

# IN THE SEYCHELLES COURT OF APPEAL

**[Coram:** A.Fernando (J.A) , M. Twomey (J.A), F. Robinson (J.A)]

## Civil Appeal SCA 18/2016

(Appeal from Supreme Court Decision CS 37/2011)

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Greg Jacques

Appellant

Versu  
s

Jhowla Manoo

1st Respondent

The Government of Seychelles

2nd Respondent

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Heard: 04 May 2018

Counsel: Mr Gabriel for the Appellant

Mr Hoareau for the first Respondent

Mr Kumar for the second Respondent

Delivered: 11 May 2018

## JUDGMENT

F. Robinson (J.A)

### THE BACKGROUND

1. This is an appeal from the judgment of the learned Judge dismissing the claim of the Appellant, Greg Jacques, in an action in delict under Articles 1382 and 1384 of the Civil Code of Seychelles Act, for damages brought against the Defendants, Dr Jhowla Manoo, a *préposé* of the Government of Seychelles and the Government of Seychelles on its part for damages caused by its *préposés*.
2. Greg Jacques instituted proceedings in the Supreme Court against Dr Manoo and the Government of Seychelles for damages arising out of the medical and surgical treatment

he received at Victoria Hospital. Greg Jacques complained in his plaint that —

"3. On the 4<sup>th</sup> February, 2010, following a visit by members of the medical staff of the 2<sup>nd</sup> Defendant, Plaintiff was admitted on D'Offay ward, Victoria Hospital after he was found to be unwell with fever, marked pallor and having discharging sinus over the left lateral thigh. Plaintiff was placed under joint medical care of the urologist and orthopaedic medical staff of the 2<sup>nd</sup> Defendant.

4. Following, the above referred diagnosis, Plaintiff underwent surgery for exploration, debridement of the discharging sinus, on the 5<sup>th</sup> February 2010 and the said surgical operation was conducted by the 1<sup>st</sup> defendant, acting in his capacity as the prepose of the 2<sup>nd</sup> Defendant.

5. Plaintiff avers that the said surgical operation was wrongly and negligently diagnosed and performed by the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> Defendant or its prepose...

6. After the said operation and as a result of the poor medical attention administered onto the Plaintiff, the Plaintiff's injuries were further aggravated and the said Plaintiff had to be attended on several occasions in the operation theatre for further dressing and irrigation and change of drain.

7. The said injuries were caused by the fault and/or negligent of the 1<sup>st</sup> Defendant and were compounded by the fault and/or negligent of the 2<sup>nd</sup> Defendant whether by itself, its servants or agents."

Dr Manoo and the Government of Seychelles have, in their plea, denied the claim of Greg Jacques. The issue before the learned Judge concerned whether or not Dr Manoo or any other medical officer or employees of the Government of Seychelles committed any negligent act or omission in the course of medical and surgical treatment given to Greg Jacques at the material time which engaged the liability of the Government of Seychelles. After reviewing the evidence, the learned Judge found —

"that the plaintiff has miserably failed to establish any act of medical negligence on the part of the 1<sup>st</sup> defendant Dr Manoo or any other medical officer or employees of the Government of Seychelles, who in one way or the other had been involved in the operation or medical treatment given to the plaintiff at the Victoria hospital for "*septic arthritis*".

### **THE GROUNDS OF APPEAL**

3. Greg Jacques has, in his Memorandum of Appeal, dated 22 September, 2016, raised 6 grounds of appeal challenging the finding of the learned Judge as follows —

- "i) The learned trial Judge erred in law in not properly considering and weighing the whole evidence put before the court at the hearing of the case, in particular the evidence of the Medical Doctors who were hardly challenged in cross examination.
- ii) The learned trial Judge erred in fact and in law in dismissing the evidence of the Appellant's witnesses especially the expert witnesses who had scrupulously laid down the case of the Appellant before the Court.
- iii) The learned trial Judge erred in dismissing the arguments of the Appellant against both Respondents who failed to provide reasonably good and adequate medical treatment to the Appellant as would generally be expected from a good, competent, skilled and qualified medical practitioner in the employment of the second Respondent.
- iv) The learned trial Judge erred in law and in fact by ignoring key elements of the Appellant's case especially where it was shown that the Respondents had been incompetent, reckless and negligent in all the circumstances of the case.
- v) The learned trial Judge erred in law and in fact by accepting the defence of the Respondents even where such defence was not canvassed in their pleadings.
- vi) In all circumstances the decision of the learned trial Judge was against the weight of the whole evidence adduced before the Court.

