IN THE SEYCHELLES COURT OF APPEAL

S. Soomery & Ors
Appellant

v.s

M. Celestine -
Respondent

SCA No: 25 of 2011

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Before: MacGregor,P., Fernando, Msoffe, JJA

Counsel: Mr Joel Camille for the Appellant
Mr Anthony Derjacques for the Respondent

J U D G M E N T

MACGREGOR, P.,

Facts of the case are the Plaintiff (Respondent here) in a plaint before Supreme Court sued Defendants (Appellant's here)for physical assault and damages for injuries received in a scuffle at Vilaz Trezor, English River, Mahe, on the 19th April 2009.

On the pleadings in the court below the Defendants denied the assault and damages but in evidence below conceded the assault and in court before us their counsel conceded there was medical evidence of injuries which was not disputed, although he argued about the ambiguity of the dating of the medical report.

On the conceding of the assault, Appellant's counsel tried to argue in the court below that this was in self defence. However this defence was never pleaded, and accordingly to the trial judge below if so not clearly.

We are of the view on this issue of the defence on the pleadings the rule is that the statement of defence must be clear and distinct, as laid out in S.75 of the Seychelles Code of Civil Procedure which reads;

> "*The statement of defence must contain a clear and distinct statement of the material facts on which the defendant relies to meet the claim. A mere general denial of the plaintiff's claim is not sufficient. Material facts alledged in the plaint must be distinctly denied or they will be taken to be admitted.*"

We are of the view this rule has not been met, and accordingly Appellant's Counsel cannot rely on the defence of self defence.

It would appear the moment the Appellants in evidence below admitted the assault and its initiation contradicting their own pleading, this major flaw was to be a capitulation of their case and cause. It was if were they loosing their own case by their conduct in the trial court.

The Appellants then argued against only the dating of the medical report as an ambiguity, but in our view this did not outweigh the balance of probabilities on the clear evidence of injury.

They then argued against the quantum of damages as being excessive at Rs50,000/-, although Rs.250,000/- was claimed on the pleading. In the alternative their counsel conceded a fairer amount would have been Rs.35,000/-.

This case rests essentially on the evidence of facts for which we go by the general principle that the trial judge is the best judge of facts which should not be lightly disturbed, and we see no reason to disturb it.

Both counsel for Appellant and Respondent accept this , and on the contrary had Respondent cross-appealed on the question of damages being on the low side, he may have succeeded.

There is some similarity in this case there to Y. Vidot Vs. J. Ally SCA 34 of 2010, on the issues of assault, provocation and quantum of damages.

In conclusion on the evidence of facts and quantum of damages pleaded in the grounds of appeal we find no merit, and accordingly dismiss the appeal with costs.

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F. MacGREGOR
President

I concur:

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A. Fernando
Justice of Appeal

I concur:

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J. Msoffe
Justice of Appeal

Dated this 30th August 2013, Victoria, Seychelles