annum - the legal rate – as from the date of the plaint, and with costs. On appeal, this court in SCA No 28 of 2007 sustained the award but amended the last sentence of the above judgment to read in part - “as from the date of the service of the plaint until the final payment of the total award, and with costs”.

It is generally accepted that damages in wrongful death cases are designed to compensate for losses resulting from the death of a family member. Of course, if we may digress a bit here, whatever sum of money is awarded as compensation for the loss of a loved one, really the sum will never heal the loss of a loved one because once human life is lost it can never be returned or paid back. Anyhow, the losses come in different varieties. For example, direct expenses such as medical bills and funeral expenses are easy to calculate because their records may easily be obtained from hospitals, funeral homes, etc. However, other damages under the general category of future damages ie loss of pension or retirement benefits and loss of future wages, etc may not be easy to calculate. However, it is settled law in Seychelles as per this court's decision in *Ventigadoo* SCA No 28 of 2007 (supra) that the fundamental principle of law by which this court is guided when considering the adequacy or otherwise of an award for damages by an inferior court is -

Before interfering with an award of damages, the Appeal Court must be convinced that:-

- (i) the trial court acted on some wrong principle of law; or
- (ii) the amount awarded was so high or so very small as to make it, in the judgment of the Appeal Court, an entirely erroneous estimate of the damage to which the plaintiff was entitled.

It is also a general principle of law in Seychelles that in awarding damages the circumstances of each case have to be taken into account. In the process, due consideration is also taken of the rate of inflation, the socio-economic situation reflected in the increase in the cost of living, etc.

After laying out the above background and introductory remarks, the crucial question at this stage of the judgment will be whether or not there is basis for interfering with the total award of R940,000 awarded to the respondents by the Supreme Court. Without hesitation, our answer to this question is in the negative for reasons which will emerge hereunder.

The starting point will be the proceedings of the trial court dated 9 February 2010, 18 February 2010 and 12 July 2010. It is evident from those proceedings that the parties agreed on certain material facts and decided to proceed with the case by way of written submissions on quantum of damages only. If so, it is now too late in the day for the appellant to come up with a number of suggestions in the grounds of appeal that some matters needed proof by way of evidence. For example, under ground 2 it is asserted that the time of death was not established, under ground 4 that the amount the deceased expended on the said second plaintiff was not established, under ground 6 that the monthly contribution made by the deceased and the second plaintiff towards the maintenance of the third plaintiff was not established, and under ground 7 that there was no proof of special damages. With respect, these were matters that ought to have been canvassed by way of evidence at the trial. Since the parties agreed not to lead evidence on the above matters it follows that technically they left upon discretion of the trial judge to determine the quantum based on the submissions before him and the principles governing the award of damages in a case of this nature.

A number of authorities were cited at the trial. Indeed, in this appeal several authorities have been cited too. In general, the authorities lay out the principles that have to be followed in assessing damages in a case of this nature. After looking at some of those authorities and after addressing our minds to them, we wish to make the following points –

One, the appellant has cited to us ten or so authorities relating to comparative awards in the assessment of damages. In principle, we have no serious quarrels with those authorities in view of the context in which they were decided. However, in those authorities, except *David v Government of Seychelles* (2008) SLR 46 and *Jouanneau* (supra), it will be noted that these were cases which were decided before the year 2003 or thereabout. Our view is that since then there have been many changes in society such that there is now a need to approach the issue of damages for personal injury cases with a new, fresh and different view point and outlook. We think that although finally each case has to be decided on the basis of its own facts time is now ripe to award damages which reflect the socio-economic situation of the day and the seriousness of the injury in question. In this sense, there is need to ensure that damages reflect this reality of life and hence be on the higher side in order to redress losses for personal injuries, particularly where death is involved. Generally speaking therefore, and without appearing to re-open the matter, if it were to happen that *Jouanneau* (supra) was being decided today perhaps a different consideration and approach might have to be taken into account in assessing damages in view of the changed circumstances and the undenied fact that the death in that case too was an inappropriate one.

Two, without prejudice to our view on one above, we note that in *Ventigadoo* (supra) a sum of R500,000 was awarded for an amputated limb. That was on 25 April 2008 - vide this court's decision in SCA No 28 of 2007. The point to note here is that a sum of R500,000 was awarded for the loss of a limb. Surely, that loss cannot be equated or compared to the loss of human life, as happened in this case. In this sense, the sum of R940,000 awarded in this case on 25 March 2011, which was about four years or so after *Ventigadoo* (supra) is not manifestly excessive. It is a very fair sum in the circumstances of the case.

We have carefully looked at the judgment of the Supreme Court. Generally the judge correctly applied the principles governing compensation in cases of personal injury. In the circumstances, we are satisfied that the award of R940,000 is reasonable in the justice of the case. There is no material basis upon which we could disturb or vacate that sum. For this reason, there is no merit in this appeal. We hereby dismiss it with costs.