## THE EVIDENCE

4. The evidence of the alleged negligence came from the accounts of Greg Jacques and his mother, Anne Jacques. Mrs Herachandra, Mrs Muriel William, Lucille Mathiot, Doctor Louis Reginald (Dr Reginald) and Doctor Ribail Babie Reyea (Dr Ribail) also gave evidence on behalf of Greg Jacques.
5. Greg Jacques was admitted to the D'Offay Ward, in February, 2010, due to a "*slight bedsore*" he had developed over his left hip and the wound needed cleaning. On the day of admission, Dr Ribail attended to him. On the day following his admission, his wound was cleaned in the operating theatre by Dr Manoo. The next day, Dr Manoo came to see him on the D'Offay Ward and he spoke to Anne Jacques. Thereafter, Greg Jacques was not attended to by an orthopaedic surgeon for a month. During his stay on the Male Medical Ward, where he was transferred to, the bedsore got worse. A lot of unpleasant smelling fluid was oozing from the sore. He was admitted to the Male Medical Ward, where he remained for two months, after which he was transferred to the D'Offay Ward. While on the D'Offay Ward, Dr Ribail operated on him by removing the head of the femur. After the surgical operation Greg Jacques remained at the hospital for four months, with frequent visits to the operating theatre because his hip required draining. He was discharged from the hospital six months after being admitted. He stated that Dr Manoo and the Government of Seychelles were negligent in administering treatment to, and taking care of him.
6. When cross-examined, Greg Jacques stated that he knew of the bedsore before he went to the hospital. On 5 February, 2010, Dr Manoo opened the bedsore and cleaned it. The nurse cleaned and dressed the bedsore. Dr Reginald came almost every day to see him during his admission on the Male Medical Ward. Dr Ribail performed the surgical intervention on 5 March, 2010.
7. The version of Anne Jacques was that Greg Jacques was involved in a road traffic accident, on 13 July, 2005, as a result of which he sustained "*C5 dislocation*". He was

admitted to Victoria Hospital, after which he underwent medical treatment in Reunion for six months. Upon his return he was admitted to North East Point Hospital for three months, after which they went to India, where Greg Jacques underwent therapy. Greg Jacques was seen at home by Dr Reginald, a family friend.

8. On 4 February, 2010, Dr Reginald noticed that Greg Jacques had fever and sepsis of the left thigh. Greg Jacques was admitted to the D'Offay Ward under the care of Dr Reginald and Dr Ribail, the latter, an orthopaedic surgeon. On 5 February, 2010, Greg Jacques was operated on by Dr Manoo. He was attended to by Dr Manoo on 6 February, but the discharge was still there. After 6 February, they did not see Dr Manoo again. On 5 March, he was attended to by Doctor Ribail. He underwent several surgical operations until 27 March, 2010, in order to drain the discharge, following which his condition started to improve. He was admitted for a total of six months before being discharged on 10 August. His condition has since improved.
9. When cross-examined, Anne Jacques stated that Dr Manoo found a "*deep seated abscess extending to the right femur*". After the operation the wound was left open. Dr Reginald did the dressing.
10. Mrs Herachandra, a theatre nurse attached to Victoria Hospital, stated that in her experience it was normal for patients with sepsis of that nature to be operated on for a number of occasions.
11. Dr Reginald, a consultant surgeon and urologist, stated that he was not competent to give an opinion about the surgery conducted by Dr Manoo because orthopaedics is not his field. In 2010, he worked at the hospital as a general surgeon.
12. He stated that Greg Jacques suffered "*spinal cord injury C4-C5*", as a result of an accident, which left him quadriplegic with a "*neurogenic bladder*". He added that he has known Greg Jacques and his family for many years. After the accident, as a urologist, he took over Greg Jacques's care and conducted treatment follow-up. He used to pass by and see Greg Jacques and Anne Jacques at their house.

13. Dr Reginald saw Greg Jacques before he was admitted to the hospital. He had a fever and a discharge sinus present on the left thigh and he was pale and anaemic. He told Anne Jacques to bring Greg Jacques to the hospital. At the hospital he handed Greg Jacques over to the orthopaedic surgeons, who could best manage his treatment. He continued to see him as a friend in order to observe his progress.
  
14. Doctor Ribail, an orthopaedic surgeon, explained the circumstances in which he operated on Greg Jacques. In 2010, Dr Reginald, Dr Manoo and himself examined Greg Jacques. He confirmed that the problem had to do with the spinal cord injury that Greg Jacques had suffered. On examination, Greg Jacques was found to have "*chronic fistula with a smelly discharge in the left hip*" and he was anaemic. Dr Manoo performed the first surgery on 5 February, 2010. Dr Ribail performed another surgery on 4 March, 2010, because "*examination showed the left inferior limb shorter than the right and his joint unstable*" and the x-ray done on 4 March, 2010, showed "*hip dislocation, head of the femur irregular architecture with lytic changes and periosteal sclerotic reaction generalize with diagnosis of left septic arthritis with head osteomyelitis*". Dr Ribail added that the first x-ray done on 4 February, 2010, did not show "*hip dislocation*". When asked by Mr Camille whether or not the first surgery would have contributed to the hip dislocation, he answered that "*... the hip was already damage[d]*".
  
15. Dr Ribail stated that Greg Jacques was operated on nine times because, at the beginning, it was necessary to try and save the joint. Then, because the head of the femur was damaged and smelling, he had to surgically remove it and keep the infected joint drained. They kept the incision open because they had to clean and drain the wound each time. When Greg Jacques was in a better condition, on 27 April, they closed the incision. On 3 May, 2010, the drain collection was complete. When asked by the learned Judge whether or not there was any negligence on the part of the doctors, Dr Ribail opined that he did not observe any negligence. Dr Ribail was not cross-examined.

## **THE ANALYSIS**

16. We have considered the evidence on record, the submissions of learned Counsel and the judgment appealed against. As we see it, the main issue for our determination, raised by grounds (i) to (iv) and (vi) of the grounds of appeal, is whether or not the learned Judge attached significant weight to the evidence of the medical doctors who, according to Greg Jacques, through learned Counsel, had adduced evidence to support the particulars of negligence. Greg Jacques in his particulars made the following allegations "(1) Failure to insert a drain after the surgery to allow the flow of the discharge. (2) The dressing was attended by the urologist instead of the orthopedic which was the 1<sup>st</sup> Defendant. (3) Discharge without proper medications.". The position of Dr Manoo and the Government of Seychelles, through learned Counsel, is that neither Dr Reginald, nor Dr Ribail had adduced evidence to support the particulars of negligence.
17. In approaching this appeal we have been guided by the principles of jurisprudence in this area of law. We have considered the facts of this case and are of the view that it is an "obligation de moyens", the principle of which was enunciated by the *Arrêt Mercier*, which is activated on the part of the medical practitioners. (See *Stella Hertel v The Government of Seychelles Civil Appeal SCA 2/2014* delivered on 9 December, 2016). In *Arrêt Mercier* the "Cour de Cassation" held "*Mais attendu qu'il se forme entre le médecin et son client un véritable contrat comportant, pour le praticien, l'engagement, sinon, bien évidemment, **de guérir le malade...**, **du moins de lui donner des soins, non pas quelconques, ainsi que parait l'énoncer le moyen du pourvoi, mais conscientieux, attentifs et, réserve faite de circonstances exceptionnelles, conformes aux données acquises de la science...***". (*Cour de Cassation, Civ., 20 mai 1936, Mercier*).
18. We have gone through the record of proceedings and the exhibits and are unable to say that the learned Judge discounted the evidence of Dr Reginald and Dr Ribail, who, as contended by learned Counsel for Greg Jacques, had adduced evidence to support the particulars of negligence. The learned Judge, after reviewing the evidence, had no difficulty in accepting the evidence of Dr Ribail and Dr Reginald, which was uncontroverted. The evidence on record was that Greg Jacques was admitted to the hospital with "*chronic fistula to the left thigh with a smelly discharge*". Dr Manoo

incised and drained the infected joint. After the surgical operation, Dr Manoo made a finding of "*deep seated abscess extending to femur, pus drained...*". Dr Ribail confirmed that Dr Manoo incised and drained the infected joint, which in his opinion "*is a simple surgery*". He added that because x-ray showed the head of the femur was damaged, he surgically removed it and kept the infected joint drained. He stated in evidence that the incision was kept open because they had to clean and drain the wound each time. The evidence of Greg Jacques himself showed that the dressing was not attended to by a urologist. Based on the uncontroverted evidence, the learned Judge accepted the evidence of Dr Ribail who stated that in his opinion there was no medical negligence. In our final analysis, we are unable to challenge the finding of fact of the learned Judge to the effect that neither Dr Reginald, nor Dr Ribail has adduced evidence to support the particulars of negligence.

19. In relation to ground (v), after considering the submissions of learned Counsel, we accept the submission of Dr Manoo and the Government of Seychelles, through learned Counsel, that Dr Manoo and the Government of Seychelles had properly canvassed their defence in their pleadings. They had in their plea denied both paragraphs 5 and 6 of the plaint. Paragraphs 5 and 6 of the defence contained a clear and distinct statement of the material facts on which Dr Manoo relied to meet the claim. We, therefore, see no merit in this ground of appeal.

### **THE DECISION**

20. In light of the above, we uphold the decision of the learned Judge. We find no merit in the appeal. We dismiss it.

F. Robinson (J.A)

**I concur:.**

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A. Fernando (J.A)



**I concur:.**

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M. Twomey (J.A)

Signed, dated and delivered at Palais de Justice, Ile du Port on 11 May 2018